

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

WRIT PETITION NO.4635 OF 2015

Smt. Banobi Binte Salauddin
Age:65 yrs Occ. Pensioner,
R/o Aapsa Nagar, Mehroon,
District Jalgaon.

- PETITIONER

VERSUS

- 1) The Commissioner,
Jalgaon City Municipal
Corporation, Jalgaon
- 2) Administrative Officer,
Education Board,
Jalgaon City Municipal
Corporation, Jalgaon.

- RESPONDENTS

Mr.Shivaji T.Shelke, Advocate for Petitioner.
Mr.VD Gunale, Advocatge for Respondents.

**CORAM : S.S.SHINDE &
P.R.BORA, JJ.**

DATE : 17th NOVEMBER, 2015.

ORAL JUDGMENT (PER:-S.S.SHINDE, J.)

1) Heard. Rule. Rule made returnable
forthwith. With the consent of learned Counsel for
the parties, the petition is taken up for final
disposal at admission stage.

2) This petition takes exception to
communication dated 28th November, 2011 issued by

Respondent No.1, which is at Exhibit-A of the compilation of writ petition. It is the case of the petitioner that, the petitioner was serving as an Assistant Teacher in Urdu School run by the respondents and stood retired from service on attaining the age of superannuation on 31st May, 2007. By the impugned communication, the respondent has informed the petitioner that an excess amount of Rs.93,991/- has been paid to the petitioner as per the Audit Para No. 25 of 2001 on account of grant of an increments from 1.1.2000 which were not admissible. The petitioner on 21st January, 2012 addressed a communication to the respondents stating that, the recovery in question is contrary to the record as the petitioner has not been granted the increments and he was paid as per the Certificate issued by the Headmaster of the School. The petitioner has been paid salary as per the Basic pay of Rs.4,900/- per month till her retirement and no increment or payment thereof has been made to him. It is the further case of the petitioner that, the respondents have recovered an amount of Rs.49,210/- in 35 months of Rs.1406/- each till November 2014. the respondents have also adjusted an amount of Rs.

44,630/- of two installments of Rs.22,315/- as per 6th Pay Commission. Thus, the respondents have recovered Rs.93,840/- till November 2014. It is the further contention of the petitioner that, the petitioner has not been paid pension since October 2014. Hence, this petition.

3) Learned Counsel appearing for Respondent No.1 submits that by mistake and inadvertence, the amount towards the increments was paid to the petitioner. It is further submitted that, the respondents were entitled to recover the excess amount from the petitioner since in audit, the said excess amount was detected by the Auditor. Therefore, according to the counsel appearing for the respondents, the petition deserves to be dismissed.

4) We have heard the learned Counsel appearing for the petitioner and learned counsel for the respondents with their able assistance, the averments of the petition, grounds taken therein and annexures thereto.

5) Though it is contended by learned Counsel

for the petitioner that, no increments were ever granted to the petitioner after 2000, nor any payment thereof was made to the petitioner, we need not go to the said disputed questions of fact, since the respondents admit that even the alleged payment was made to the petitioner on account of mistake by the respondents. It is not in dispute that the petitioner stood retired from service upon attaining the age of superannuation on 31st May, 2007 and the impugned communication has been issued on 28th November, 2011. It is also not in dispute that on the date of retirement, the petitioner was Class-III employee. In that view of the matter, in the light of the observations made by the Hon'ble Supreme Court in the matter of State of Punjab and Ors. Vs. Rafiq Masih (White Washer) and Ors. - (2015) 4 SCC 334, and in particular para 18 thereof, we are inclined to allow this petition in part. Para 18 of the said judgment reads thus, -

“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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from the retired employees, or 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."

6) The case of the petitioner is squarely

covered by clause (i) of para 18 of the judgment in State of Punjab (cited supra).

7) Though the counsel appearing for the petitioner vehemently argued that the amount so recovered by the respondents be ordered to be refunded to the petitioner with 18% interest, the said prayer is vehemently opposed by the counsel appearing for the respondents. We are not inclined to grant the prayer of the petitioner to the extent of payment of interest on recovered amount. However, we direct the respondents to refund the amount recovered from the petitioner, as expeditiously as possible and preferably within a period of four weeks from today.

8) The writ petition is partly allowed. Rule is made absolute in the aforesaid terms with no order as to costs.

sd/-
(P.R.BORA)
JUDGE

sd/-
(S.S.SHINDE)
JUDGE

bdv/