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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1592 OF 2014

Tejbhan Rajaram Singh	..Petitioner
Versus	
Municipal Corporation of Greater Bombay and others	..Respondents

Mr. Rahul Walia, Advocate for the Petitioner.
Mr. Saurabh Pakale i/by Mr. Jernold Joseph Xavier, Advocate for
Respondent Nos.1 to 4.

**CORAM: B. R. GAVAI &
B. P. COLABAWALLA, JJ.**

DATE: 14th DECEMBER, 2017

P.C.:-

1] Rule. Rule is made returnable forthwith. Respondents waive service. Heard by consent of parties.

2] Petitioner has approached this Court, being aggrieved by the recovery of an amount of Rs 40,489/- having been initiated at the instance of Respondent – Corporation

3] Heard Mr. Rahul Walia for the Petitioner and Mr. Saurabh Pakale for Respondent – Corporation.

4] Mr. Pakale submits that, apart from the issue as to whether the Petitioner was a trained employee or untrained employee, there is

another issue as to whether the initial appointment of the Petitioner was as a permanent teacher or temporary teacher. He submits that the issue with regard to the Petitioner being a trained teacher, has been resolved vide order passed by this Court on 30/07/2012 in Writ Petition No.2447 of 2011. He, however, submits that in the year 2010, it was found that the Petitioner's initial appointment was a temporary appointment on 6/2/1974 and he was actually regularized on 13/6/1975. He therefore submits that this gave rise to correct fixation of his salary and accordingly it has been found that an amount of Rs 40,380/- has been illegally paid to the Petitioner.

5] The issue is no more *res integra*. The Apex Court in the case of *Sayed Abdul Qadir and Others vs. State of Bihar and others*¹ has held that if an amount is paid to the employee on account of erroneous fixation, not attributable to the employee, recovery on the basis of such erroneous fixation would not be permissible. Not only this, the Apex Court in the case of *State of Punjab and Others vs. Rafiq Masih (White Washer) and Others*², has clearly held that such a recovery at the fag end of the career of the employee or after his superannuation, is not at all permissible in law.

6] Rule is made absolute in terms of prayer clause (a).

(B. P. COLABAWALLA, J.)

(B. R. GAVAI, J.)

¹ (2009) 3 SCC 475

² (2015) 4 SCC 334