



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

WRIT PETITION NO. 10514 OF 2023 (S-RES)

BETWEEN:

SRI. B H VARADARAJU
S/O B. HUTCHIAIAH,
AGED ABOUT 60 YEARS,
RETIRED HEAD MASTER,
RESIDING AT
NO.6, PRERANA NILAYA,
BESIDE AYURDHAMA HOSPITAL,
YELACHENAHALLI,
BANGALORE- 560078

...PETITIONER

(BY SRI. RAGHAVENDRA G GAYATRI., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY,
EDUCATION DEPARTMENT
(PRIMARY AND SECONDARY EDUCATION),
M.S.BUILDING,
DR. B.R.AMBEDKAR VEEDHI,
BANGALORE- 560 001.
2. THE COMMISSIONER
DEPARTMENT OF PUBLIC INSTRUCTIONS,
NRUPATHUNGA ROAD,
BANGALORE- 560001

Digitally
signed by
SUNITHA K S
Location:
HIGH COURT
OF
KARNATAKA



3. THE DEPUTY DIRECTOR OF PUBLIC INSTRUCTIONS,
RAMANAGAR DISTRICT,
II FLOOR, PANCHAYATH BHAVAN,
B.M. ROAD,
RAMANAGAR TOWN,
RAMANAGAR-562159
4. THE ACCOUNTANT GENERAL (PENSION)
KARNATAKA, P.B.NO.5329,
PARK HOUSE ROAD,
BANGALORE- 560001
5. THE HEAD MASTER,
SSMSRHS, SRI. MARALE GAVIMUTT,
KANAKAPURA TQ.
BANGALORE RURAL DISTRICT- 562117

...RESPONDENTS

(BY SRI. G RAMESH NAIK, AGA FOR R1 -R4
R5 SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A) CALL FOR THE RECORDS RELATING TO ISSUANCE OF THE ORDER DTD 02.03.2023 IN REFERENCE NO.ANU.2./KHaa.A.ProuShaa.Mu.Shi.Pim.90/2022-23/3848/22-23 ISSUED BY THE R3 DDPI VIDE ANNEXURE-A AND TO B) ISSUE A WRIT OF CERTIORARI AND QUASH THE ORDER DTD 02.03.2023 IN REFERENCE NO.A.Nu.2/Khaa.A.ProuShaa.Mu.Shi.Pim.90/2022-23/3848/22-23 ISSUED BY THE R3 DDPI VIDE ANNEXURE-A AS ARBITRARY AND ILLEGAL, IN THE INTEREST OF JUSTICE; AND C) FURTHER, ISSUE A WRIT OF MANDAMUS OR DIRECTION DIRECTING THE RESPONDENTS TO RELEASE ALL THE RETIREMENT BENEFITS LIKE DCRG, COMMUTED VALUE OF PENSION, LEAVE ENCASHMENT AND OTHER BENEFITS WITHOUT RECOVERING AN AMOUNT OF RS.9,63,448/- WITH ADMISSIBLE INTEREST OF 6 PERCENT PER ANNUM FOR DELAY IN DISBARMENT OF THE SAID AMOUNT. D) GRANT SUCH OTHER ORDER OR DIRECTION AS THIS HON'BLE COURT



DEEMS FIT IN THE FACTS AND CIRCUMSTANCES OF THE CASE,
IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL ORDER

The petitioner filed this writ petition seeking the
following reliefs:

- "(a) *Call for the records relating to issuance of the order dated 02.03.2023 in reference No. A.Nu.2/Khaa.A. ProuShaa. Mu.Shi. Pim. 90/2022-23/3848/22-23 issued by the 3rd Respondent DDPI vide ANNEXURE-A; and to*
- (b) *Issue a writ of certiorari and quash the order dated 02.03.2023 in reference No. A.Nu.2/Khaa.A.ProuShaa. Mu. Shi. Pim. 90/2022-23/3848/22-23 issued by the 3rd Respondent DDPI vide ANNEXURE-A as arbitrary and illegal, in the interest of justice; and*
- (c) *Further, issue a writ of mandamus or direction directing the Respondents to release all the retirement benefits like DCRG, commuted value of pension, leave encashment and other benefits without recovering an amount of Rs.9,63,448/- with*



admissible interest of 6% per annum for delay in disbarment of the said amount.

(d) Grant such other order or direction as this Hon'ble Court deems fit in the facts and circumstances of the case, in the interest of justice and equity."

2. Brief facts leading rise to the filing of this petition are as follows:

2.1. The petitioner entered into service as an Assistant Teacher on 09.11.1987. The petitioner was admitted to the salary grant as per the order dated 21.11.1990. Thereafter, his pay was re-fixed by taking into consideration his unaided services from 09.11.1987 and financial benefits were released to him with effect from 01.12.1990. The petitioner was promoted to the cadre of Headmaster on 13.05.2014. The petitioner retired from service on attaining the age of superannuation on 30.11.2022. As per the instructions issued by the Accountant General, respondent No.3 has passed an order on 02.03.2023 re-fixing his pay and has sought to recover



an amount of ₹9,63,448/- from DCRG. The petitioner, aggrieved by the said order, filed this writ petition.

3. Respondent No.3 has filed a statement of objections admitting that the petitioner was appointed as a Science Teacher on 09.11.1987 as per the resolution of the Managing Committee and the post was not admitted to grant-in-aid. Appointment was approved with the grant-in-aid by respondent No.3-DDPI vide order dated 21.11.1990 as per Annexure-C produced by the petitioner on the pay-scale of ₹1,400 - 2,750/-. All the financial benefits will be applicable from 01.12.1990 and the petitioner is not entitled to any arrears for previous non-grant period. This condition was neither challenged by the petitioner nor it was set aside by the Competent Court of law. It was the policy decision of the Government that the Government servant is entitled to financial benefits with effect from the date of approval of his appointment and not from the date of joining. Hence, prays to dismiss the petition.



4. Heard the arguments of the learned counsel for the petitioner and learned AGA for respondent Nos.1 to 4.

5. Learned counsel for the petitioner submits that, the petitioner was appointed as a Science Teacher on 09.11.1987 and he was admitted to the salary grant-in-aid as per the order dated 21.11.1990. The petitioner's pay was re-fixed by taking into consideration his unaided services from 09.11.1987 and all the financial benefits were released to him with effect from 01.12.1990. The petitioner retired from service on attaining the age of superannuation as a Headmaster on 30.11.2022. The Government sought a recovery of an amount of ₹9,63,448/- from DCRG. Hence, the action of the respondents in recovering the said amount from the DCRG is contrary to the proposition of law laid down by the Hon'ble Apex Court in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others***¹. He has also placed reliance on the judgment of the Hon'ble

¹ (2015) 4 SCC 334



Apex Court in the case of **Maniben Maganbhai Bhariya Vs. District Development Officer, Dahod and Others**².

Hence, on these grounds, he prays to allow the writ petition.

6. *Per contra*, learned AGA submits that, the issue involved in the instant case is pending before the Division Bench of this Court in the case of **State of Karnataka and Others Vs. Dr(Ms). B K Naik and Others**³. Hence, the order to be passed by this Court shall be subject to the outcome of the writ appeals. Hence, on this ground, he prays to dispose of the writ petition.

7. Perused the records and considered the submissions of the learned counsel for the parties.

8. It is an undisputed fact that the petitioner was appointed as a Teacher and retired as a Headmaster on attaining the age of superannuation on 30.11.2022.

² (2022) 16 SCC 343

³ WA No.2476/2015 and connected matters



Considering his unaided service from 09.11.1987, his pay was re-fixed and financial benefits were released to the petitioner with effect from 01.12.1990.

9. It is not the case of the respondents that the petitioner has played a fraud and got released the financial benefits. The respondents themselves, considering the unaided service of the petitioner from 09.11.1987, re-fixed the petitioner's pay and released the financial benefits to the petitioner with effect from 01.12.1990. Now, the respondents are estopped to contend that the petitioner is not entitled for the financial benefits given for his unaided service from 09.11.1987 and has no authority to recover the amount.

10. The Hon'ble Apex Court in the case of **Rafiq Masih (White Washer)** (supra) has, in paragraph No.18, held 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 Class 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."*

From the perusal of the paragraph No.18 of the judgment referred above, the Hon'ble Apex Court has held that, recovery in the cases where an employee was wrongfully been required to discharge his duties of a higher post, and



has been paid accordingly, even though he should have rightfully been required to work against an inferior post; recovery from the retired employees, or the employees who are due to retire within one year, the order of recovery is arbitrary and erroneous.

11. Considering the proposition of law laid down by the Hon'ble Apex Court in the case of **Rafiq Masih (White Washer)** (supra), the action of the respondents in recovering the said amount is illegal, arbitrary and contrary to the said proposition. Hence, on this ground, the impugned order of recovery is liable to be quashed.

12. In view of the above discussion, I proceed to pass the following:

ORDER

- i. The writ petition is ***allowed***;
- ii. The impugned order of recovery dated 02.03.2023 passed by respondent No.3 vide Annexure-A is hereby ***quashed***;



- iii. The respondents are directed to release all the retiral benefits like DCRG, commuted value of pension, leave encashment and other benefits without recovering the amount of ₹9,63,448/- with interest at the rate of 6% p.a., for the period of delay in disbursement of the amount within eight weeks from the date of receipt of a certified copy of this order;
- iv. Pending IA(s), if any, shall stand disposed of.

Sd/-
(ASHOK S.KINAGI)
JUDGE

PA
List No.: 1 Sl No.: 6