



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6637 OF 2023

1. Dnyaneshwar Rambhau Mandekar,
Aged about 59 years,
Occ. Retired, R/o Jaihind chowk, Old
City, Akola, Tah. and Dist. Akola.

... **PETITIONER**

...VERSUS...

1. Zilla Parishad, Akola,
Through its Chief Executive Officer,
2. Education Officer (Primary),
Zilla Parishad, Akola,
District – Akola.
3. Deputy Chief Accounts & Finance
Officer, Zilla Parishad, Akola,
Dist. Akola.
4. Block Development Officer,
Panchayat Samiti, Barshitakli,
District – Akola.

...**RESPONDENTS**

Mr. A. S. Dhore, Advocate for petitioner.
Mr. A.M. Tirukh, Advocate for respondent No.2.

**CORAM : SMT. M.S. JAWALKAR AND
NANDESH S. DESHPANDE, JJ.**



RESERVED ON _____ : 15th APRIL, 2026.
PRONOUNCED ON : 08th MAY, 2026.

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The present petition seeks quashing and setting aside of the orders dated 01.06.2023 and 22.06.2023 passed by respondent Nos. 2 and 3, respectively, only to the extent of the direction to recover the amount as stated in the said order. It further prays for a direction to pay the entire of amount of gratuity along with all retiral benefits payable, without deducting any amount towards the alleged excess payment made to the petitioner.

3. The facts as can be seen from the petition are as under:

a) The petitioner herein was an employee of the respondent-Zilla Parishad from the date of his initial appointment till his superannuation on 31.05.2023. The petitioner was initially

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appointed on the post of Primary Assistant Teacher in the Primary School run by the respondent No. 1 on 31.05.1986. Thereafter, he was promoted from time to time during his service tenure. Vide order dated 01.06.2023 passed by the respondent No. 2 – Education Officer, the said respondent sanctioned payment of Rs. 16,31,340/- and accordingly fixed the commuted value of Rs. 16,240/- thereby directed to reduce the pension to Rs. 24,360/- from the amount of Rs. 40,600/- per month. In the backdrop of these facts, without even issuing any notice and granting any opportunity of hearing, the respondent No. 2 on 01.06.2023 and thereafter the respondent No. 3 on 22.06.2023 passed orders approving the retiral benefits payable to the petitioner on account of his services and granted pension of Rs. 40,600/- only. However, in the said orders of 01.06.2023 and 22.06.2023, the said respondents have directed that an amount of Rs. 1,79,892/- towards alleged excess payment and Rs. 24,650/- towards audit objection, i.e., a total amount of Rs. 2,04,542/-, be recovered from the gratuity payable to the petitioner. It is the submission of the petitioner that even if such a recovery is directed, there is no reference in the said orders as to on what basis the said amount has been paid as excess to the petitioner.

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b) This prompted the petitioner to make a representation on 19.07.2023, thereby pointing out that an amount of Rs. 10,223/- is already deducted by the office and credited by challan dated 03.02.2022 on the account that it was paid in excess. It was also stated that the pay scale of the post of Center Head was approved on account of promotion of the petitioner as a Center Head with effect from 01.07.2008, and therefore the pay scale cannot be considered as an excess payment. It was, therefore, requested that the recovery should not be effected. It is further stated in the petition that the petitioner has not received any reply from any of the respondents, more particularly on the representation dated 19.07.2023. The petitioner also points out in his petition that the petitioner was never called upon to execute any undertaking or bond at the time of payment of the alleged excess amount and, therefore, there is no authority in favour of the respondents to recover the said amount from the retiral benefits. He also points out that the Government of Maharashtra, vide order dated 10.08.2020, has informed all the Zilla Parishads that no amount of alleged excess payment made to Class-III and Class-IV employees shall be

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recovered from them who have attained the age of superannuation or are at the fag end of their services. It is in this backdrop that the present petition is filed seeking directions as stated supra.

4. We have heard Mr. A.S. Dhore, learned counsel for the petitioner, and Mr. A.M. Tirukh, learned counsel of the respondent Nos. 2.

5. Learned counsel for the petitioner submits that the action of respondent Nos. 2 and 3 in directing the recovery of the amount is per se arbitrary, illegal, and mala fide. He submits that admittedly no notice was given to the petitioner before effecting such recovery, nor he was heard, thereby violating principles of natural justice. He further points out that the petitioner is not at fault for any excess payment made to him and he has never made any misrepresentation or played any fraud. He further submits that the action is directly contrary to the directions of the Government of Maharashtra order dated 10.08.2020.

6. Per contra, learned counsel for respondent No. 2 vehemently opposes the contentions of the petitioner. He submits that it is
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admitted in the petition that the payment of excess amount to the extent of Rs. 2,04,542/- is made to the petitioner during the period from 27.11.2007 to December 2015 and from January 2016 to November 2019. He also submits that, apart from this, an amount of Rs. 24,650/-, which has been paid in excess to the petitioner under the head of permanent travelling allowance, is also recoverable from him. He submits that this is public money and, therefore, cannot be claimed as of right. He also submits that on 24.05.2023, the petitioner had given an undertaking in favour of the Block Development Officer, Panchayat Samiti, Balapur, that he would have no objection for recovery of the excess amount, if any, paid to him under whatever head from his retirement benefits. He therefore prays for dismissal of the petition.

7. We have considered the contentions canvassed by the learned counsels for the respective parties and, with their able assistance, have gone through the record. The learned counsel for the petitioner has placed reliance on a judgment of this Court in the case of the *State of Maharashtra and others Vs. Rekha Vijay Dubey*, reported in **2022 (3) Mh.L.J.** wherein a coordinate Bench of this

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Court, after taking into consideration the judgment of Hon'ble Apex Court in the case of *State of Punjab Vs. Rafiq Masih (White Washer) and ors.*, reported in 2014 MhLJ Online (S.C.) 95 and *High Court of Punjab and Haryana and ors. v. Jagdev Singh*, reported in 2016 MhLJ Online (S.C.) 62, has disagreed with the contention of the State of Maharashtra. In the said judgment, in para 4, the Hon'ble Supreme Court has observed as under:

“4. In Rafiq Masih (supra), the Supreme Court, upon consideration of previous decisions, proceeded to hold in paragraph 18 as follows :—

18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :

(i) Recovery from the employees belonging to Class III and IV service (or Group C and Group D service).



(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made, for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

8. Thereafter, it has differentiated the judgment of ***High Court of Punjab and Haryana and ors. v. Jagdev Singh*** referred to supra, by stating that, in the said matter, while opting for revised pay scale, the undertaking was given regarding the excess payment. This is not the present case. Hence, there is no statutory rule or otherwise demanding an undertaking from the employee concerned. In para 10 of the said judgment, this Court has also observed that it cannot be ignorant of the factual position that
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money paid as part of salaries to the original applicants, which the State considers to constitute excess payment, has continued for a period in excess of 5 (five) years prior to the order of recovery. Here in the present case at hand, also even as per the reply, the excess amount allegedly paid was from the year 2007 to 2015 and then from January 2016 to 2019. It can thus be said that it was well before a considerable period, looking to the fact that the petitioner stood superannuated on 31.05.2023.

9. Furthermore, there is no defence of the respondents in the present matter that such excess amount was paid due to any act of fraud or misrepresentation on the part of the petitioner and is attributable to him. It can thus very well be said that the judgment in *State of Punjab Vs. Rafiq Masih (White Washer) and ors.*, as enunciated by this Court in the judgment referred supra, squarely applies. The learned counsel for the respondent harps upon the undertaking, but we are hardly impressed by the contentions of the learned counsel of the respondents. Even though the learned counsel for the petitioner relies on the judgment of this Court in the case of *Umesh Tulsiram Raut Vs. Zilla Parishad Akola, Thr. Its Chief*

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Executive Officer, Akola & Ors., in Writ Petition No. 4427 of 2024, passed on 25.03.2025, the facts in the case are different from the present case.

10. The action of directing recovery even falls short of compliance with the principles of natural justice, in as much as no notice or hearing was given to the petitioner. As has been rightly pointed out by the learned counsel for the petitioner, that in an identical set of facts, this Court, in the case of *Vishwas S/o. Kisanrao Deokate Vs. Zilla Parishad, Akola and others* in Writ Petition No. 3931 of 2021, where the same respondent was there, i.e., Zilla Parishad, Akola, has considered all these contentions. We are in respectful agreement with the said judgment.

11. Thus, the fact remains that for an event which happened more than about 7 years back, no steps were taken for recovery of the amount. As far as the undertaking relied upon by the learned counsel for the respondents is concerned, that is in too general term and has been obtained a week prior to the petitioner's superannuation. It only states that if any amount is found due to be

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recovered, he would have no objection if that amount was deducted from the retiral benefits. In *Jagdev Singh*, undertaking was to be submitted in view of the statutory requirement of the Haryana Superior Judicial Service Revised Pay Rules, 2001. Here, there is no such statutory requirement, as has been observed by us supra.

12. Furthermore, the undertaking, as we have mentioned above, is too general in nature and does not spell out the contingency of wrong pay fixation. Thus, such an undertaking by the employee of seven days prior to superannuation cannot come to the aid of the respondents, since an employee who is about to superannuate would be more keen on receiving retiral benefits and would comply with all the required formalities. It is not even the case of the respondents that any fraud or misrepresentation has been committed by the employee resulting in overpayment to him.

13. In that view of the matter, we find considerable force in the submission advanced by the learned counsel for the petitioner. We, therefore, pass the following order:

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ORDER

- i) Writ Petition is allowed.
- ii) The order dated 01.06.2023 and 22.06.2023 passed by the respondent No. 2-Education Officer and the respondent No. 3-Deputy Chief Accounts & Finance Officer, Akola to the extent of direction to recover an amount of Rs. 1,79,892/- and Rs. 24,650/-, total amounting to Rs. 2,04,542/- is quashed and set aside.
- iii) It is further directed that the said respondents should return the said amount if deducted to the petitioner within four weeks from the date of receipt of the order.
- iv) It is further directed that the respondents should pay the entire amount of gratuity along with all retiral benefits and due to the petitioner without deducting any amount.
14. Rule is made absolute in the aforesaid terms. The Writ petition is disposed of.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)

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