

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3098 OF 2006

Pandhrinath s/o Gathlu Wani,
Age : 70 years, Occu. Retired
School Teacher, R/o Nizampur,
Bazarpeth Galli, Tq. Sakri,
District Dhule

PETITIONER

VERSUS

1. The State of Maharashtra,
through Secretary to Education
and Employment Department,
Mantralaya, Fort, Mumbai
2. The Chief Executive Officer,
Zilla Parishad, Dhule
3. The Education Officer
(Primary), Zilla Parishad,
Dhule
4. The Block Development Officer,
Taluka Panchayat Samittee,
Sakri, District Dhule

RESPONDENTS

Mr. Amit A. Mukhedkar, Advocate for the Petitioner
Mr. S.W. Munde, A.G.P. for respondent No. 1/State
Mr. Unmesh B. Shriram, Advocate holding for Mr. D.S.
Bagul, Advocate for respondent Nos. 2, 3 and 4

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

DATE : 12th JUNE, 2017

JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

Heard the learned counsel for the petitioner, the learned counsel for respondent Nos. 2 to 4 and the learned A.G.P.

2. The petitioner has claimed refund of Rs.19,720/- with interest at the rate of Rs.18% per annum which amount, according to him, has been wrongly deducted from his pension by respondent-authorities of the Zilla Parishad, Dhule.

3. The learned counsel for the petitioner submits that the petitioner was serving as a Primary Teacher with Zilla Parishad, Dhule. He retired on attaining the age of superannuation on 31st March, 1993. He received a notice dated 4th September, 1995 from respondent No. 4 – Block Development Officer, calling upon him to show cause as to why an amount of Rs. 19,720/- should not be recovered from his pension on account of the alleged misappropriation. The petitioner replied that notice on 21st September, 1995 and denied his liability to pay the above mentioned amount. He refused to have committed

any misappropriation. Thereafter, without holding any enquiry, the amount of Rs. 19,000/- came to be deducted from his pension with effect from February, 2003 to September, 2004. The learned counsel submits that the deduction so made from the pension of the petitioner without holding any enquiry or extending any opportunity of hearing to the petitioner, is totally unwarranted and illegal. He submits that in Writ Petition No. 7496 of 2004 filed by one Vasantrao Ragho Mahale against the respondent-authorities of Zilla Parishad, Dhule on the similar set of facts, has been allowed by this Court vide judgment and order dated 28th February, 2005 and the respondent-authorities have been directed to refund the amount deducted from the salary of the petitioner therein.

4. The learned counsel for the respondent-authorities, based on the contents of the affidavit-in-reply, submits that as per the report of the Special Auditor, the total amount of Rs.21,25,386.45 was found to have been misappropriated and out of that amount, the amount of Rs.19,720/- was found to have been misappropriated by the petitioner. This amount was required to be recovered from the petitioner. It was

decided to impose minor penalty on the petitioner in the form of recovery of the said amount. Therefore, after giving him the show-cause notice and considering the reply given by the petitioner, the amount of Rs.19,720/- came to be recovered from his pension. He submits that it was not necessary to hold any enquiry since minor penalty was to be imposed on the petitioner. He supports the impugned recovery.

5. The procedure for imposing minor penalty is provided in Rule 7 of the Maharashtra Zilla Parishads District Services (Discipline & Appeal) Rules, 1964, which reads as follows :-

"7. Procedure for imposing minor penalties.-

(1) No order imposing any of the penalties specified in clauses (i) to (iii) and clause (viii) of Rule 4 shall be passed except after -

(a) the Parishad servant is informed in writing of the proposal to take action against him and of the allegations on which it is proposed to be taken and given an opportunity to make any representation he may wish to make, and

(b) such representation, if any, is taken into consideration by the Disciplinary Authority.

(2) The record of proceedings in such cases shall include -

(i) a copy of the intimation to the Parishad servant of the proposal to take action against him;

(ii) a copy of the statement of allegations communicated to him;

(iii) his representation, if any; and

(iv) the orders of the case together with the reasons thereof.

6. The learned counsel for the respondent-authorities referred to Rule 4 clause (iii) of the said Rules which speaks of the minor penalty in the form of recovery from pay of the whole or part of any pecuniary loss caused to the Zilla Parishad by negligence or breach of orders.

7. Basically, as per the above mentioned clause (iii) of Rule 4, the recovery can be made from the pay of the employee of the Zilla Parishad and not from his pension. That means the employee should be in the service at the time of recovery. Moreover, the said recovery can be made for any pecuniary loss caused to the Zilla Parishad by negligence or breach of orders. The amount alleged to have been misappropriated cannot come under the loss caused by negligence or breach of orders. Therefore, clause (iii), referred above, would

not be applicable for recovery of the amount alleged to have been misappropriated and that too from the pension. Even if it is accepted for a while that such recovery can be made from pension, the procedure laid down in Rule 7, referred to above, was required to be followed. Except issuing show-cause notice to the petitioner, no further steps have been taken by the respondent-authorities as contemplated under Rule 7. Thus, the alleged recovery of the amount from the pension of the petitioner is totally illegal.

8. There is one more hurdle in the way of the respondent-authorities to recover the amount of alleged misappropriation from the petitioner. It is alleged that the misappropriation was committed during the period from 1985-86 to 1991-92. The employees of the Zilla Parishad are governed by the Maharashtra Civil Services (Pension) Rules, 1982. As per clause (b) of sub-Rule (2) of Rule 27 of the said Rules, in case the departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall not be instituted save with the sanction of the Government and it shall not be in respect of any event which took place

more than four years before retirement. In the present case, the departmental enquiry was not initiated against the petitioner when he was in service or even after his retirement. Consequently, the amount of Rs.19,720/- was not liable to be deducted from the pension of the petitioner.

9. We have perused the judgment dated 28th February, 2005, delivered by this Court in the case of Vasantrao Ragho Mahale (supra), which was almost based on the identical facts, wherein this Court has quashed and set aside the order passed by the respondent-authorities directing deduction of the alleged misappropriated amount from the salary of the pension of the petitioner therein and ordered to refund the amount so deducted to him.

10. Considering the above facts and circumstances of the case, the Writ Petition deserves to be allowed. Since the amount of Rs. 19,720/- has been illegally deducted from the pension of the petitioner, the respondent-authorities will have to be directed to refund the said amount with interest at the rate of Rs. 9% per annum from the date of filing of the Writ

Petition. In the result we pass the following order:-

- (i) The Writ Petition is allowed.
- (ii) The order passed pursuant to the show-cause notice dated 4th September, 1995 for deduction of the amount of Rs. 19,720/- from the pension of the petitioner, is quashed and set aside.
- (iii) Respondent Nos. 2 to 4 are directed to refund the amount of Rs. 19,720/- to the petitioner with interest at the rate of Rs. 9% per annum from the date of filing this Writ Petition i.e. 23rd December, 2005 until the date of refund.
- (iv) The parties shall bear their own costs.
- (v) Rule is made absolute in the above terms.

[SANGITRAO S. PATIL]
JUDGE

[T.V. NALAWADE]
JUDGE