

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

WRIT PETITION NO.5263/2015

Uddhav s/o Uttamrao Muley

...Versus...

Chief Executive Officer, Zilla Parishad, Buldhana and others

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

Court's or Judge's orders

Shri S.V. Sohoni, Advocate for petitioner
Shri N.R. Rode, AGP for respondent no.3

**CORAM : SMT. VASANTI A. NAIK AND
PRASANNA B. VARALE, JJ.**

DATE : 20.11.2015

By this petition, the petitioner in effect, impugns the order of the Zilla Parishad dated 28.7.2004, directing the petitioner to refund an amount that was wrongly paid to the petitioner in excess from 1990 to 1999. The petitioner seeks a direction to the respondent – Zilla Parishad to refund the amount that was wrongly deducted in pursuance of the said recovery.

The petitioner was appointed as an Assistant Teacher in the Zilla Parishad School in February, 1989. From 12.10.1990 the pay scale of graduate teacher was made applicable to the petitioner. On 14.6.1999 the said order was cancelled and the petitioner was held to be entitled to the graduate pay scale only from the date on which he acquired the requisite qualification. On 29.10.2001, in supersession of the order dated 14.6.1999, the

petitioner was granted the pay scale of graduate teacher from the date on which he joined the said post. According to the respondent, the said pay scale was wrongly paid to the petitioner, though the petitioner was not entitled to the same and hence, it was necessary for the petitioner to refund the same. By the order dated 28.7.2004, the respondent – Zilla Parishad directed the petitioner to refund the amount that was paid in excess. The said amount was deducted from the salary of the petitioner. The petitioner has challenged the action on the part of the respondent in the instant petition.

The learned Counsel for the petitioner submitted that the respondent – Zilla Parishad was not entitled to recover the amount that was wrongly paid to the petitioner in excess. It is stated that the petitioner had not secured the said amount by fraud or misrepresentation and hence, the Zilla Parishad could not have recovered the said amount. The learned Counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court reported in *(2009) 3 SCC 475 (Syed Abdul Qadir and others...Versus...State of Bihar and others)*.

Shri Rode, the learned Assistant Government Pleader appearing on behalf of the respondent no.3 submitted that the restitution could have been ordered in this case as even in a case where the amount is mistakenly paid to an employee, the same is liable to be returned to the employer, if the employee is not on the verge of retirement or has retired. It is stated that the petitioner was only 35 years of age when the recovery was sought to be made. It is stated that it is held in the case of *Chandi Prasad Uniyal and others...Versus...State of Uttarakhand and*

others, reported in (2012) 8 SCC 417 that even if there is no misrepresentation or fraud the amount could be recovered if the beneficiary has not retired or is not on the verge of retirement. It is stated that in the case of *Syed Abdul Qadir and others...Versus...State of Bihar and others* (Supra) a direction was issued as the employees had either retired or were on the verge of retirement. It is stated that the petition suffers from laches as the recovery was sought to be made in 2004. It is further stated that some teachers had challenged the orders of recovery of the year 2004 but the said writ petitions were dismissed.

We find on hearing the learned Counsel for the parties that the case of the petitioner stands covered by the judgment in the case of Chandi Prasad Uniyal and others...Versus...State of Uttarakhand and others (Supra). The petitioner was 35 years of age when the recovery was sought and had to serve for nearly 25 years in the Zilla Parishad. The petitioner had neither retired from service on attaining the age of superannuation nor was the petitioner on the verge of retirement when the recovery was sought. It is held in the case of *Chandi Prasad Uniyal and others* that except for the few instances pointed out in the case of *Syed Abdul Qadir and others* excess payment made due to wrong/irregular pay fixation can always be recovered though the same may not have been paid to the recipients on misrepresentation or fraud. Also, we find that the claim of the petitioner is stale, in as much as, the recovery was sought in the year 2004 and the entire amount is already recovered. The petitioner has approached this Court merely with a view to take a chance. We do not find any illegality in the action

of the Zilla Parishad in recovering the excess amount from the petitioner.

For the reasons aforesaid, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

Wadkar