IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7299 OF 2022

Dr. Harihar S/o. Shrirang Kulkarni
Age : 71 years, Occ : Pensioner,
R/o Chaitanya Housing Society,
Gajanan Mandir Road, Garkheda,
Aurangabad.

... PETITIONER

...VERSUS...

1. The State of Maharashtra,
Through it's Secretary,
School Education Department,
Mantralaya, Mumbai

2. The Director of Adult Education, Pune,
17, Ambedkar Road,
Camp, Pune-411 001.

3. The Director,
The Maharashtra State Institute of Adult Education,
Near Govt. B.Ed. College Hostel,
Padampura, Railway Station Road,
Aurangabad.

... RESPONDENTS

- Mr. Rushikesh A. Joshi, Advocate for Petitioner
- Mr. M.K. Goyanka, AGP for Respondent Nos.1 and 2
- Mr. Uday S. Malte, Advocate for respondent no.3

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CORAM	:	NITIN B. SURYAWANSHI AND VAISHALI PATIL – JADHAV, JJ.
RESERVED ON	:	APRIL 21, 2026
PRONOUNCED ON	:	MAY 07, 2026

J U D G M E N T [Per Vaishali Patil – Jadhav, J.] :

. Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocates for the parties.

2. By this Petition, the petitioner challenges the order dated 07.02.2017 passed by Respondent No.3- Director, Maharashtra State Institute of Adult Education, whereby recovery of Rs. 1,34,083/- has been directed against the petitioner towards alleged excess payment of salary, pension and other retiral dues.

3. **The facts, in brief, are as follows**:

The petitioner was initially working as a teacher in Zilla Parishad Multipurpose High School, Aurangabad. After rendering 22 years of service, he took voluntary retirement on 31.12.1993. (For which he receives separate pension.) Thereafter, he came to be appointed by way of selection as Assistant Director in the Maharashtra State Institute of Adult Education, State Resource Centre, Aurangabad on 01.01.1994. He was subsequently promoted to the post of Deputy Director. (He has also held the charge of the post of Director for some time.) The petitioner superannuated from service on 27.02.2009. On the very date of his retirement, he was served with a communication by

Respondent No.3 stating that he was relieved from service w.e.f. 28.02.2009, subject to a preliminary enquiry against him. No charge sheet or show cause notice was served on the petitioner nor any departmental proceedings were initiated against him till the date of his retirement.

4. Despite retirement, except the amount of provident fund, other retiral benefits including pension and leave encashment to which the petitioner was entitled were not released by Respondent No.3. Being aggrieved thereby, the petitioner had earlier approached this Court by filing Writ Petition No.7529 of 2012. During the pendency of the said proceedings, Respondent No.3 issued a charge sheet (under the MCS (Discipline and Appeal) Rules, 1979) dated 12.03.2012, levelling charges of misconduct and alleging excess payment of salary and pension to the petitioner. (For drawing pension for the service rendered as a teacher in Zilla Parishad.)

5. By order dated 16.08.2012, this Court partly allowed the petition and held that Respondent No.3 had no authority to initiate or continue departmental proceedings against the petitioner after his superannuation and directed the petitioner to file proper representation to Respondent No.3 for release of his pension and other benefits.

Pursuant to this Court's direction, the Petitioner made a representation on 10.09.2012. As no decision was taken, petitioner initiated Contempt Petition No.475 of 2013 for non-compliance of the earlier order of this Court.

6. During the pendency of the contempt proceedings, respondent no.3 has passed the impugned order on 07.02.2017 directing recovery of an amount of Rs.1,34,083/- from the petitioner. It is stated in the impugned order that an amount of Rs.4,67,990/- is due and payable to the petitioner, however, an amount of Rs.6,02,079/- is to be recovered (comprising of Rs. 68,060/- towards excess salary, Rs. 4,63,969/- towards excess pension, and Rs. 70,050/- towards interest on EPF). Therefore, the petitioner is liable to pay an amount of Rs.1,34,083/-. The contempt petition came to be disposed of by this Court on 28.04.2022 granting liberty to the petitioner to challenge the order dated 07.02.2017 in separate proceedings. Hence, the present writ petition.

7. Learned counsel for the Petitioner submits that the impugned recovery is unjustified and arbitrary. He submits that the recovery towards excess payment of salary is incorrect. In the meeting of the Board of Governors dated 07.10.1991, Resolution No. 18 (5) was

adopted, whereby the pay scale applicable to the post of Deputy Director was modified/stood revised from Rs. 3000-4500 to Rs. 3200-4625. Although, the petitioner came to be promoted as a Deputy Director, the then Director erroneously fixed his pay in the unrevised pay scale of Rs. 3000-4500. On noticing the said discrepancy, the petitioner brought the same to the notice of the then Director/competent authority and sought appropriate correction in accordance with the revised pay scale of Rs. 3200-4625. The Accounts Officer, on verification, accepted the said position and effected the necessary correction. In such circumstances, he submits that the Petitioner cannot be faulted for any alleged excess payment as the same had arisen on account of an administrative error which was subsequently rectified through due process.

As regards objection towards recovery of interest on the Employees Provident Fund, learned counsel submits that the petitioner had specifically pointed out to Respondent No.3 that, on 10.06.2010 a cheque for an amount of Rs. 1,04,210/- was issued towards the Employees Provident Fund and the same was duly encashed. Therefore, the basis for seeking recovery on this count is factually erroneous.

With regard to the recovery of Rs. 4,63,969/- towards excess payment of pension, learned counsel submits that the petitioner had pointed out that the order dated 07.02.2017 does not contain any provision permitting Respondent No.3 to effect such recovery. He further submits that throughout the Petitioner's service tenure, no objection whatsoever was raised regarding the computation or payment of pension. He submits that, at the time of the Petitioner's appointment in the Maharashtra State Institute of Adult Education, the then Director as well as the Accounts Officer were fully aware that the Petitioner had earlier taken voluntary retirement from the services of Zilla Parishad, Aurangabad. The pay fixation was undertaken with due consideration of this aspect, and the Petitioner was permitted to draw pension for the services rendered in the Zilla Parishad. In view thereof, the subsequent attempt to recover pensionary benefits is wholly arbitrary and contrary to the settled position.

Learned counsel further submits that Respondent No.3 has acted in complete disregard of the order dated 16.08.2012 passed by this Hon'ble Court, wherein it was categorically observed that departmental proceedings could not be continued against the Petitioner after his superannuation. Despite such clear observations, the Respondent has proceeded to initiate action and has indirectly effected recovery under the guise of deciding the Petitioner's representation, which is impermissible in law.

It is further submitted that the impugned action is in violation of the principles of natural justice, as no show cause notice was issued before passing the impugned order and no reasonable opportunity of hearing was granted to the Petitioner. The recovery has been ordered long after the Petitioner's retirement, despite the observations of this Hon'ble Court that departmental proceedings cannot be continued after superannuation. It is further submitted that the amounts sought to be recovered are alleged to have been paid due to errors in pay fixation and pension calculation on the part of the department, and, there is no fraud, misrepresentation or suppression attributable to the Petitioner.

In these circumstances, learned counsel submits that the impugned order dated 07.02.2017 is liable to be quashed and set aside, and, the Respondents be directed to refund the amount recovered from the Petitioner along with applicable interest and to release all consequential benefits.

8. Learned counsel for Respondent No.3 supports the impugned order and submits that the same is legal, valid and in conformity with the applicable Staff Regulations and the Maharashtra Civil Services Rules. He submits that under Regulation 79 of the Staff Regulations, the relevant service and pension rules of the State

Government apply to the employees of the Institute mutatis mutandis. According to him, the recovery towards excess salary is justified as the petitioner had unilaterally revised his own pay scale and drawn arrears without approval of the Governing Body, which alone was competent to sanction and revise pay scales. As regards recovery towards EPF interest, he submits that the Respondent No.3 had deposited the petitioner's contribution along with interest pursuant to directions of the Provident Fund authorities and the same was liable to be reimbursed by the petitioner in terms of the consent and resolutions passed by the Governing Body. Insofar as recovery towards excess pension is concerned, he submits that the petitioner, being a re-employed pensioner, was governed by Rule 157 of the Maharashtra Civil Services (Pension) Rules, 1982 and was not entitled to draw full salary without adjustment of pension, resulting in excess payment. He further submits that the petitioner was issued notices and granted an opportunity to explain before the impugned decision was taken, and therefore there is no violation of principles of natural justice. Learned counsel submits that the earlier order passed by this Court only prohibited continuation of departmental proceedings after superannuation and did not preclude the respondent from examining the petitioner's monetary entitlement and effecting lawful recovery. He, therefore, submits that the petition being devoid of merit deserves to be dismissed.

9. Heard learned Advocate Mr. Rhshikesh Joshi for the petitioner, learned AGP Mr. M.K.Goyanka for the State and learned Advocate Mr. Uday S. Malte for Respondent No. 3. Perused the Writ Petition, the Affidavit-in-Reply, the documents annexed thereto and the relevant Rules.

10. The amount to be recovered from the petitioner by the impugned order dated 07.02.2017 under different heads is as follows:-

A) Amount Payable:

1) Differences according to Sixth Pay Commission		:Rs. 1,58,210.00/-
2) Gratuity		:Rs. 2,26,425.00/-
3) Leave Encashment		:Rs. 56, 355.00/-
	Total	:Rs. 4,67,990.00/-

B) Amount to be recovered:

1) Excess salary paid		:Rs. 68,060.00/-
2) EPF Interest		:Rs. 70,050.00/-
3) Retirement Pay/Pension Recovery		:Rs. 4,63, 969.00/-
	Total	:Rs. 6,02,079.00/-

C) Difference to be recovered: :Rs. 1,34,083.00/-

11. The Respondent No.3 - Maharashtra State Institute of Adult Education is governed by its Staff Regulations. By virtue of Regulation 79, the provisions of the Bombay Civil Services Conduct, Discipline and Appeal Rules and Classification, Control and Appeal Rules are applicable to all the employees of the respondent no.3 with necessary modifications.

12. Let us see the recovery under 3 heads is discussed to decide whether the recovery is justifiable or not :-

(i) Recovery of excess salary of Rs. 68,060/-:

. A perusal of the Government of India letter dated 27.08.1991 issued by the Ministry of Human Resource Development, Department of Education, Government of India shows that the Maharashtra State Institute of Adult Education, Aurangabad, was recognized as a Regional Resource Centre for Vidarbha and Marathwada and various posts, including the post of Program Co-ordinator in the pay scale of Rs.3000-100-3500-125-5000, were sanctioned. Thereafter, the School Education Department, Government of Maharashtra, by communication dated 20.05.1992, sanctioned and renamed the said sanctioned posts, wherein, the post of Program Co-ordinator was translated/designated as “कार्यक्रम समन्वयक तथा शिक्षण

उपसंचालक" (Program Coordinator-cum-Deputy Director of Education) and shown in the pay scale of Rs.3000-100-3500-125-4500, which was subsequently revised under the 5th Pay Commission to Rs. 10,000-325-15,200.

The material on record indicates that the Petitioner came to be promoted to the post of Deputy Director, which was earlier designated as Program Coordinator i.e., to the equivalent post and not to a distinct post of Deputy Director carrying the higher pay scale of Rs. 10,650-325-15,200. It is also evident that the pay scale of the Director was Rs.3200-4625 and, the post claimed by the Petitioner being subordinate in hierarchy, could not ordinarily carry a higher pay scale than that of the Director. The subsequent resolutions of Respondent No.3 appear to have been passed in consonance with the aforesaid Government communications.

13. The Ministry of Human Resource Development, Department of Elementary Education and Literacy, Government of India issued Guidelines for Management, Planning and Operation of the State Resource Centres for Adult and Continuing Education. The power to fix the remuneration vests with the Governing Body. Rule 3.2 (ii) and Rule 5.4 of the Rules and Regulations of State Recourse Centre for Adult

Education regarding powers and functions of the Governing Body and Emoluments are quoted below:

Rule 3.2 (ii) Powers and Functions of the Governing Body:

i) To create within the budget allocation any post in the RC.

ii) To appoint all categories of officers and staff for management and conduct of the affairs of the RC, to fix the amount of their remuneration and to define their duties and to grant allowances, etc.

Rule 5.4 Emoluments

"Depending upon qualification and experience of the person so selected, the Governing Body may consider offering a minimum consolidated amount along with such facilities as it may deem fit (viz. EPF, Residential telephone, Vehicle for Official use and medical facilities reimbursement, house rent, servant allowance, leave travel concession etc.) This is, however, entirely suggestive.

It is clarified that the Governing Body in each Resource Centre, is free to decide the quantum of emoluments and other benefits to be paid to the Director and to the other members of the staff subject to the RC's rules and regulations. The Government of India will bear expenses only upto the limit of the amount provided in the Emoluments Head of its annual grant."

14. Though the petitioner claims promotion as Deputy Director pursuant to the order dated 16.06.2001, the said post was not a sanctioned post on the establishment of the respondent no.3 and was not a promotional post. The Governing Body is the competent authority to appoint, approve and fix the pay scales of employees. The Petitioner's contention that the Board of Governors passed a resolution dated 07.10.1991 modifying the pay scale of Deputy Director from Rs. 3000-4500 to Rs. 3200-4625 is not correct, as the said resolution was never placed before the Governing Body for approval. The records of Respondent No.3 show that the Petitioner was promoted as Deputy Director vide order dated 16.06.2001 in the pay scale of Rs. 10,000-325-15,200 and the Governing Body, in its meeting dated 09.02.2005, granted *post facto* approval to the said promotion in the same pay scale and not in any higher pay scale.

15. While holding charge of Director, the petitioner himself signed a Pay Order dated 17.04.2008 revising his own pay scale to Rs.10,650-375-15,850 and took arrears for the period from June 2001 to May 2007 without obtaining approval of the Governing Body, Finance Committee or Executive Committee. The Pay Order itself contains a specific clause providing that any excess payment found due to error or mistake shall be recoverable. Accordingly, excess payment of Rs. 68,060/- has been determined. No resolution was passed by the Governing Body for enhancement or revision of the Petitioner's pay scale beyond what was sanctioned.

16. In view of the above quoted rules, the power to determine remuneration vests exclusively with the Governing Body. The revised payment is not approved by the governing body and, the petitioner could not have altered his own pay. Hence, the recovery of Rs. 68,060/- towards excess salary payment is proper and requires no interference.

(ii) **Recovery of interest on EPF of Rs. 70,050/-:**

As regards the recovery of Rs. 70,050/- towards EPF interest, though the petitioner had deposited his share of the EPF contribution, he had not deposited the amount towards interest. All employees, including the Petitioner, had given written consent on 10.03.2000 that the difference in Provident Fund contribution would initially be deposited by the Respondent no.3 and thereafter recovered from their monthly salaries. The Provident Fund authorities directed the Respondent no.3 to deposit the Provident Fund amount, with interest, from the date of engagement of each employee with the P.F. Commissioner. Accordingly, the Respondent No.3 deposited the said amount, including interest, on behalf of the employees. The Chartered Accountant, D.P. Mohite & Co., by Certificate dated 30.04.2011, calculated the interest component payable by each employee, including the Petitioner, as Rs. 70,050/-. The Governing Body thereafter resolved to recover the said amount by Resolution No.23 dated 30.03.2010.

This amount was deposited by the Respondent No.3 on behalf of the petitioner, and the recovery is merely a reimbursement of the statutory interest liability. The petitioner cannot be allowed to retain this benefit at the cost of public funds. Hence, the recovery of Rs. 70,050/- towards EPF interest is correct and requires no interference.

(iii) **Recovery of excess pension of Rs. 4,63,969/-**:

Petitioner, being a re-employed pensioner, is governed by Rule 157 (a), (b) of the Maharashtra Civil Services (Pension) Rules, 1982, which mandates deduction of pension while fixing pay upon re-employment. By virtue of Regulation 79 of the Staff Regulations of the Respondent No.3, the Maharashtra Civil Services (Pension) Rules, 1982 are applicable to all employees of the Respondent No.3 with necessary modifications. Rule 157 of the Maharashtra Civil Services (Pension) Rules, 1982 reads as below:

> ***"157. Fixation of pay of re-employed pensioner***
>
> *(1) ….*
>
> *(2) The authority who is competent to re-employ a pensioner shall fix the pay on reemployment subject to the following conditions, all of which must be satisfied :-*
>
> *(a) Pay on re-employment plus pension (including pension equivalent of retirement gratuity or gratuity in lieu of pension) should not exceed the substantive pay drawn before retirement, or the officiating pay, if the Government servant was continuously officiating in that post for at least one year before retirement. In cases, where the substantive / officiating pay drawn before retirement is less than the minimum of the time-scale of the post in which a pensioner is re-employed, pay on re- employment may be the minimum of the time-scale minus pension (including pension equivalent of retirement gratuity or gratuity in lieu of pension).*
>
> *(b) Pay (i.e., gross pay minus pension) on re-employment should not except with the*

sanction of Government under rule 40 of Maharashtra Civil Services (pay) Rules, 1981 exceed the minimum of the time-scale of post in which the Government servant is reemployed.

2. ...."

17. Rule 157 of the MCS (Pension) Rules, 1982 specifically mandates that where a pensioner is re-employed, his pay on re-employment together with pension shall not exceed the substantive pay drawn before retirement. The Petitioner had voluntarily retired from Zilla Parishad, Aurangabad w.e.f. 31.12.1993 and joined the Respondent No.3 on 01.01.1994, while continuing to draw full pension from the Zilla Parishad. He also received full salary from the Respondent No.3 without deduction of pension, thereby resulting in excess payment of Rs.4,63,969/-. Other similarly situated re-employed pensioners also had their pension deducted from salary, therefore, the petitioner cannot claim any exception.

The recovery is therefore strictly in compliance with Rule 157 (a) and (b), hence requires no intereference.

18. On noticing irregularities, show cause notices were issued to the petitioner and the matter was duly placed before the Finance and Executive Committee and the Governing Body, which resolved to

recover the excess amount. The competent authorities of the State Government also approved further action. Respondent No.3 issued a letter dated 29.01.2009 specifically calling upon the Petitioner to explain why the excess salary drawn by him should not be recovered. Thereafter, a detailed letter dated 24.02.2009 was served on the Petitioner on 27.02.2009, calling for an explanation within three days. The Petitioner sought time and ultimately submitted his reply on 17.03.2009. The Petitioner was fully aware of the grounds for recovery and had been granted an opportunity of hearing. Thereafter, even his representation dated 10.09.2012 was considered in detail along with office notes, resolutions and expert reports before passing the impugned order.

19. This Court, in Writ Petition No.7529/2011, did not prohibit Respondent No.3 from examining the Petitioner's entitlement to monetary benefits. On the contrary, this Court specifically directed the Petitioner to make a representation and directed Respondent No.3 to decide the same in accordance with law. The impugned order is the result of such due consideration. The decision has been taken bona fide and in public interest, as the amounts involved are public funds received from the Government of India and the State of Maharashtra. The impugned order is not an order of punishment in disciplinary proceedings, but an administrative order for recovery of amounts paid

to the Petitioner in excess, contrary to the rules, namely excess salary drawn by him sanctioned on his own initiative and pension drawn contrary to Rule 157 of the Maharashtra Civil Services (Pension) Rules, 1982. The recovery is founded upon statutory rules and resolutions of the Governing Body and not on any finding of misconduct.

In view of the above, the recovery under all three heads is legal, bona fide, and in public interest. The respondent authorities are entitled to recover the amounts as computed in the impugned order dated 07.02.2017.

20. Having considered the rival submissions and the material on record, we find that the impugned order dated 07.02.2017 directing recovery of an aggregate amount of ₹1,34,083/- (comprising ₹68,060/- towards excess salary, ₹70,050/- towards EPF interest, and ₹4,63,969/- towards excess pension, with adjustment against amounts due to the petitioner) is strictly in accordance with law and the applicable rules.

21. For the aforestated reasons, the writ petition sans merit, stands dismissed. Rule stands discharged, accordingly.

[VAISHALI PATIL – JADHAV, J.] **[NITIN B. SURYAWANSHI, J.]**