

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10526 OF 2014

1. Dr. Marulkar V.S.

Age 65 yrs., Occ. Retired,
R/o. Vishwakarma Residency,
Flat No. 208, 7th Lane Rajarampuri,
KOLHAPUR – 416 008.

2. Dr. Kumbhar A.P.

Age 67 Yrs., Occ. Retired,
R/o. Plot No. 5, Dhansashri Colony,
Near KBP HSG Society,
Godoli, SATARA – 415 001

... Petitioners

Vs.

1. The State of Maharashtra

Through its Secretary of Ministry of
Higher and Technical Education,
Mantralaya, Mumbai 400 032.

2. The Director of Education

(Higher Education)
Maharashtra State Central Building,
Pune 411 001

... Respondents

WITH

WRIT PETITION NO. 3787 OF 2015

1. Shri R.R. Sapre & Ors.

Age Adult, Occ. Retired,
R/o. 14, Ashwini Nagar, Sagarmal,
Kolhapur – 416 008

... Petitioners

Vs.

1. The State of Maharashtra

Through its Secretary of Ministry
of Higher and Technical Education,
Mantralaya, Mumbai 400 32.

**2. The Director of Education, (Higher
Education), Maharashtra State Central
Building, Pune 400 001**

... Respondents

Mr. S.R. Ganbavale, i/b Mr. Sangramsinh Yadav, Adv. for Petitioners in
both Writ Petitions.

Mr. V.N. Sagare, AGP for Respondents Nos. 1 & 2 in both Writ
Petitions.

**CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.
DATE : 28 JUNE 2017.**

J U D G M E N T :- (Per Riyaz I. Chagla J.)

1. The Petitioner No.1 was a teacher working in SNDT Women's University Mumbai and Petitioner No.2 was working in the college affiliated to Shivaji University, Kolhapur in Writ Petition No. 10526 of 2014. The Petitioners in Writ Petition No. 3787 of 2015 were the teachers working in the colleges affiliated to Shivaji University.

2. The Petitioners in these Petitions are seeking a refund of

the stagnation increments together with all consequential benefits and interest which had been deducted by the Respondents from the pension accounts of the Petitioners together with further interest of 12% p.a. The Petitioners had been granted these stagnation increments by the Respondent No.1, which were recovered from them. The Respondents had recovered these amounts which according to them were payable to all government servants under Government Resolution dated 25th January 1999 and according to the Respondent, the GR nowhere mentioned that this would be applicable to the teaching faculty. In continuation of the GR dated 25th January 1999, the Government of Maharashtra had issued another GR dated 14th September 1999 making the stagnation increments payable to the employees of the universities and its affiliated colleges. However, the Respondents maintain that the scheme for grant of stagnation increments were not made applicable to the teachers of the universities and its affiliated colleges in Maharashtra. A further GR dated 11th December 1999 was issued by Respondents which made the 5th Pay Scales applicable to the teaching staff of the university and colleges affiliated to the universities. According to the Respondents, the GR dated 11th December 1999 also made no provision to apply

the benefit of the stagnation increments to the teaching staff. The Respondent No.1 accordingly issued communications dated 10th March 2008 and 18th March 2010, wherein the various amounts paid to the Petitioners and other such superannuated teachers were recovered by the Respondents.

3. The Association of College and University Superannuated Teachers (Maharashtra) had filed two Writ Petitions being Writ Petition Nos. 9054 of 2010 and 2868 of 2011 in this Hon'ble Court (Bench at Aurangabad). The said Writ Petitions were disposed of by a judgment and order dated 22nd August 2011 passed by the Division Bench, which included one of us as a member of the Bench. In the said judgment and order, it was held that recovery of pension amount from an employee cannot be made, if the amount in excess was paid to such an employee for the reason not attributed to such an employee. In that case, the stagnation amount was not paid to the members of the Petitioner – Association on account of any misrepresentation made by such members. The Division Bench in that case had relied upon the view laid down by the Apex Court in *Sayed Abdul Qadir Vs. State*

*of Bihar*¹ and allowed both the Petitions. The impugned communications dated 10th March 2008 and 18th March 2010 have been quashed and set aside. The Respondents were in that case directed to return to the Petitioners the amounts which were deducted within a period of three months from the date of order and judgment along with interest @ 12% p.a. The Petitioners in the said Writ Petitions had filed a Special Leave Petition (“SLP”) challenging the order and judgment dated 22nd August 2010 whilst the SLP was pending, the Petitioners therein filed Contempt Petition No. 513 of 2011 and 519 of 2011. In the contempt petition, the Respondent No.1 was directed to deposit certain amount before this Court by an order dated 24th February 2012 and the amount was deposited by the Respondents on 12th March 2012. An Affidavit had been filed in the Contempt Petition by the Principal Secretary, Higher Education department tending apology and subsequently making a statement that the order and judgment dated 22nd August 2011 would be complied with. A GR dated 3rd August 2012 and an order dated 6th August 2012 was passed by Respondents Nos. 1 and 2 complying with the order of this Court which directed refund to the Petitioners in said

1 (2009) 3 Supreme Court Cases 475.

Writ Petitions. The SLP also came to be dismissed by order dated 9th May 2012.

4. The Petitioners have stated that despite the order and judgment dated 22nd August 2011, Respondent No.1 although making payments to the members of the Petitioners in Writ Petition No. 9054 of 2010 and 2868 of 2011, did not take steps to pay the other similar placed persons. Shivaji University Teachers Association (SUTA) had approached this Court by way of filing Writ Petition No. 1106 of 2013. This Court had allowed the Petition by order dated 13th August 2011. The Petitioners, however, submits that no steps were taken by the Respondents to refund the recovered amounts to the present Petitioners. It is because of the discriminatory approach of the Respondents, that the Petitioners were constrained to approach this Court by the present Petitions.

5. The counsel appearing for the Petitioners has contended that the the order and judgment dated 22nd August 2011, wherein the identical issue was involved will apply to the present Petitioners who also challenge the wrongful recovery by the Respondents of the

stagnation increments paid to the Petitioners and which was deducted from the pension accounts. The stagnation increments had also been recovered by the Respondents vide communications passed on 10th March 2008 and 18th March 2010. These impugned communications were quashed and set aside by the order and judgment dated 22nd August 2011.

6. The Respondents have in their reply stated that in compliance with the order of this Court in Writ Petition Nos. 9054 of 2010 and other identical Writ Petitions, the office of Joint Director, Higher Education will calculate the due amount of the Petitioners and will submit it to the office of the A.G. Nagpur for release the same.

7. We are of the considered view that the order and judgment dated 22nd August 2011 squarely applies to the present Petitions and that reliance is similarly placed on the Apex Court judgment in the case of *Sayed Abdul (Supra)* and particularly since the impugned communications dated 10th March 2008 and 18th March 2010 of the Respondents pursuant to which they had recovered the stagnation increments from the Petitioners have been quashed and

set side by the order and judgment dated 22nd August 2011, the present Petitions are allowed, by passing following order.:-

ORDER

a) It is held and declared that the recovery of the amount paid to the Petitioner on account of stagnation increment is bad in law and therefore, quashed and set aside.

b) The amount recovered from the pension of the Petitioners is directed to be refunded to the Petitioners within a period of three months from today, along with interest @ 12% p.a. thereon.

c) There shall be no order as to costs.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI J.)