

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD.****WRIT PETITION NO. 6439 OF 2015**

Fulchand Devidas Poul
age 65 years, occu. Retired,
r/o Alani, Tq. Osmanabad,
Dist. Osmanabad.

... PETITIONER.

VERSUS

1. The State of Maharashtra
through its Principal Secretary,
General Administration Department,
Mantralaya, Mumbai – 32.

2. The Chief Executive Officer,
Zilla Parishad Osmanabad,
Tq. & Dist. Osmanabad.

3. The Executive Officer (Primary),
Zilla Parishad, Osmanabad,
Tq. & Dist. Osmanabad.

4. The Block Education Officer,
Zilla Parishad Osmanabad,
Tq. & Dist. Osmanabad.

5. The Chief Account Officer,
Zilla Parishad Osmanabad,
Tq. & Dist. Osmanabad.

... RESPONDENTS.

...
Advocate for Petitioners : Mr.Naiknavare Ramesh V.
AGP for Respondents/State: Mr.K.S. Patil.
Advocate for Respondent 2 to 5 : Mr.Jadhavar Kiran B.

...

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

Dated: December 17, 2015.

ORAL JUDGMENT: [Per SHINDE, J]

1. Rule. Rule is made returnable forthwith. By consent of the parties, taken up for final hearing.

2. It is the case of the petitioner that, the petitioner possessed educational qualification of SSC in the year, 1969 and therefore, the respondent No.2 on 9th July, 1971 issued appointment order appointing the petitioner as Assistant Teacher. The petitioner was asked to join the services on or before 17th July, 1971. It is further case of the petitioner that along with the petitioner, other 35 persons came to be appointed as Assistant Teachers, who were possessing the same qualification like the petitioner. The petitioner was appointed in the pay scale of Rs. 105-5-125. Thereafter, his pay scale came to be revised from time to time as per the Government Policy. On 20th July, 1974 the petitioner has completed his ad-hoc D.Ed. Course from the Government D.Ed. College, Osmanabad. On 29th March, 2003, after a

period of 35 years, the respondents promoted the petitioner as Head Master in the pay scale of Rs.5500-175-9000. The petitioner was extended all the benefits including increments, pay scale etc. The respondent No.6 on his own issued the pay fixation order and accordingly, the petitioner's pay was fixed on 29th May, 2003. It is further case of the petitioner that since joining of the petitioner as Assistant teacher till the last pay scale, no one objected for granting such pay scale to the petitioner. It is specific case of the petitioner that at no point of time the petitioner was instrumental or played any fraud so as to fix his pay scale. It is further case of the petitioner that, the respondent Education Officer has shown dues of Rs.2,74,692/- after retirement of the petitioner from service. It is further case of the petitioner that the impugned order / communication is without mentioning any date; but the same appears to be of the year, 2005. The petitioner retired on 31st August, 2007. It is case of the petitioner that since the similarly situated employees like the petitioner stood retired in the year, 2007, in respect of them also recovery was ordered by the respondents. However, this Court in **Writ Petition No.1236/2013 filed by Mr.Babarao Digambar Kulkarni and others vs The State of Maharashtra and**

others decided on 21st March, 2014 passed order allowing the said petition thereby holding that, the respondents are not entitled to recover the amount paid by the respondents during the period of the services rendered by the petitioners therein. The learned Counsel for the petitioner further invited our attention to the orders passed by this Court on 4.7.2012 in **Writ Petition No.7838 of 2011 (Association of College and University Superannuated Teachers (Maharashtra) vs The State of Maharashtra and others** and submits that since the petitioner was neither responsible for excess payment made by the respondents nor he committed any fraud, the prayer of the petitioner to quash the impugned order and pay back the recovered amount to the petitioner may be favourably considered. He submits that since the petitioner was suffering from paralysis, he could not file the writ petition along with other similarly situated employees. However, the learned Counsel for the petitioner invited our attention to the various representations filed by the petitioner with the respondents / authorities for redressal of his grievance. He, therefore, submits that the petition may be allowed.

3. On the other hand, learned Counsel for respondents

No.2 to 5 and the learned AGP appearing for the State submit that the petitioner was not entitled to receive certain monetary benefits since he was not possessing the requisite qualification initially for the post of Assistant Teacher and subsequently, for holding the post of Head Master. It is further submitted that there is inordinate delay in filing this writ petition and also the judgments which are cited by the learned Counsel for the petitioner are not applicable to the present case inasmuch as, the impugned order has been issued in the year, 2005 and all these judgments have been rendered thereafter.

4. Heard learned Counsel for the petitioner, learned AGP for the State and learned Counsel for the respondents No.2 to 5. With their able assistance, perused the pleadings in the petition, annexures thereto, the contentions raised by the petitioner and also the judgments and orders passed by this Court in case of similarly situated employees. Upon perusal of the material placed on record, it appears that, the respondents have not demonstrated that the petitioner by playing fraud or with misrepresentation, received monetary benefits which were disbursed to the petitioner. If is the

respondents were of the opinion that the petitioner did not possess the requisite qualification for granting particular pay scale, it was open for the respondents to verify the documents and not to extend such monetary benefits in the nature of revised pay scale. Respondents allowed the petitioner to render the services; not only that, from time to time his pay scale was revised and he was promoted and appointed on the post of Head Master. It is not demonstrated by the respondents that, the petitioner played any role in fixation of his pay scale time to time during his service carrier or he played fraud or by misrepresentation participated in the process of pay fixation.

5. In that view of the matter, keeping in mind the various pronouncements of this Court and the Supreme Court in the case of State of **Punjab and others vs Rafiq Masih (White Washer) and others**¹, the petitioner's case is covered by category (i) laid down by the Supreme Court in the case of **Rafiq Masih (White Washer)**, para 18 of which reads, thus:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the

¹ (2015) 4 scc 334;

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 retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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. In that view of the matter, in our opinion, the petitioner is entitled for refund of the principal amount. However, since the petitioner has belatedly approached this Court, he is not entitled to interest on the said amount.

7. In the result, petition is partly allowed. The respondents No.2 to 5 are directed to refund the amount recovered from the petitioner without paying any interest on it, as expeditiously as possible; however within six months from today. Rule is made absolute in the above terms with no orders as to costs.

[P.R. BORA, J.]

[S.S. SHINDE, J.]

Kadam.