

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 3400 of 2018

=====

JAYESHBHAI BALDEVBHAI CHAUHAN

Versus

GUJARAT VIDYAPITH

=====

Appearance:

MR RAJENDRA PATEL(645) for the PETITIONER(s) No. 1

MR DEVANG VYAS(2794) for the RESPONDENT(s) No. 3

MR JAYANT P BHATT(169) for the RESPONDENT(s) No. 1,2

MR JEET J BHATT(6154) for the RESPONDENT(s) No. 1,2

MR MITUL K SHELAT(2419) for the RESPONDENT(s) No. 4

=====

CORAM: HONOURABLE MR.JUSTICE N.V.ANJARIA

Date : 19/11/2018

ORAL ORDER

Heard learned advocate Mr.Rajendra Patel for the petitioner, learned advocate Mr.Jeet Bhatt for respondent Nos.1 and 2, learned advocate Mr.Devang Vyas for respondent No.3 and learned advocate Mr.Mitul Shelat for respondent No.4.

2. The petitioner was placed in the pay-scale of Rs.5000-8000/- when he came to be appointed on the post of Cashier in the year 2000. He was thereafter promoted as Section Officer. After passage of 16 years, respondent Nos.1 and 2 took a stand to come out with a case that the granting of pay-scale of Rs.5000-8000/- to the petitioner was erroneous. On

such premise, a Show Cause Notice came to be issued to the petitioner on 06.08.2016.

3. The above Show Cause Notice culminated into the impugned order dated 05.12.2017 whereby recovery was sought to be effected against the petitioner on the aforesaid ground that pay-scale of Rs.5000-8000/- was wrongly received by him. The petitioner was further sought to be reverted to the post of Cashier from the post of Section Officer.

4. The issue of reversion of the petitioner from the post of Section Officer to the post of Cashier is a separate issue which may be examined on merits at the time of final hearing of the present petition.

5. Therefore, Rule returnable on 25.03.2019.

6. As far as the aspect of recovery is concerned, the action on the part of the respondents is manifestly not sustainable in law in view of the principles laid down by the Supreme Court in **State of Punjab and others vs. Rafiq Masih (White Washer) and others [(2015) 4 SCC 334]**, to be applied to the facts

of the present case. The recovery was ordered after a gap of 16 years stating that the pay-scale was wrongfully granted, although it was granted without any fault of the petitioner, much less any fraudulent conduct on the part of the petitioner. As per the principles laid down by the Apex Court in **Rafiq Masih (supra)**, the recovery against employees belonging to Class-III and Class-IV could not be permitted when the receipt of benefit of pay-scale was not attributable to any fault on their part and the recovery in respect of any employee after gap of 5 years from the date of receipt of the benefit was held to be impermissible.

7. By way of interim relief, it is directed that no amount shall be recovered from the petitioner henceforth. It was uncontrovertedly pointed out by the learned advocate for the petitioner that the recovery was already effected from the petitioner's salary for the period from January, 2018 to November, 2018 and that during that time, amount of Rs.5,590/- per month was recovered which was evidenced by copy of the Bank passbook figuring on record. Since this recovery is plainly illegal in nature, it cannot be

allowed to operate. Therefore, by way of further interim relief, it is directed that respondent Nos.1 and 2 shall keep the entire amount recovered from the petitioner's salary during the aforesaid period of January, 2018 to November, 2018, in a fixed deposit in a nationalized Bank initially for a period of one year and renewable, which shall be guided by further orders which may be passed by this Court.

C.M. JOSHI

(N.V.ANJARIA, J)