

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7205 OF 2021

Monika Brij Kunj,
Age: 47 years, Occupation: Service,
R/o. At/Post: Achara, Taluka: Malvan,
District: Sindhudurg.

...Petitioner.

Versus

1. The State of Maharashtra,
Through the Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai 400 032.
2. The Dy. Director of Education,
Kolhapur Region, Kolhapur,
Having office at Somwar Peth,
Hatti Mahal, Ganji Galli,
Kolhapur 416 002.
3. The Education Officer (Secondary),
Zilla Parishad, Sindhudurg,
Having office at Zilla Parishad
Building, Sindhudurg Nagari-Oros.
4. Shri. Bhagwati Education Society,
Munage, Taluka: Devgad,
District: Sindhudurg,
Through its President/Secretary.
5. Shri Bhagwati High School,
Munage, Taluka: Devgad,
District: Sindhudurg,
Through its Head Master.
6. Account Officer, Inspection Unit
(Education), Sindhudurg,
Sindhudurnagari-Oros.

...Respondents.

WITH
INTERIM APPLICATION NO. 9672 OF 2024

The Education Officer (Secondary)

Zilla Parishad Sindhudurg ...Applicant.

In the Matter in Between :

Monika Brij Kunj ...Petitioner.

Versus

The State of Maharashtra and Others ...Respondents.

Mr. Prashant Bhavake for the Petitioner.

Mr. Siddheshwar B. Kalel, AGP for the Respondents-State.

**Coram : Sharmila U. Deshmukh &
Neeraj P. Dhote, JJ.**

Date : August 28, 2026.

ORAL JUDGMENT : (Per Sharmila U. Deshmukh, J.)

- 1. Rule.** Rule made returnable forthwith and heard finally by consent.
- 2.** By the present petition, challenge is to the order dated 23rd June 2021 passed by the Respondent No.2-Deputy Director, upholding the order dated 8th April 2021 passed by the Respondent No.5-School and the order dated 8th August 2011 passed by the Respondent No. 6-Accounts Officer, Inspection Unit (Education), initiating recovery against the Petitioner.
- 3.** Briefly stated, the facts of the case are that the Petitioner's father expired on 4th February 1997 and the Petitioner submitted an application for appointment on compassionate ground, which was pending with the Respondent No. 3-Education Officer.

4. The Respondent No. 3, in view of the vacancy of B.Sc., B.Ed. teacher at Respondent No. 5-School, issued an order dated 8th December 2003, directing absorption of the Petitioner on the post of 'Shikshan Sevak', having qualification B.Sc., B.Ed., and subsequently, the Petitioner was appointed to the post of 'Shikshan Sevak' on probation for three (3) years with effect from 10th December 2003 to 10th December 2006.

5. The individual approval was granted to the Petitioner's appointment to post of 'Shikshan Sevak' on 19th December 2003. The Petitioner's services came to be approved as 'Assistant Teacher' in regular pay scale by the Respondent No. 3, vide order dated 26th January 2007.

6. The Respondent No. 6 conducted an audit for the financial years 2007–2008 and 2008–2009 and raised objections, including an objection that though one post of D.Ed. Scale is vacant, teacher on B.Ed. Scale was appointed and directed recovery of difference amount from 10th December 2013 from the Petitioner, being the difference in the B.Ed. Scale and D.Ed. Scale.

7. Subsequently, in the year 2015, the Respondent No. 5-School was directed to deposit the alleged excess amount paid to the Petitioner. In response, it was pointed out to the Respondent No. 3 that the request

was made to provide surplus teacher for science subject and accordingly, the Graduate Pay Scale was given to the Petitioner, and hence, there is no question of recovery.

8. As demand was raised upon the Petitioner, to deposit the amount of Rs.3,33,752/-, which was the excess amount, the Petitioner filed a detailed representation dated 5th April 2021 informing Respondent No. 5-School that since she is holding B.Sc., B.Ed. qualification and appointed on B.Ed, scale, there is no excess, and there can be no recovery.

9. The order of recovery came to be challenged by the Petitioner by filing an application-cum-appeal with the Respondent No. 2-Deputy Director of Education, which led to passing of the impugned order. Hence, the present petition has been filed.

10. Mr. Bhavake, learned counsel appearing for the Petitioner has taken this Court through the records and proceedings and would point out that the Petitioner was appointed on the B.Ed. Scale, possessing B.Sc., B.Ed. qualification, and was teaching Mathematic and Science in the secondary section. He submits that accordingly, her appointment was approved by the Education Officer and the graduate pay scale was being paid to her. He submits that though the Petitioner's appointment was in the year 2003, it is only in the year 2011, that the audit objection

was raised and recovery was sought to be initiated, which is beyond the period of five (5) years, drawing support from the decision of the Hon'ble Apex Court in the case of ***State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.***¹

11. He would further submit that though the representation stated the Petitioner's qualification being B.Sc., B.Ed. and discharging duties in the secondary section, no cognizance has been taken of the same. He would further submit that paragraph 18 of the decision in the case of ***Rafiq Masih (supra)*** specifically provides that recovery from the employees belonging to Class-III and Class-IV, as well as recovery in cases, where an employee has been wrongfully 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, is impermissible in law. He submits that given the settled position in law, the recovery could not have been initiated against the Petitioner.

12. Mr. Kalel, learned AGP, would submit that the submission on the aspect of period of five (5) years will not apply in the present case, as the Petitioner was appointed in 2003 and completed three (3) years of probation in 2006. He points out that the audit objection was in respect of the excess amount paid for 2007–2008 to 2008–2009, and the

1 (2015) 4 SCC 334.

recovery was initiated by communication of 8th August 2011 to the Principal of Respondent No. 5-School, which is within the period of five (5) years.

13. He would further submit that it cannot be disputed that there was no vacant post of 'Graduate Teacher', when the Petitioner came to be appointed, and against a D.Ed. post, the Petitioner has rendered services and excess amount came to be paid, which is sought to be recovered.

14. We have considered the submissions and perused the record.

15. The Petitioner was appointed in the year 2003 on the post of 'Shikshan Sevak', which services acquired deemed permanency after period of three (3) years and approval was also granted by the Respondent No. 3-Education Officer to the Petitioner as 'Assistant Teacher' in regular pay scale on 26th January 2007.

16. The Petitioner was teaching the subjects of Mathematic and Science in the secondary section, given her educational qualification of B.Sc., B.Ed., and was accordingly paid the graduate teacher pay scale. The audit objection, which has been raised, was on account of the fact that at the time of the appointment of the Petitioner in the year 2003–2004, considering the staffing pattern, the sanctioned post was of 1 Headmaster, 5 trained Graduate Teachers, 3 Undergraduate Teachers

and 1 Graduate Teacher. The reason of the wrongful payment of salary as a 'Graduate Teacher' was attributed to the fact that at the relevant time, apart from the Headmaster, 6 Graduate Teachers were getting the pay scale and, therefore, the Petitioner was being paid a graduate pay scale, which was excess of the sanctioned staff. The sum and substance of the reasoning for the recovery is that without any sanctioned post of graduate teacher, a graduate pay scale was being paid to the Petitioner. There is no material placed on record to dispute the position that the Petitioner was teaching in the secondary section in the subjects of Mathematics and Science. The Petitioner was, therefore, discharging the duties of a higher post, which was not the sanctioned post at the relevant time, and should have been teaching as an undergraduate teacher in the primary section. The case of the Petitioner, therefore, squarely falls within the categories, enumerated in paragraph 18(iv) of the decision of the Hon'ble Apex Court in the case of **Rafiq Masih** (*supra*). The Hon'ble Apex Court has specifically held that such recovery is impermissible in law. This is apart from the fact that the Petitioner falls to Class-III service and, therefore, such recovery has also been held to be bad by the Hon'ble Apex Court. Considering the law laid down by the Hon'ble Apex Court, the order of recovery is impermissible.

17. In so far as paragraph 2 of the impugned order is concerned, no submissions have been canvassed in that respect. The submissions

canvassed are in respect of the recovery of the alleged excess amount and considering the decision of the Hon'ble Apex Court in the case of *Rafiq Masih (supra)*, paragraph 1 of the impugned order is clearly unsustainable. In light of the discussion above, paragraph 1 of the impugned order dated 23rd June 2021 is hereby quashed and set aside.

18. Resultantly, there can be no recovery of any excess amount from the Petitioner.

19. The Writ Petition is allowed in the above terms.

20. Needless to clarify that as the impugned order insofar as the recovery of the excess is concerned is set aside, necessary consequences to follow.

21. The Interim Application would not survive and the same stands disposed of.

22. If any amount is recovered on the basis of the impugned order, the same to be accordingly adjusted.

[Neeraj P. Dhote, J.]

[Sharmila U. Deshmukh, J.]

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signed by
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DATTATRAYA
GAIKWAD
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