

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6242 OF 2016

Vijay Babanrao Sonawane,
Age : 62 years, Occu. Retired,
R/o Pitashree, Plot No. 53,
Gat No. 29, Muktainagar Colony,
In front of Hanuman Temple,
Jalgaon, Tq. & Dist. Jalgaon

PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32
2. The Zilla Parishad, Jalgaon
at Jalgaon, through its
Chief Officer
3. The District Health Officer,
Zilla Parishad, Jalgaon,
Tq. and District Jalgaon
4. The District Audit Inspection
Officer, Local Funds, Audit,
Jalgaon at Jalgaon,
District Treasury Office,
First Floor, Collector Office
Campus, Jalgaon at Jalgaon

RESPONDENTS

Mr. Ajay G. Talhar, Advocate for the Petitioner
Mr. S.B. Joshi, A.G.P. for respondent No. 1/State
Mr. M.S. Sonawane, Advocate for respondent No. 2
Smt. C.R. Kutti, Advocate for respondent No. 3

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

DATE : 10th FEBRUARY, 2017

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

Rule, returnable forthwith. With the consent of the learned counsel for the contesting parties and the learned A.G.P., heard finally.

2. The petitioner has challenged the action on the part of the respondents of recovering the licence fee from his monthly pension.

3. The learned counsel for the petitioner submits that the petitioner was working as Health Assistant from 1st April, 2000 onwards. As per the Government Resolution dated 2nd June, 1976, he was entitled to get staff quarter as well as licence fee. Accordingly, he was extended the said benefits. He got retired on 30th November, 2012. Thereafter, an objection was raised by Auditor in the year 2014 that since the petitioner was allotted staff quarter, he has been wrongly granted licence fee. Accordingly, respondent No. 3 issued notice dated 26th November, 2014 to the petitioner,

informing about the objection raised by the Auditor and further directing recovery of excess payment of licence fee for the years 2006-07 and 2007-08. The learned counsel submits that the petitioner was a Class-III employee. He retired on 30th November, 2012. Even if it is accepted that the licence fee was wrongly paid to the petitioner, it was not because of any misrepresentation made or fraud played by the petitioner. It was because of the mistake of respondent No. 3 that the said amount was paid to the petitioner. In the circumstances, according to the learned counsel, in view of the judgment in the case of **Syed Abdul Quadir and others Vs. State of Bihar and others, 2009 (3) SCC 475**, the alleged excess payment of amount cannot be recovered from the pension of the petitioner.

4. As against this, the learned counsel for the respondent Nos. 2 and 3 submits that the petitioner was not entitled to occupy the staff quarter and at the same time, to get licence fee. He has been wrongly paid licence fee. Consequently, the said excess payment made to him is liable to be recovered from his monthly pension.

5. Here, it would be worthwhile to reproduce paragraph 28 of the judgment in the case of **Syed Abdul Quadir and others** (supra), cited by the learned counsel for the petitioner, wherein it has been observed as under :-

"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. The petitioner was a Class-III employee. He got retired in the year 2012. The excess payment has been made to him because of the mistake on the part of respondent No. 3 in interpreting the provisions of the Government Resolution dated 2nd June, 1976. It follows that the said excess payment has not been made because of any fraud played by the petitioner or any misrepresentation made by him. In the circumstances, it would be a matter of great hardship to him, if the excess payment made to the petitioner is now allowed to be recovered from his pension.

7. In the circumstances, in view of the above referred observations of the Hon'ble the Apex Court, we allow the Writ Petition and prohibit the respondents from recovering the excess payment of licence fee from his monthly pension. If any amount has been recovered already, respondent No. 3 shall refund the same to the

petitioner. Rule is made absolute in the above terms.

The Writ Petition is disposed of. No costs.

[SANGITRAO S. PATIL]
JUDGE

[T.V. NALAWADE]
JUDGE

npj/wp6242-2016