

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4734 OF 2000

Mohd. Muzzaffar Siddiqui,
Age : 38 Years, Occu. : Service,
R/o Aurangabad, Tq. & District
Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
Revenue and Forest Department,
Mantralaya, Bombay.
2. The Deputy Secretary,
Revenue and Forest Dept.,
(Wakf Cell), L-3, Branch,
Mantralaya, Bombay,
3. The Marathwada Wakf Board,
through its Secretary,
having office at Panchakki,
Aurangabad, Tq. & Dist. Aurangabad.
4. The Chairman,
Marathwada Wakf Board,
having office at Panchakki,
Aurangabad, Tq. & Dist. Aurangabad.
5. S. S. Ali Quadri,
Age : 56 Years, Occu. : Service,
At present working as Chief Executive
Officer, The Maharashtra State Wakfs
board, having its office at Panchakki,
Aurangabad, Taluka and District :
Aurangabad.

.. Respondents

Shri R. S. Deshmukh, Advocate for the Petitioner.
Shri N. B. Patil, A.G.P. for Respondent Nos. 1 and 2.
Shri K. G. Khadar & S. S. Kazi, Advocate for Respondent Nos. 3
and 5 - absent.

CORAM : S. V. GANGAPURWALA AND

A. I. S. CHEEMA, JJ.

DATE : 09TH APRIL, 2015.

ORAL JUDGMENT (*Per S. V. Gangapurwala, J.*) :-

. Mr. Deshmukh, the learned counsel for the petitioner states that, the petitioner was nominated as Secretary of the Wakf Board and had assumed the charge of secretary. However, the respondent No. 5 was appointed as Secretary in place of the petitioner without following proper procedure. The petitioner has been nominated legitimately by the Chief Executive Officer, who had the authority at the relevant time. The learned counsel submits that, initially this Court had granted stay to the order removing the petitioner as Secretary. Thereafter, the order was modified, wherein this Court observed that, the petitioner is not entitled to remain as Secretary, but is entitled to officiate as Superintendent of Accounts that is the post, the petitioner was holding prior to the nomination as secretary. The learned counsel further submits that, during the pendency of present writ petition, the petitioner was sent on deputation to work at Regional Wakf Office at Nagpur. That order is also stayed by this Court. The recovery is also claimed by respondents on account of alleged erroneous pay fixation. The pay fixation was done on

promotional post. The learned counsel relies on the judgment of the Apex Court in a case of **Syed Abdul Qadir and others Vs. State of Bihar and others** reported in (2009) 3 SCC 475, so also the judgment in a case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** reported in (2014) 8 SCC 883.

2. None appears for the respondent No. 5. The respondent No. 5/Chief Executive Officer of the Wakf Board has been served. Vide order dated 16.02.2015 a fresh notice was issued to the respondent No. 5. None appears for the respondent No. 3 also. The learned A. G. P. appears for respondent Nos. 1 and 2.

3. We have considered the submissions canvassed by the learned counsel for respective parties. We have also perused the order dated 04.05.2001 passed by this Court modifying the interim relief granted in favour of the petitioner. In fact, at the time of passing order dated 04.05.2001, the learned counsel for the Wakf Board conceded to the position that, the post of Superintendent of Accounts will have to be given to the petitioner. This Court vide order dated 04.05.2001 set aside the order dated 27.04.2001 and the Wakf Board was directed to reinstate the petitioner in service of Wakf Board as Superintendent of Accounts with immediate effect. The said order was in the nature of final order. It is not disputed that, pursuant to said order, the petitioner has joined as Superintendent of Accounts as stated by the learned counsel for

the petitioner. Even he is working on the said post today.

4. It would appear that, during the pendency of present petition, the petitioner was transferred to Nagpur. The petitioner carried out amendment. This Court granted an ad-interim stay to the said transfer order vide order dated 29.08.2009. Now the said transfer order dated 22.05.2009 would not be of any consequence, as the same was stayed six years back. Even the order dated 22.06.2009 claiming recovery is also assailed by way of amendment. This Court stayed the said order of recovery vide order dated 29.08.2009. The Apex Court in a case of **Syed Abdul Qadir and others Vs. State of Bihar and others** referred supra has held that, the recovery on the basis of wrong pay fixation and not on account of misrepresentation on the part of the petitioner cannot be made. In the light of that, the order dated 22.06.2009 to the extent of claiming recovery from the petitioner, so also order of transfer is quashed and set aside. The Rule is accordingly made absolute in terms of order dated 04.05.2001 passed by this Court in Civil Application No. 2810 of 2001 in Writ Petition No. 4734 of 2000. So also the order dated 22.05.2009 transferring the petitioner and the order dated 22.06.2009 to the extent of claiming recovery are quashed and set aside. No costs.

Sd/-

[A. I. S. CHEEMA, J.]

Sd/-

[S. V. GANGAPURWALA, J.]