

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 3117 OF 2014**

SMT. GANGA NAMDEO SUTAR

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mrs. M.G. Kasturkar h/f Mrs. M.A. Kulkarni

AGP for Respondent/State : Mr. S.B. Pulkundwar

Advocate for Respondent nos. 2 and 4 : Mr. P.V. Tapse

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CORAM : S.S. SHINDE & A.M. BADAR, JJ.**Dated: October 07, 2015**

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PER COURT :-

Rule. Rule made returnable forthwith. By consent of the learned counsel appearing for the parties heard finally.

2. It is case of petitioner that she was initially appointed as Primary Teacher on 20.1.1986 for the period from 20.1.1986 to 30.4.1986. Thereafter, she was given break in service for the period from 1.5.1986 to 27.6.1986. The petitioner was thereafter given continuous appointment. The break of 93 days in her service was subsequently condoned by the order dated 26.2.1996 (Exhibit B) passed by the Block Education Officer, Panchayat Samiti, Bhoom. However, according to petitioner, after her retirement on

attaining age of superannuation, on 31.5.2013, by order dated 8.4.2013, the Education Officer (Primary) Zilla Parishad, Osmanabad, had directed recovery of payment from her with reason that there was change of date of increment because of break in her service from 1.5.1986 to 30.7.1986. Petitioner is challenging this order dated 8.4.2014, directing recovery from her occasioned allegedly because of change in date of her increment.

3. The learned counsel appearing for the petitioner invited our attention to the affidavit in reply filed on behalf of Respondent Nos. 2 and 4 and submits that, though there was break in service but the said break was condoned, and therefore, the petitioner's services from 20.01.1986 to 30.04.1986 and also from 01.05.1986 to 27.06.1986 are treated as continuous. It is submitted that, the petitioner is already retired from service, and therefore, the impugned communication dated 08.04.2013 issued by the Education Officer (Primary), Zilla Parishad Osmanabad, thereby directing recovery of excess payment due to change of date of increment is liable to be quashed and set aside.

4. The learned counsel appearing for the petitioner placed reliance on the reported judgment of the Hon'ble Supreme Court in the case of **State of Punjab and others V/s Rafiq Masih (White Washer) etc**¹, and in particular, para 12 thereof and submits that, the petitioner's case is covered by clause (i) of para 12 of the said judgment.

5. On hearing the learned counsel appearing for the petitioner, after perusal of the averments in the affidavit in reply filed on behalf of Respondent Nos. 2 and 4 and in the light of the judgment of the Hon'ble Supreme Court in the case of State of Punjab (supra), the petitioner being retired employee from class - III category, no recovery from such employee can be effected. In that view of the matter, the Petition is allowed in terms of prayer clause 'C'. Rule made absolute accordingly.

6. The Petition is disposed of in above terms.

(**A.M. BADAR, J.**)

(**S.S. SHINDE, J.**)

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sga/

1 AIR 2015 S.C.696