

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD.****WRIT PETITION NO.8872 OF 2014**

1. Vinod s/o Joseb Takwale
AGE 66 YEARS, OCCU. Pensioner,
r/o Shantipura, Cantonment,
Aurangabad.
2. Chunnilal s/o Bhagchand Kotiya,
age 65 years, occu. Pensioner,
r/o Fardapur, Tq. Soygaon,
Dist. Aurangabad.
3. Sukhdeo s/o Matharaji Wagh,
age 66 years, occu. Pensioner,
r/o N-13, HUDCO, Aurangabad.
4. Sandipan s/o Rambhau Kekan,
age 64 years, occu. Pensioner,
r/o Varndavan Apartment,
Peerbazar, Aurangabad.
5. Trimbak s/o Bhika Mahdekar,
age 66 years, occu. Pensioner,
r/o Radhaswami Colony, Jatwada Road,
harsool, Aurangabad.
6. Shivaji s/o Dhondipa Nahvi,
age 59 years, occu. Pensioner,
r/o Plot No.28/29, Kumat Nagar,
Shetiya Colony, Satara Parisar,
Beed By Pass,
Aurangabad.
7. Sheshrao s/o Balaji Mankape,
age 64 years, occu. Pensioner,
r/o Jategaon, Tq. Phulambri,

Dist. Aurangabad.

8. Lahu s/o Deoram Bhole,
age 64 years, occu. Pensioner,
r/o N-11, E-1/1, Mayur Nagar,
HUDCO, Aurangabad.

9. Laxmikant s/o Gopalrao Kulkarni,
age 65 years, occu. Pensioner,
r/o Deshpande Galli, Vaijapur,
Tq. Vaijapur,
Dist. Aurangabad.

10. Pandharinath s/o Asaram Kale,
age 65 yrs., occu. Pensioner,
r/o Manoor, Tq. Vaijapur,
Dist. Auranabad.

11. Murlidhar s/o Masuji Sonawane,
age 64 years, occu. Pensioner,
r/o Vaijapur, Tq. Vaijapur,
Dist. Aurangabad.

12. Dasharath s/o Tukaram Thombare,
age 65 Years, occu. Pensioner,
r/o Jaisingpura, Aurangabad.

13. Phulchand s/o Shankarrao Kasar,
age 65 yrs, occu. Pensioner,
r/o House No.V/F-43, Vishnu Nagar,
Aurangabad.

14. Eknath s/o Shekuji Revale,
age 65 yrs, occu. Pensioner,
r/o Uttam Nivas, Jawahar Colony,
Aurangabad.

... PETITIONERS.

VERSUS

1. The State of Maharashtra,
through Secretary,

Department of Education,
Mantralaya, Mumbai – 32.

2. The Director,
Maharashtra Prathmik Shikshan Parishad,
Jawaharlal Bhawan, Netaji Subhash Marg,
Charni Road, Mumbai – 400004.

3. The Chief Executive Officer,
Zilla Parishad, Aurangabad.

4. The Education Officer,
Sarva Shiksha Abhiyan,
Z.P. Aurangabad.

... RESPONDENTS.

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Advocate for Applicant : Mr. Irale Patil D.R.
AGP for Respondents / State : Mr. D.V. Tele.
Advocate for R.Nos.3 and 4: Mr. Swami Mahesh C.

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

RESERVED ON : 27th April, 2015.

PRONOUNCED ON : 08th May, 2015.

JUDGMENT: [Per SHINDE, J]

1. Rule, returnable forthwith. By consent of the parties, heard finally at admission stage.

2. This petition has been filed with the following prayers:

“B-1) Quashing and setting aside the impugned orders dtd. 27.08.2014 passed by Maharashtra Prathmik Shikshan Parishad, Mumbai and Order dtd. 19.09.2014 passed by the Education Officer, Sarva Shiksha Abhiyan, Z.P. Aurangabad, the petitioners may be allowed to get their regular pension and other benefits as usual.”

3. It is the case of the petitioners that the petitioners were appointed under the Zilla Parishad, Aurangabad and were promoted subsequently as Kendra Pramukhs and on completing their tenure, retired on superannuation on different dates.

4. The Government of India, Ministry of Human Resources formulated a scheme called as *Sarva Shiksha Abhiyan*. The said scheme was given for implementation to the State Government. Budgetary provision has been made for giving appointments on contract basis and pay them honorarium. The petitioners were initially appointed on consolidated honorarium of Rs.4000/- per month as Resource person in the year, 2008. The said

order was for six months period and the same was renewed by giving one day's break. The respondent No.2 enhanced the remuneration from Rs.4000/- to Rs.10,000/- and further under the order dated 28th October, 2010, enhanced the same to Rs.14000/- and thereafter, under order dated 7th June, 2013, enhanced it to Rs.18000/-.

5. It is further case of the petitioners that after appointment as Resource Person, training was given to the Kendra Pramukhs and teachers who were teaching in primary section, to strengthen and uplift the quality of education in the light of directions under Sarva Shiksha Abhiyan. The services of the petitioners were discontinued on completion of their tenure and since then, they are no more in service on contract basis.

6. The respondent No.2 referring to the Government Resolution dated 15th February, 1995 issued by the General Administration Department of Government of Maharashtra for its employees, reached to the decision

that the persons appointed on contract basis under Sarva Shiksha Abhiyan are entitled to get Rs.10,000/- honorarium and not more than that. According to the petitioners, Sarva Shiksha Abhiyan is a scheme framed by the Government of India and given for implementation to the Government of Maharashtra. Therefore, it is an independent project and therefore, the provisions contained in Government Resolution dated 15th February, 1995 issued by the G.A.D., Government of Maharashtra are not applicable to the cases of the petitioners and that too, after lapse of 19 years. The petitioners made representation to the respondents on 1st September, 2014 and made request not to act upon the Government Resolution dated 15th February, 1995 issued by the G.A.D., Government of Maharashtra, which had no concern with the appointments of the petitioner made under Central Scheme namely, Sarva Shiksha Abhiyan. It was also stated in the said representation that the petitioners are relieved long back after completing the contract period and, therefore, recovery should not be effected or made from them. The learned Counsel for the

petitioners invited our attention to the exposition of the Supreme Court in case of **Syed Abdul Qadir and ors. Vs State of Bihar and ors.**¹ and submits that the Supreme Court has held that recovery of excess payment should not be made where there is no misrepresentation or fraud on the part of employees and where excess payment has been made by applying a wrong principle or wrong interpretation of a rule / order. Such relief is granted not because employee has any right but because the court exercises its equity jurisdiction so as to avoid hardship to an employee who is not at fault.

The learned Counsel for the petitioners further invited our attention to the judgment of the Supreme Court in case of **Sushilkumar Singhal vs Pramukh Sachiv Irrigation Department and others**² and submitted that it is held by the Supreme Court that mistake committed in calculation and excess amount paid to the employees and amount paid prior to retirement could not be taken into account. Amount of pension shall also not be reduced. The appellants shall be paid pension which had been determined at the time of their retirement. Therefore, the learned Counsel for the

1 (2009) 3 SCC 475.

2 2014(4) ALL MR 909 SC.

petitioner submits that the petition deserves to be allowed.

7. On the other hand, learned AGP relying upon the Government Resolution dated 15th February, 1995 submits that the petitioners were not entitled to more than Rs.10,000/- per month and the Chief Executive Officer has wrongly issued the orders granting Rs.14,000/- and Rs.18,000/- per month and, therefore, the impugned order may not be interfered with.

8. We have given careful consideration to the submissions of the learned Counsel for the petitioner and the learned AGP for the State and the Counsel for the Zilla Parishad, Aurangabad and we are of the opinion that since the petitioners were appointed under the Sarva Shiksha Abhiyan sponsored by the Central Government and they received the amount under the orders dated 28.10.2010, 7.6.2013 issued by the Chief Executive Officer, and admittedly, the petitioners have neither played fraud nor misrepresented for getting the

amount. It clearly appears that the C.E.O., issued orders from time to time prescribing their amount per month and for rendering services, they have received the said amount. The petitioners had no any knowledge that they were not entitled for the said amount.

9. The Supreme Court in case of **Syed Abdul Qadir and ors.** (supra), observed in paragraph nos.57 to 59 of the judgment, thus:

“57 This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58 The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered.

But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Rah v. State of Haryana*, *Shyam Babu Verma v. Union of India*, *Union of India v. M. Bhaskar*, *V. Gangaram v. Director*, *Col. B.J. Akara (Retd.) v. Govt. of India*, *Purshottam Lal Das v. State of Bihar*, *Punja National Bank v. Manjeet Singh & Bihar SEB v. Bijay Bhadur*.

59 Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the

appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”

10. The Division Bench of this Court in case of **Digambar s/o Bhagirath Pagire Vs. State of Maharashtra and others in Writ Petition No.7227 OF 2011** vide judgment dated 24th August, 2012, in para 7 held, thus:

“7 Considering the facts and circumstances of this case, we are of the opinion that the principles laid down by the Apex Court in the matter of **Syed Abdul Qadir and others** (supra), are squarely applicable to the facts of the instant case. The employer is not entitled to effect recovery in pursuance to the directions issued by order dated 08.02.2000. If at all any recovery is made by the employer from the salary/pensionary benefits admissible to the employee, said amount shall be returned back to the employee expeditiously and in any case within six months from today. The directions issued by the employer, in the order dated 08.02.2000, relating to recovery of amount allegedly paid erroneously to the employee, shall stand quashed and

set aside.”

11. In that view of the matter, we are of the considered view that the petitioners are entitled for the relief claimed. Accordingly, petition is allowed in terms of prayer clause (B-1). Rule is made absolute, accordingly with no order as to costs.

[P.R. BORA, J]

[S.S. SHINDE, J]

Kadam.