

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3792/2016

(Ashok Ramrao Vichave vs. Block Education Officer, ES, Hinganghat and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Ms. Smita Dashputre, Adv. for petitioner
Shri Jayant Mokadam, Adv. for respondent nos. 1 to 4

**CORAM : B.P. DHARMADHIKARI &
MRS. SWAPNA JOSHI, JJ.
DATED : 20th March, 2017.**

1. The petitioner stood retired on 30th April, 2016. On 06.05.2016 recovery of total amount of Rs. 90,767/- has been ordered from gratuity payable to him, on the ground that during his service for period from 1987 till superannuation, because of wrong fitment in salary/pay scale, he has been paid that much amount in excess.

2. Learned counsel for petitioner relies upon the judgment of the Hon'ble Apex Court in the case of State of Punjab vs. Rafique Masih, reported in 2014 (8) SCC 883, to urge that such a recovery is not permissible.

3. Adv. Mokadam appearing for respondents supports the recovery. According to him, the fact of payment of excess amount is not in dispute and, therefore, the amount must be recovered. He states that the amount sought to be recovered is from the gratuity. He is relying upon the submissions filed on affidavit, on record.

4. The fact that recovery has been ordered after superannuation of the petitioner is not in dispute. The amount allegedly paid as excess is spread over a period of 29-years and must have been spent by petitioner for his day-to-day needs, who has retired as Headmaster.

5. In this situation, we find the above-mentioned judgment of Hon'ble Apex Court is squarely attracted,

6. We, therefore, quash and set aside that recovery.

7. The amount of recovery from petitioner shall be refunded to him within eight weeks from today.

8. The Writ Petition is partly allowed and disposed of. No costs.

JUDGE

JUDGE

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