

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

**WRIT PETITION NO.2889 OF 2014**

[Purushottam Mahadeo Tayade .vs. State of Maharashtra and others]

-----  
 Office Notes, Office Memoranda of Coram,  
 appearances, Court's orders of directions  
 and Registrar's orders  
 -----

Court's or Judge's orders

-----  
 Ms. Dashputre, counsel h/f Shri P.B. Patil, counsel for the petitioner,  
 Shri K.L. Dharmadhikari, A.G.P. for respondent nos.1, 2 and 7,  
 Shri N.B. Kalwaghe, counsel for respondent nos.5 and 6.  
 -----

**CORAM : SMT. VASANTI A. NAIK AND**  
**A.M. BADAR, JJ.**

**DATED : APRIL 01, 2015.**

By this petition, the petitioner challenges the order of the respondent no.3, dated 17.5.2014 reverting the petitioner on the post of Assistant Teacher from the promotional post in 25% graduate quota. The petitioner seeks a declaration that the respondents are not entitled to recover the salary paid to the petitioner towards the services rendered by him as a graduate teacher in 25% quota.

Ms. Dashputre, the learned counsel holding for Shri P.B. Patil, the learned counsel for the petitioner, states that the petitioner is not desirous of challenging the impugned order dated 17.5.2014 reverting the petitioner from the post of graduate teacher in 25% quota and would restrict the petition only to the prayer in regard to the recovery sought to be made towards the difference in salary paid to the petitioner for working on the promotional post in 25 % graduate quota. The learned counsel for the petitioner relied on the judgment reported in AIR 2015 SC 696 (State of Punjab and others .vs. Rafiq Masih (White Washer) etc. to substantiate the submission that recovery cannot

be made from an employee when the excess payment has been made for a period of more than five years before the order of recovery is issued. It is stated that the petitioner was paid the salary of the post in 25% graduate quota for more than 14 years before the excess amount was sought to be recovered. It is stated that the petitioner has not secured the benefits available to the teachers in 25% graduate quota by making any misrepresentation.

On hearing the learned counsel for the parties and on a perusal of the judgment reported in AIR 2015 SC 696, it appears that the respondents cannot make the recovery of the excess amount paid to the petitioner when the said payments are made for a period of more than 14 years before the order of recovery is issued. It appears that the petitioner had not misrepresented the respondents in seeking the salary as a graduate teacher in 25% graduate quota and in view of principle no.(iii) as laid down by the Hon'ble Supreme Court in para 12 of the aforesaid reported decision, the respondents would not be entitled to recover the excess amount paid to the petitioner. Hence, it would be necessary to grant the only prayer made on behalf of the petitioner.

In view of the aforesaid, the writ petition is partly allowed. The respondents would not be entitled to recover the excess amount paid to the petitioner towards the salary of a graduate teacher in 25% graduate quota. Order accordingly. No costs.

**JUDGE**

**JUDGE**