

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11070 OF 2014

Mr. Rajdev Ramnaresh Yadav

.... Petitioner

vs

- 1 Chacha Nehru Hindi High School
and Bhagwan Mahavir Girls College,
Bhivandi
- 2 Sahayogi Shikshan Sangh
- 3 The Education Officer (Secondary),
Zilla Parishad, Thane
- 4 The Superintendent,
Pay & Audit Unit, Zilha Parishad,
Thane

.... Respondents

Mr. Mandar Limaye for the petitioner.

Mr. Sagar A. Joshi for respondents 1 and 2.

Mr. C.P. Yadav, AGP for respondents 3 and 4.

**CORAM: B. R. GAVAI &
RIYAZ I. CHAGLA, JJ.**

DATE : June 30, 2017

ORAL JUDGMENT (Per B. R. Gavai, J.) :

1 Rule. Rule is made returnable forthwith. Heard finally by
consent of the parties.

2 The Petitioner has approached this Court being aggrieved
by the inaction on the part of the Respondents in not paying the retiral

benefits to the Petitioner and not fixing the pension of the Petitioner.

3 The Petitioner came to be appointed as an Assistant Teacher on 16.09.1980. At the relevant time, the Petitioner was possessing the qualification of B.A. C.PEd. The appointment of the Petitioner was duly approved by the Education Officer by order dated 21.11.1980.

4 While in service, the Petitioner bettered his qualification and obtained a degree in B.P. Ed in the year 1993. The Petitioner superannuated in November 2013.

5 Since the Petitioner did not receive the retiral benefits and since his pension was not fixed, he made an inquiry and on inquiry, he was told that the Education Officer has directed the school to recover the amount from the salary of the Petitioner vice communication dated 18.10.2014 and as such, his retiral benefits were not paid and pension was not fixed. In these premises, the Petitioner has approached this Court.

6 Heard Mr. Limaye, learned counsel for the Petitioner and
Mr. Yadav, learned AGP for the Respondent/State.

7 In the affidavit in reply filed on behalf of the State, it is
stated that since the Petitioner has obtained the C.PEd degree after
31.05.1971 he was not entitled to the pay-scale of a trained teacher
and he would be entitled to the pay-scale of trained teachers only if he
obtains a B.Ed degree. It is stated in the affidavit that the amount
which has been illegally paid to the Petitioner on account of wrong
fixation is liable to be deducted from the terminal benefits of the
Petitioner.

8 We find that the stand taken by the Respondents-
Authorities is not sustainable in law. Undoubtedly, the Petitioner has
not suppressed anything. The Petitioner had disclosed what his
qualification was at the time of his appointment. After disclosure of
his qualification, he was given an appointment order and his
appointment was duly approved by the Education Authorities. It is not
as if that the Petitioner can be held responsible for erroneous fixation.

The Apex Court in *Syed Abdul Qadir and ors. v. State of Bihar and ors.*¹ has held that if an excess amount is paid to an employee on account of erroneous fixation of salary for the reasons not attributable to him, then recovery of such amount is not permissible.

9 In the present case, the Respondents-Authorities merrily permitted the Petitioner to get retired and after his retirement, almost after a period of one year, they woke up from the slumber to realise that in the year 1980, his pay fixation was done erroneously. We find that the stand is totally contrary to the law laid down by the Apex Court.

10 In that view of the matter, we find that impugned communication dated 18.10.2014 is not sustainable in law.

11 Rule is, therefore, made absolute in the following terms:

ORDER

- (i) Communication dated 18.10.2014 issued by
Respondent No.3 is quashed and set aside.

1 (2009) 3 SCC 475

(ii) Respondent Nos. 1 and 2 are directed to prepare the necessary papers for grant of terminal benefits and fixation of pension to the Petitioner on the basis of last drawn salary of the Petitioner within a period of two weeks from today.

(iii) On receipt of the said papers, Respondents 3 and 4 shall process the same and shall ensure that the pension is paid to the Petitioner actually from the month of August 2017.

(iv) The arrears, as per the orders passed hereinabove, along with interest at the rate of 6% per annum shall be paid within a period of six months from today.

(v) Writ Petition is disposed of accordingly.

(vi) No costs.

(RIYAZ I. CHAGLA J.)

(B. R. GAVAI J.)