

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5222 OF 1997

Bhaskarrao Bhaurao Kuwar,
Age 45 years, Occ. Lecturer,
R/o Laxmi Printing Press,
Near Bus Stand, Navapur,
District Dhule.

..Petitioner

Versus

1. The Principal,
Shri D.H.Agrawal Arts,
Shri Rany Avadhoot Commerce
and Shri C.C.Shah and M.G.
Agrawal Science College,
Navapur, Dist. Dhule.

2. Adivasi Seva Sahayak Sanstha,
through its Secretary, Navapur,
District Dhule.

3. Audit Officer,
Higher Education Jalgaon
Division Jalgaon.

4. Joint Director,
Higher education Jalgaon,
District Jalgaon.

5. North Maharashtra University
Jalgaon, through Registrar.

6. The State of Maharashtra. ..Respondents

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Advocate for Petitioner : Shri Dnyaneshwar Pawar
h/f Shri K.C.Sant
AGP for Respondents 3, 4 & 6 : Shri S.P.Tiwari
Advocate for Respondents 1 & 2 : Shri M.M.Jadhav
h/f Shri S.P.Shah

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 03, 2017
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. The petitioner is aggrieved by the order dated 20.10.1997 issued by respondent No.4 and the order dated 8.11.1997 issued by respondent No.1, by which, the directions of respondent No.4 have been implemented.
3. A short issue has been raised for the consideration of this Court.
4. The petitioner was appointed as a Part Time Lecturer in the Senior College by respondent No.1, w.e.f. 21.6.1982. By order dated 21.6.1984, he was appointed as a Full Time Lecturer in the Senior College. There is no dispute that his services have been approved and he has continued in employment. He was given a pay scale after a specific committee appointed by the University of Poona assessed his performance. He was placed in the pay scale of Rs.3000-5000.
5. After the said order was implemented over a period of time, respondent No.4 issued a direction dated 20.10.1987 to the respondent No.1 College that the petitioner has been over paid by inadvertence as there was an error in his pay-fixation. Respondent

No.1 was directed to recover the amount of Rs.44003/- from the petitioner. Consequentially, respondent No.1 issued the order dated 8.11.1997 and the deduction at the rate of Rs.2,000/- per month was commenced.

6. This Court while admitting the petition, did not grant a stay to the order of recovery and as such, the entire amount of Rs.44003/- has been recovered from the petitioner over a period of time.

7. Though the learned Advocate for respondent No.1 and the learned AGP on behalf of respondent Nos.3, 4 & 6 have strenuously defended the impugned orders, I do not find that their submissions deserve to be entertained for reasons more than one. Certain queries were raised with regard to the pay fixation, before the University. The said issue was dealt with by the University of Poona vide its clarifications introduced by an executive order, issued by the Vice Chancellor, on 27.2.1989. Though these clarifications are not directly with reference to the petitioner, certain questions have been formulated with regard to pay fixation of teachers. Relevant question No.2 and the answer offered by the University by way of a clarification based on the executive order of the Vice Chancellor dated 22.5.1989 reads as under:-

“ Query 2:- Whether the services rendered by a teacher as

part-time teachers are to be considered for calculating the length of service for placement in senior and selection grade.

Answer : The part-time services put in by the teacher irrespective of whether it is in one or more colleges at the same time be counted calculating he length of service.”

8. None of the learned Advocates for the respondents submit that the above clarification of the University would not cover the case of the petitioner.

9. The pay fixation was exclusively within the domain of the University. Neither the college nor the petitioner were involved in the said process. The part time assignments of the petitioner for two years from 1982 to 1984 were reckoned with for calculating his pay. As such, there is neither any allegation of fraud nor laches are attributed to the conduct of the petitioner. The clarification issued by the University, reproduced above, indicates that once a teacher is regularized, his initial engagement on part time basis, would also be taken into account while calculating the length of service.

10. In the absence of any fraud or mischief or misrepresentation by the petitioner and when it can be seen that he is not even remotely connected with the pay fixation, even if it is accepted that

the pay fixation was wrongly done and the part time service should not have been reckoned with, the view taken by the Honourable Apex Court in the matter of Syed Abdul Qadir Vs. State of Bihar [2009 AIR SCW 1871 = (2009) 3 SCC 475] and in the matter State of Punjab and others Vs. Rafiq Masih (White Washer) etc. [(2015) 4 SCC 334 = AIR 2015 SC 696], protect the petitioner from recovery of the excess amount paid.

11. The Honourable Apex Court in the matter of High Court of Punjab and Haryana Vs. Jagdev Singh [AIR 2016 SC 3523], has concluded that where an employee has executed an undertaking that if excess amount is paid to him, he would refund the same, if the revision of pay scale is found to be erroneous, it would not protect such an employee by virtue of the view taken by the Honourable Apex Court in the case of Syed Abdul Qadir (supra) Rafiq Masih (supra).

12. Considering the above, though I am not concluding that the part time service of the petitioner had to be reckoned with for his pay fixation since no such order has been passed by the University, the petitioner succeeds in the light of the ratio laid down in the above referred cases.

13. This petition is, therefore, allowed. The impugned orders

dated 20.10.1997 and 8.11.1997 are quashed and set aside. Since the recovered amount has been remitted to the office of respondent No.4, the said amount of Rs.44003/- shall be refunded to the petitioner with simple interest at the rate of 3% per annum from 2000, by which time the recovery of money was completed. The said amount shall be paid within a period of eight weeks from today. Failure to do so, would invite further interest at the rate of 3% per annum over and above the interest granted as above from the year 2000 and the said portion of the interest at the rate of 3% per annum shall be recovered from the Joint Director, Higher Education, Jalgaon. The said interest shall not be paid from the State exchequer.

14. If the said amount recovered is lying with respondent No.1 institution, respondent No.4 would be at liberty to recover the said amount from respondent No.1 after paying the petitioner.

15. Rule is made absolute accordingly.

(RAVINDRA V. GHUGE, J.)

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