

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

WRIT PETITION NO.1772 OF 2004

Waman s/o Bapurao Joshi,
Age 63 years, Occu. Pensioner,
R/o Malakoli, Tq. Loha,
District Nanded

... PETITIONER

VERSUS

- 1) The Chief Executive Officer,
Zilla Parishad, Nanded
- 2) The Education Officer (Primary),
Zilla Parishad, Nanded,
District Nanded
- 3) The State of Maharashtra,
through Secretary,
Education Department,
Mantralaya, Mumbai

(Respondent No.3 to be served
through Govt. Pleader,
High Court of Bombay,
Bench at Aurangabad)

... RESPONDENTS

.....
Shri S.V. Natu, Advocate for petitioner
Shri S.B. Pulkundwar, Advocate for respondents No.1 & 2
Shri P.G. Borade, A.G.P. for respondent No.3
.....

CORAM: T.V. NALAWADE AND
 SUNIL K. KOTWAL, JJ.

Date of reserving judgment : 20th July, 2017.

Date of pronouncing judgment : 31st July, 2017

JUDGMENT (PER SUNIL K. KOTWAL, J.) :

1. Petitioner, who was Assistant Teacher in respondent
school, has filed this petition for recovery of amount of

Rs.48,118/- from the respondent No.1, which are alleged to be illegally recovered from the pensionary benefit amount of the petitioner. Initially, petitioner has also sought relief to regularize his suspension period and to recover the arrears of salary along with consequential benefits after re-fixation of the salary. However, at the stage of arguments, learned Advocate for the petitioner restricted his relief only regarding the recovery of amount of Rs.48,118/- from the respondents. Respondent No.1 is Chief Executive Officer, Zilla Parishad, Nanded. Respondent No.2 is Education Officer (Primary), Zilla Parishad, Nanded and respondent No.3 is State of Maharashtra.

2. Contention of the petitioner in brief is that, during his service period, though he was appointed on 22/7/1968 as Assistant Teacher in respondent school, he was placed under suspension on 8/8/1977 as R.C.C. No.2217/1979 was filed against him under Section 409 of the Indian Penal Code. In that matter, the petitioner was acquitted on 24/4/1980. In the result, he was reinstated w.e.f. 24/10/1980. However, Department initiated departmental enquiry against the petitioner and as a result, on 6/6/1981, his one increment was stopped with permanent effect and amount of Rs.8,048=47 ps. was recovered from the salary of the petitioner. Thereafter, again petitioner was suspended on 14/8/1987 as Criminal Case No.87/1989 was filed against him before Judicial Magistrate, First Class, Kandhar.

In that matter also he was acquitted on 24/9/1993 and again he was reinstated. However, respondents did not regularize the suspension period from 8/8/1977 to 24/10/1980 as well as 14/8/1987 to 7/2/1994. On 30/9/1999 petitioner retired on superannuation. However, his suspension period was not regularized and respondents granted only provisional pension on account of pendency of Writ Petition No.1055/1999 filed by the petitioner for the relief of regularization of suspension period and other consequential reliefs. At last, that Writ Petition was withdrawn by the petitioner on 19/8/2002. However, later on the suspension period of the petitioner was regularized by treating as extraordinary leave without pay. Later on, respondents deducted amount of Rs.48,118/- from the gratuity amount payable to the petitioner on his retirement, on account of release of increments during his suspension period against the rules. Despite representation submitted by petitioner, the said amount is not refunded to the petitioner. Therefore, this petition for refund of the amount of Rs.48,118/-, illegally deducted by respondents from the gratuity amount of petitioner.

3. By filing affidavit-in-reply, respondents No.1 and 2 opposed this petition on the ground that the surplus amount paid to the petitioner on account of release of increments during his suspension period was as per rules and regulations and, therefore, petitioner cannot claim refund of that amount. As

other reliefs claimed by the petitioner have been waived by him, other objections raised by respondents in respect of those other reliefs are not considered.

4. Heard learned Advocate for the petitioner and learned Advocates for respondents. Learned counsel for both parties have vehemently supported the above respective cases of the parties. According to respondents, during the suspension of the petitioner, increments were released against rules and, therefore, the additional payment received by the petitioner on account of release of increments deserves to be recovered and accordingly, the same is legally recovered. However, learned Advocate for the petitioner submitted that, the petitioner never misrepresented the respondents at any time for release of his increments during the suspension period. If any irregularities have been committed by the office while releasing the increments of the petitioner during the suspension period, for that the petitioner cannot be held responsible. Therefore, the payment received by the petitioner, towards additional released increments during his suspension period, cannot be recovered.

5. Learned counsel for the petitioner relied on the case of **Syed Abdul Qadir and others Vs. State of Bihar and others**, reported in **2009(3) S.C.C. 475**. In that matter at the time of revision of payscale certain additional increments on

promotion to higher post were given. The same were later tried to be recovered as wrongly paid. In para 28 of the judgment, Hon'ble Supreme Court observed as under:

"28 Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants- teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants- teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants- teachers should be made."

6. Reliance is also placed on the case of **Kusheswar Nath Pandey Vs. State of Bihar and others**, reported in **2013(12) S.C.C. 580**. In that matter appellant was given time bound promotion and after 11 years the authorities woke up to claim that the time bound promotion was wrongly given, relying on the rules. Learned Single Judge of the High Court allowed writ petition holding that the time bound promotion granted to the appellant 11 years earlier was not because of any fault or fraudulent act on the part of the appellant and therefore could

not be cancelled. In appeal, the Division Bench of the High Court set aside the judgment of the learned Single Judge. In Appeal to the Hon'ble Supreme Court, the counsel for appellant relied upon judgments of the Hon'ble Supreme Court in the case of **Bihar State Electricity Board and another Vs. Bijay Bhadur and another** reported in **(2000) 10 S.C.C. 99** and the case of **Purushottam Lal Das and others Vs. State of Bihar and others**, reported in **(2006) 11 S.C.C. 492** where it was held that recovery could be permitted only in such cases where the employee concerned is guilty of producing forged certificate for the appointments or got the benefit due to misrepresentation. Hon'ble Supreme Court observed in Para 10 and 11 as under :

"10. In our view, the facts of the present case are clearly covered under the two judgments referred to and relied upon by Mr. Rai. The appellant was not at all in any way at fault. It was a time bound promotion which was given to him and some eleven years thereafter, the authorities of the Bihar Government woke up and according to them the time bound promotion was wrongly given and then the relevant rules are being relied upon and that too after the appellant had passed the required examination.

11. In our view, this approach was totally unjustified. Learned Single Judge was right in the order that he has passed. There was no reason for the Division Bench to interfere. The Appeal is therefore allowed. The judgment of the Division Bench is set aside. The writ petition filed by the appellant will stand decreed as granted by the learned Single Judge. The parties will bear their own costs."

Jalgaon, reported in **2016 (2) ALL MR 750**, Division Bench of this Court followed above referred decision of the Supreme Court. Thus, in view of this settled law, when the petitioner is not responsible for the payment of excess amount to the petitioner towards additional increments, and as petitioner did not misrepresent the respondent for release of those increments, the amount of Rs.48,118/- deducted by respondents from the gratuity amount of petitioner deserves to be refunded to the petitioner. It follows that this petition needs to be allowed. accordingly we pass following order :

ORDER

- (i) Writ Petition is allowed. Respondents No.1 to 3 are directed to refund the amount of Rs.48,118/- to the petitioner within a period of three months from the date of this judgment and order.
- (ii) In the event of default in refund of above amount, it shall carry interest @ 6% p.a. from the date of default till its realization.
- (iii) Rule made absolute on the terms indicated above.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE