

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3859 OF 2017

Meen Balasaheb Deshmukh .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

Shri. P.B. Patil, Advocate for Petitioner.
Shri. A.S. Shinde, A.G.P. for Respondent Nos. 1 to 3.
Shri. R.D. Biradar, Advocate for Respondent No. 4.

**WITH
CIVIL APPLICATION NO. 5734 OF 2017**

**CORAM : S.V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATED : 5th February, 2018

PER COURT:

. The petitioner assails the order of recovery.

2. Mr. Patil, the learned advocate submits that the petitioner was promoted as a Head Mistress on 01.06.2014 and retired as a Head Mistress on 31.05.2015. According to the learned counsel after the

retirement of the petitioner recovery is sought to be claimed against the petitioner. The learned counsel submits that after retirement of the petitioner the respondents could not have claimed recovery. The learned advocate relies on the judgment of the Apex Court in case of **State of Punjab and others Vs. Rafiq Masih (White Washer) reported in (2015) 4 Supreme Court Cased 334.**

3. Mr. Venjane, learned advocate for the respondent submits that as the writ petition and Special Leave Petition filed by the petitioner were pending, the petitioner was not reverted pursuant to the orders of the Education Officer.

4. The learned A.G.P. submits that the Education Officer has passed an order on 31.07.2014, directing the management to revert the petitioner and to send the proposal of a Head Master of a senior teacher. Though the order was passed by the Education Officer the Management did not take steps. The recovery is rightly claimed.

5. We have considered the submissions. The petitioner was promoted as a Head Mistress on 01.06.2014 and was officiating as a Head Mistress since that date. On 31.07.2014 the Education Officer passed an order on

the basis of the complaint received from another employee holding that the petitioner is not senior and is not entitled to be appointed as a Head Master and directed to appoint the senior most teacher as a Head Master and submit the proposal of the senior most teacher. This order of the Education Officer was challenged by the petitioner before this court bearing Writ Petition No. 10526 of 2014. This Court dismissed the writ petition on 06 May, 2015.

6. This court had not granted any protection to the petitioner, still, the Institution allowed the petitioner to officiate as a Head Mistress and did not take steps pursuant to the orders of the Education Officer dated 31.07.2014. It is stated that the petitioner has filed Special Leave Petition before the Apex Court against the judgment and order of this court dated 06.05.2015 passed in Writ Petition No. 10526 of 2014. However, no protection is given to the petitioner and the petitioner in the interregnum has retired on attaining the age of superannuation.

7. It is a fact that till the date of retirement the petitioner officiated as a Head Mistress. The petitioner was allowed to officiate as Head Mistress by the Management inspite of the orders of the Education Officer, directing reversion of the petitioner.

8. It would not be appropriate to direct the petitioner to pay the amount after retirement as the petitioner had actually officiated on the said post. The fault lies with the Management in allowing the petitioner to officiate as Head Mistress inspite of the orders of the Education Officer dated 31.07.2014 and further no protection was granted to the petitioner even by this court. The Management was expected to take steps pursuant to the orders of the Education Officer dated 31.07.2015.

9. It is stated that the President of the Institution on 28.03.2015 directed reversion of the petitioner w.e.f. 26.03.2015. This shows that even for the period of 8 months no steps were taken against the petitioner by the Management and the petitioner was allowed to officiate as a Head Mistress.

10. In light of the above, we are not inclined to stall the recovery claimed by the respondent. It is not a case of innocent representation but inspite of the orders of the Education Officer dated 31.07.2014, the Management allowed the petitioner to continue on the said post at least till 26.03.2015 and it is stated that the petitioner retired in May/July 2015. In such a case the Management will be liable to pay the amount of recovery claimed.

11. The Respondent-State shall recover the excess amount paid to the petitioner from the grants to be disbursed to the Management and not from the petitioner.

12. The writ petition accordingly disposed of. No costs.

13. The Civil Application also stands disposed of.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]