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WP-644-2018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 644 OF 2018

Dhansing s/o. Sahadu Baviskar ...Petitioner
Versus
The State of Maharashtra and Ors. ...Respondents

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Mr. Vinod P. Patil, Advocate for the Petitioner.
Smt. V. P. Dama, AGP for Respondent Nos. 1 to 3/State.
Mr. Nitin C. Choudhary, Advocate for Respondent No.6.

CORAM : KISHORE C. SANT &
SUSHIL M. GHODESWAR, JJ.

DATE : 7th MAY 2026.

ORDER :-

1. Heard Mr. Patil, the learned Advocate for the Petitioner, Smt. Dama, the learned AGP for Respondent Nos. 1 to 3/State and Mr. Choudhary, learned Advocate for Respondent No.6. The petition is taken up for final disposal at the stage of admission with the consent of the parties.

2. The petitioner, by way of this petition, has challenged the communication dated 27.09.2016 issued by Respondent No.4-Education

Officer, Jalgaon and further sought a direction to the Respondent No.4/Education Officer, (Primary) Zilla Parishad, Jalgaon to fix the pension and pensionary benefits on the basis of last basic pay i.e. Rs.12,340+2,000 grade pay=14,340 alongwith higher pay scale/time bound promotional scale after completion of 12 years of service.

3. By way of impugned communication dated 27.09.2016, the Respondent No.4 Education Officer, Z. P. Jalgaon has directed recovery of excess payment allegedly made to the petitioner. It is stated that the petitioner was wrongly pay salary by fixing his salary at an incorrect rate.

4. It is the case of the petitioner that the petitioner was ex-serviceman. After his retirement from service, he came to be appointed as a primary teacher on 29.12.1992 with Zilla Parishad, Jalgaon. On attaining superannuation, he retired from service on 31.05.2015. His pay was fixed by the Zilla Parishad. While appointing the petitioner as a Primary Teacher, he was required to complete D.Ed. qualification within five years from the date of appointment. However, the petitioner could not complete D.Ed. within stipulated time.

5. By way of communication dated 12.03.1999, the Zilla Parishad Jalgaon informed the Block Education Officer to fix the pay scale of the petitioner. It was only just prior to retirement that the Respondent No.5-Accounts Officer issued communication to Block Education Officer on 17.04.2015 and directed to verify the fixation of pay scale, stating that the petitioner could not complete D.Ed. qualification within five years from the date of appointment and yet was wrongly granted increments. An explanation was sought from the Block Education Officer. Office Superintendent in the office of Education Officer (Primary) sent the proposal back to the Block Education Officer for appropriate action. In turn, the proposal was sent back to the Senior Accounts Officer, Zilla Parishad Jalgaon alongwith service book. It was reported that though the petitioner was an untrained teacher, he was wrongly granted increments in the year 2005-06. Guidance was, therefore, sought. It was also reported that as per Government Resolution dated 31.08.2009, pay should have been fixed as per untrained teacher. Thereafter, again communication dated 29.06.2016 was issued by the Education Officer (Primary) Jalgaon to the Block Education Officer stating that the

petitioner was paid an excess amount and directed recovery of the said amount. It is thus the recovery was directed.

6. Mr. Patil, the learned Advocate for the petitioner, vehemently submits that the petitioner was not at fault at any point of time. He has never represented falsely or otherwise that he had obtained the D.Ed. qualification. It was the Zilla Parishad, Jalgaon which granted the increments etc. Though there is no fault on his part, now the recovery is directed only after the retirement of the petitioner. When the petitioner was in service, at no point of time, any notice was issued to him. The recovery is started without giving any opportunity to the petitioner and without holding any inquiry. The action is thus bad in law and deserves to be quashed and set aside. In support of his submission, he relied upon the judgment in the case of *State of Punjab and Ors. etc. Vs. Rafiq Masih (White Washer) etc.*¹.

7. Learned Advocate Mr. Choudhary, appearing for Respondent No.6, vehemently opposed the petition. He submits that the action taken is

1 AIR 2015 SC 696

correct. The petitioner, though was not eligible to get the increments, was wrongly granted the increments. He thus submits that when the petitioner was wrongly paid the salary in excess, it needs to be recovered. The learned AGP also supports the impugned communication.

8. This Court has heard the parties. It is not the case of the respondents that, at any point of time, the petitioner has misled the authorities. There is nothing on record to show that the petitioner, by making any misrepresentation, has obtained the increments. It is at the fag-end of the service that the recovery action is sought taken without due process of law. The action certainly calls for interference. The Hon'ble Apex Court in the case of *State of Punjab Vs. Rafiq Masih* (supra), has held that no recovery shall be made from a person if he paid in excess and where he is not at fault for such excess payment.

9. Paragraph Nos. 9 and 10 of the judgment in the case *State of Punjab Vs. Rafiq Masih* (supra) reads as under:

"9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality, can be found in Article 14 to 18, contained in Part III of the Constitution of India, dealing with "Fundamental Rights". These Articles of the

Constitution, besides assuring equality before the law and equal protection of the laws; also disallow, discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracized section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the "Directive Principles of State Policy". These Articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice - social, economic and political, by inter alia minimizing monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.

10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India."

10. In the present case also, no case is made out against the petitioner.

It was not any act of the petitioner which led to fix the salary and to grant increments. So far as the prayer in respect of grant of ACPS is

concerned, this Court finds that it is an admitted fact that the petitioner could not obtain D.Ed. qualification within five years and thus could not have been treated as a trained teacher. For the ACPS, it was necessary for him to be eligible to receive the benefit of the next promotional post.

11. So far as prayer for deemed trained teacher pay scale or ACPS benefits is concerned, the petitioner is not entitled to the same. The petitioner would be thus entitled only to the extent of quashing of communication dated 27.09.2016 and consequential recovery. The petition is, therefore, allowed in above terms.

12. The communication dated 27.09.2016 is quashed and set aside. No recovery be done from the petitioner. However, the authorities are at liberty to fix the pension as per eligibility of the petitioner.

13. With these, writ petition stands disposed off.

[SUSHIL M. GHODESWAR, J.]

[KISHORE C. SANT, J.]