

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4298 OF 2007

Dinesh s/o Shankar Patil,
Age 64 years, occ. Retired
R/o. 57/B, "Surshri" Vidya Vihar Colony,
District Jalgaon

...Petitioner

versus

1. The State of Maharashtra
through Secretary, Higher
Education department
Mantralaya, Mumbai
(Copy to be served on G.P.
of High Court of Mumbai
Bench at Aurangabad)
2. The Director of Education
Central Building, Pune
3. The Divisional Deputy Director
of Education, Nashik Division
Nashik
4. The Education Officer (Secondary)
Zilla Parishad, Jalgaon
5. The Senior Auditor
Education department,
Zilla Parishad, Jalgaon
6. The Principal
Arts, Science and Commerce College
Chopda, Tq. Chopda,
District Jalgaon

...Respondents

.....
Mr. V.B. Garud, advocate for the petitioner
Mr. D.B. Bhange, A.G.P. for respondent Nos. 1 to 4
.....

**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATED : 6th OCTOBER, 2015

ORAL JUDGMENT (PER A.V. NIRGUDE,J.) :-

1. This petition is mainly challenging the correctness of reasoned order dated 2.12.2006 passed by the Deputy Director of Education, Nashik Division, Nashik, holding, on facts, that the petitioner was not appointed as a teacher in Higher Secondary school in 1975, as claimed, but he was so appointed only on 1.9.1978. The Deputy Director of Education, therefore, held that the higher pay scale was available to the petitioner only from 1990 and not prior to that. On perusal of the order, we realized that the order is mainly based on fact of the case and appreciation of the same. We found that all aspects of the matter have been considered in the said order. The main dispute between the parties was whether the petitioner was appointed as a teacher in Higher Secondary School in the year 1975. On considering the facts of the case, the Deputy Director of Education has rightly held that the petitioner was not appointed as higher secondary teacher in the year 1975. The reasons recorded by the Deputy Director of Education are convincing and we are not inclined to disturb the findings recorded by him.

2. The second question that arises in this petition is whether the recovery of excess salary is permissible against the petitioner. In the year 1992, petitioner was given higher pay scale w.e.f. 1987 instead

of 1990. In the year 2001, i.e. about 9 years thereafter, that too after retirement of the petitioner, the auditor found some mistake in the order of the year 1991. Resultantly, an order of recovery of Rs.90,703/-, as an excess amount paid to the petitioner for the period from 1987 to 1990, was passed. The question now is, whether this recovery is permissible. At this juncture, in our opinion, it would be appropriate to refer to the judgment of the Supreme Court in the case of **State of Punjab and others vs. Rafiq Masih (White Washer)**, reported in (2015) 4 SCC 334. In para 18 of the said judgment, the Supreme Court has laid down following principles:-

“18.

(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, whether 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."

3. Considering the principles laid down by the Apex Court, as quoted above, we find that the case of the petitioner would fall within the ambit of clauses (ii) and (iii) quoted above, and therefore, the petition should succeed partly.

4. In view of the above, we declare that impugned order, to the extent of recovery of excess amount, deserves to be quashed and set aside and it is accordingly quashed and set aside. The writ petition, in so far as the other prayers is concerned, is dismissed.

5. We direct the respondents to refund the amount of Rs.90,703/- to the petitioner with interest @ 6% p.a., deposited by the petitioner in Treasury on 29.3.2001, within eight weeks from today.

6. Rule is absolute in the above terms.

(V. K. JADHAV, J.)

(A. V. NIRGUDE, J.)