

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

WRIT PETITION NO.5230 OF 2015

Ramchandra Girjappa Teli,
Age 65 years, Occ. Retired
Teacher, R/o.Jewali,
Tq. Lohara, 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. and Dist. Osmanabad
3. The Education Officer (Primary),
Zilla Parishad Osmanabad,
Tq. and Dist. Osmanabad
4. The Block Education Officer,
Zilla Parishad, Osmanabad
Tq. and Dist. Osmanabad
5. The Chief Accountant Officer,
Zilla Parishad, Osmanabad,
Tq. and Dist. Osmanabad ..Respondents

**WITH
WRIT PETITION NO.4949 OF 2015**

Ek Nath s/o. Vithoba Jadhve (died)
through Lrs.

1. Sakuntala w/o. Ekant Jadhav,
Age 60 years, Occ. Household,
r/o. Kati, Tq. Tuljapur,
at present at Osmanabad
 2. Sanjay s/o. Ekant Jadhav,
Age 45 years, Occ. Driver,
r/o. Kati, Tq. Tuljapur,
at present at Osmanabad
 3. Raju s/o. Ekant Jadhav,
Age 40 years, Occ. Labour
r/o. Kati, Tq. Tuljapur,
at present at Osmanabad
 4. Ku. Nutan d/o. Ekant Jadhav,
Age 28 years, Occ. Education,
r/o. Kati, Tq. Tuljapur,
at present at Osmanabad
- ..Petitioners

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. and Dist. Osmanabad
3. The Education Officer (Primary),
Zilla Parishad Osmanabad,
Tq. and Dist. Osmanabad
4. The Block Education Officer,
Zilla Parishad, Osmanabad
Tq. and Dist. Osmanabad

5. The Chief Accountant Officer,
Zilla Parishad, Osmanabad,
Tq. and Dist. Osmanabad ..Respondents

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Mr.R.V.Naiknavare, advocate for petitioners (in both petitions)

Mr.S.B.Yawalkar, AGP for respondent no.1 – State (in both petitions)

Mr.K.J.Ghute Patil, advocate for respondent no.2 in Writ Petition NO.5230 of 2015

Mr.R.B.Biradar, advocate for respondent no.2 in Writ Petition No.4949 of 2015

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**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.
DATE : APRIL 15, 2016**

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

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

2. It is the case of the petitioners that they possessed educational qualification of S.S.C. in the year, 1969 and therefore, respondent No.2 on

9th July, 1971 issued appointment order appointing the petitioners as Assistant Teacher. The petitioners were asked to join the services on or before 17th July, 1971. It is further case of the petitioners that along with the petitioners, other persons came to be appointed as Assistant Teachers, who were possessing the same qualification like the petitioners. The petitioners were appointed in the pay scale of Rs.105-4-125. Thereafter, pay scale of the petitioners came to be revised from time to time as per the Government Policy. On 20th July, 1974, the petitioners had completed their 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 petitioners as Head Masters in the pay scale of Rs.5500-175-9000. The petitioners were extended all the benefits including increments, pay scale etc. The petitioners were issued the pay fixation orders and accordingly, their pay was fixed on 29th May, 2003.

3. It is further case of the petitioners that since their joining as Assistant teacher till the last pay scale, no one had objected for granting such pay scale to the petitioners. It is the specific case of the petitioners that at no point of time, they were instrumental or played any fraud so as to fix their pay scale. It is further case of the petitioners that the respondent - Education Officer, by issuing the impugned order, has shown dues of more than Rs.3 Lakhs against the petitioners after their retirement from service. The petitioner in Writ Petition No.5230 of 2015, has retired from service on 30th April, 2008 and the petitioner in the Writ Petition No.4949 of 2015 has retired from service on 30th April, 2007. It is the case of petitioners that since the similarly situated employees stood retired in the year, 2007, in respect of them also, recovery was ordered by the respondents.

4. The learned counsel for the petitions submits that this Court in **Writ Petition No.1236/2013 filed by Mr.Babarao4 Digambar Kulkarni and others vs The State of Maharashtra and others** decided on 21st March, 2014 passed an order allowing the said petition holding that the respondents are not entitled to recover the amount paid by the respondents during the period of the service rendered by the petitioners therein. The learned Counsel for the petitioners further invited our attention to the orders passed by this Court on 4th July, 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 petitioners were neither responsible for the excess payment made by the respondents nor they committed any fraud, the prayer of the petitioners to quash the impugned order and pay back the

recovered amount to the petitioners, may be favourably considered. The learned counsel for the petitioners has also invited our attention to the various representations filed by the petitioners with the respondents / authorities for redressal of their grievance. He, therefore, submits that both the petitions may be allowed.

5. On the other hand, the learned counsel appearing for respondents No.2 to 5 and the learned AGP appearing for the State submit that the petitioners were not entitled to receive certain monetary benefits since they were 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 these Writ Petitions and also the judgments, which are cited by the learned Counsel for the petitioners, are not applicable to the present case inasmuch as the

impugned orders have been issued in the year, 2008 and 2007, respectively, and all these judgments have been rendered thereafter.

6. Heard the learned counsel appearing for the petitioners, the learned AGP appearing for the State and the learned counsel appearing for respondents No.2 to 5. With their able assistance, perused the pleadings in the petitions, annexures thereto, the contentions raised by the petitioners and also the judgments and orders passed by this Court in case of similarly situated employees.

7. Upon perusal of the material placed on record, it appears that, the respondents have not demonstrated that the petitioners, by playing fraud or with misrepresentation, have received monetary benefits which were disbursed to the petitioners. If the respondents were of the opinion that the petitioners 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 the revised pay scale. The respondents allowed the petitioners to render the services; not only that from time to time, their pay scale was revised and they were promoted and appointed on the post of the Head Master. It is not demonstrated by the respondents that the petitioners have played any role in fixation of their pay scale time to time during their service carrier or they played any fraud or misrepresentation.

8. 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, (2015)4 SCC 334***, the case of the petitioners is covered by categories (i) and (ii) 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 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."

9. In that view of the matter, in our opinion, the petitioners are entitled for refund of the principal amount. However, since the petitioners have belatedly approached this Court, they are not entitled to interest on the said amount.

10. In the result, both the Writ Petitions are partly allowed. Respondents No.2 to 5 are directed to refund the amount recovered from the petitioners

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.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]

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