

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

WRIT PETITION NO.9070 OF 2015

Shriram s/o Baburao Pisal,
Age 63 years, Occu. Retired,
R/o 36-A, Ayodhya Nagari,
Pipe Line Road Corner, Shriram Chowk,
Vasant Tekadi, Ahmednagar,
Taluka and District Ahmednagar 414 001 ... PETITIONER

VERSUS

1. The State of Maharashtra,
through its Principal Secretary,
Higher & Technical Education Department,
Mantralaya Annex, Mumbai 400 032
2. The Director of Higher Education,
Maharashtra State, Central Building,
Pune, District Pune.
3. The Joint Director of Higher Education,
Department of Higher Education,
Pune Region, 17 Dr. Ambedkar Road,
Pune - 1, District Pune.
4. The Account Officer,
Higher Education Grants,
17, Dr. Ambedkar Road,
Pune Region, Pune - 411 001

(Respondent No.1 to 4 to be served
through Government Pleader,
High Court of Bombay,
Bench at Aurangabad)

5. New Arts, Commerce and Science
College, Shevgaon, Dist. Ahmednagar
through its Principal ... RESPONDENTS

.....
Shri P.R. Patil, Advocate for petitioner
Shri P.S. Patil, A.G.P. for State
Shri A.V. Hon, Advocate for respondent No.5
.....

CORAM: R.M. BORDE AND
 A.I.S. CHEEMA, JJ.

DATED: 25th February, 2016.

Date of reserving judgment : 15/12/2015
Date of pronouncing judgment: 25/2/2016

JUDGMENT (PER : A.I.S. CHEEMA, J.):

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.

2. This petition is filed by Associate Professor, who retired on 31.7.2014 and against whom impugned orders dated 6.4.2015 and 8.4.2015 have been passed by respondent No.4 – Accounts Officer, Higher Education Grants, Pune, directing the recovery of excess payments made to him while he was in service.

3. It is the case of petitioner that, he was appointed as Lecturer in New Arts, Commerce and Science College, Shevgaon, District Ahmednagar. He obtained Ph.D. in 1986. He has retired as Associate Professor on 31.7.2014. He had earlier filed one

Writ Petition No.2605/2007 to redetermine his pay scale as per Government Resolution of 1996, which came to be allowed by judgment and order dated 17.6.2008. Yet another Writ Petition No.455/2013 had to be filed to step up the salary so as to bring it at par with Associate Professor, who were junior to the petitioner. Consequently, vide order dated 28.2.2014 of the High Court, he was given step up in the pay. After retirement, petitioner approached respondent No.3 Joint Director of Higher Education, Pune for his pension. The orders came to be passed on 6.4.2015 and 8.4.2015 without giving opportunity to petitioner, directing recovery of excess payment in the course of service. Thus this petition challenging the recovery ordered by the respondents.

4. Respondents No.1 to 4 have filed affidavit-in-reply dated 29.10.2015 signed by Suresh Khedkar, the Accounts Officer, Higher Education Grants, Pune. It is claimed that, as per Government Resolution dated 17.5.1994, Senior Auditor (Accounts Officer) has been authorised to do audit of all Non-Government aided Colleges and Non-Agricultural Universities. The office verifies all the Pay Fixations of Teaching and Non-Teaching Staff of the aided college at the time of retirement (*emphasis supplied*). The respondents claim that, if erroneous or

wrong fixation is found at the time of verification of pay fixation, the same is pointed out to the concerned college for correction of pay fixation and recovery of excess payment made to the individual. The deponent has claimed that, he verified the pay fixations of petitioner. According to him, in revision of Fifth Pay Commission, he found that the petitioner had been given Ph.D. increments twice, once on 1.1.1996 and next time on 1.1.2001. According to him, twice two Ph.D. increments were thus given. The increments given on 1.1.2001 were not admissible as per Rule 11 of Government Resolution dated 11.2.1999. The deponent claims that, he has thus corrected the excess two Ph.D. increments given to the petitioner from 1.1.2001 and communicated to the college to make necessary recovery vide letter dated 6.4.2015. It is stated that, he has not directed recovery of pay of the petitioner which is done as per the High Court order dated 17.6.2008. Referring to the undertaking required to be given at the time of pay fixation, it is stated that, there was previous fixation of Ph.D. increments which were given twice by misinterpreting the Government Resolution dated 11.2.1999 and thus the recovery is valid.

5. We have heard counsel for both sides making submissions on above lines. On behalf of the petitioner, reliance

has been placed on the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others**, reported in **(2015) 4 Supreme Court Cases 334** to argue that, directing of recovery of amounts paid wrongly in the course of service cannot be directed to be recovered after retirement.

6. Going through the record, what appears is that, the petitioner was initially appointed in the institute on 1.7.1977. He was appointed in the Senior College on 14.8.1985. It appears that, he completed his Ph.D. on 21.4.1986 and was given senior pay scale on 14.8.1990. The impugned letter (Exh. A-1) dated 6.4.2015 sent by the Accounts Officer Suresh Khedkar (who has filed affidavit-in-reply) to respondent No.5 College, mentions that, the petitioner was appointed on 14.8.1985 and completed his Ph.D. on 21.4.1986. The letter in para 2 mentions that, because of this, Senior scale should have been given after eight years i.e. on 14.8.1993, but the Service Book showed that the same was given on 14.8.1990 and this was not admissible as per Government Resolution of 1989 and the excess payment was required to be recovered.

 In addition to the above directions, the letter in its third paragraph mentions that, twice increments for Ph.D. were given which were not as per the Government Resolution. In

affidavit-in-reply, the Accounts Officer has, however, claimed that he directed recovery only with regard to Ph.D. increments given wrongly. He claimed (in para 6 of the affidavit-in-reply) that he did not recover the pay of petitioner which was done as per orders of the High Court in Writ Petition No.2605/2007, dated 17.6.2008. The High Court order in this regard shows that there was direction to place the petitioner in selection grade w.e.f. 1.1.1996. The impugned letter dated 6.4.2015, copy of which has been filed by petitioner at Exhibit A-1, when compared with Exhibit 3 relied on by the Accounts Officer and filed with his affidavit shows that, both the letters are of the same date, same Outward Number, written by the same officer, but para 2 is missing in Exhibit 3 now relied on by the Accounts Officer. In Exhibit A-1, the same letter had additional para 2 directing recovery regarding wrong fixation in senior scale.

7. Even regarding the directions with reference to recovery of payments made in view of grant of two Ph.D. increments on 1.1.2001, the affidavit-in-reply clearly mentions that the fixation was given twice "by misinterpreting Government Resolution dated 11.12.1999". Thus, it is not the case of respondents that the petitioner misrepresented or there was fraud etc.

8. Now if the judgment in the matter of "Rafiq Masih" (supra) is perused, the Hon'ble Supreme Court dealt with cases of private respondents who were given monetary benefits in excess of their entitlement consequent upon mistake committed by the competent authority concerned in determining the emoluments payable to them. Recoveries were sought to be made by the employer and the matters came up before the Hon'ble Supreme Court. The Hon'ble Supreme Court inter alia referred to the case of Syed Abdul Qadir Vs. State of Bihar [(2009) 3 SCC 475] and it was observed :

"It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee."

Further, referring to the case of Shyam Babu Verma Vs. Union of India [(1994) 2 SCC 521], it was observed :

“It is apparent, that in Shyam Babu Verma’s case, the higher pay- scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984, i.e., after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay-scale would not be just and proper. We therefore hereby hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India. ”

9. Keeping the above in view, it is apparent that, the Supreme Court has found that, recovery of excess payment discovered after five years would be inequitable and arbitrary. Now if the approach of the present respondents is seen, the affidavit-in-reply itself mentions (in para 4) that the office of Accounts Officer verifies the pay fixation of teaching and non-teaching staff of aided colleges “at the time of retirement”. It is not the affidavit that from time to time pay fixations are verified. There is no reason why there should not be regular audits including verification of the payments being made as salary and crosschecking whether or not the pay fixations have been properly done. If this is done, timely recoveries can be made without putting employees to avoidable difficulties.

In para 6 of the judgment, the Hon'ble Supreme Court observed :

“In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact

situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee. ”

Referring to the various hardships which employees would suffer due to belated recoveries, it was observed in para 18 :-

“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. "

10. Before parting, reference may be made also to para 28 of the judgment in the case of **B.J. Akkara Vs. Govt. of India** reported in **(2006) 11 SCC 709**, where it was observed in para No.28 as under :

"28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery. "

11. In the present matter, it is not the defence of the respondents that the petitioner resorted to any fraud or misrepresentation or that he was aware that he was getting

amounts which was in excess of what was due or were wrongly paid. As such, keeping in view the judgments of the Hon'ble Supreme Court, we find that the petition needs to be allowed.

12. The impugned communications – Exhibit A-1, letter dated 6.4.2015 directing recoveries of amounts paid long before retirement and the consequential refixation done vide Exhibit A-2 are quashed and set aside. The recoveries directed shall not be enforced and the communication and refixation so done so as to make recoveries is quashed and set aside.

13. Rule is made absolute in above terms.

14. Parties to bear their own costs.

(A.I.S. CHEEMA, J.)

(R.M. BORDE, J.)