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

WRIT PETITION NO. 5482 OF 2014

1. Govind s/o Hanmant Biradar,
Age : Major, Occupation : Retired,
R/o Bank Colony House No. 85,
Nilanga dist. Latur-413521
Mo. No. 9423349439

2. Tanaji s/o Dhairyasheelrao Deshmukh
Age : Major, Occupation : Retired,
Behind Devi Temple, Shivaji Nagar,
Nilanga, Dist. Latur – 413521
Mo. No. 985061699 ..PETITIONERS

versus

1. The State of Maharashtra
Through its Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai

2. The Director of Higher Education,
Maharashtra State, Pune

3. The Joint Director of Higher Education,
Nanded Region, Nanded

4. The Accountant General of Maharashtra,
Walker's Road Seminary Hills, Nagpur,
District Nagpur, Maharashtra-440001

5. The Principal,
Maharashtra Mahavidyalaya Nilanga,
Nilanga, Tq. Nilanga, District Latur ..RESPONDENTS

Mr Ajinkya Reddy, Advocate for petitioners
Mr S.N.Kendre, Asstt.Government Pleader for respondents no.1 to 4

CORAM : SUNIL P. DESHMUKH AND
S. M. GAVHANE, JJ

DATE : 5th December, 2018

ORRAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally by consent.

2. Petitioners were appointed as lecturers in respondent no. 5 – college after following due process of selection in 1975 and since then had been working as lecturers. On 25-01-1999, a notification had been issued by the State government extending benefit of scheme for grant of stagnation increment to government servants including teachers who had completed required duration of service during their tenure for being eligible to said benefit. Subsequently, on 15-11-2013, a circular had been issued by respondent no. 2 under supervision and control of respondent no. 1 informing the registrars of concerned universities in Maharashtra that the scheme for grant of stagnation increment is made applicable to all employees in respective universities and their affiliated colleges and also to those teachers who had exercised their option under Maharashtra Civil Services (Revised) Pay Rules, 1998.

3. Petitioners' case is that they had unblemished service record. During their tenure, they had reached stage of maximum of their pay in the pay scale and as such had been eligible for benefit of scheme of grant of stagnation increment as per the notification and

the circular referred to above. Accordingly, entry has also been made in their service book. However, in 2010, petitioners were directed by the Principal of their college to pay back the amounts received by them as a benefit of stagnation increment scheme. Petitioners accordingly had deposited the amounts in the treasury office. Petitioners retired in 2012 and 2013 respectively.

4. There is no dispute about aforesaid factual aspects. It is petitioners' case that direction, to redeposit the amounts received by them, had been illegal and was arbitrary since the benefit was extended to them under stagnation increment scheme. The amounts have been improperly and incorrectly recovered. Respondents had no authority to recover the monetary benefits so received under the notification and circular.

5. Petitioners refer to various judgments, viz; *D.S. Nakara vs. Union of India* reported in *(1993) 1 SCC 305*, *Syed Abdul Qadir and others vs. State of Bihar* reported in *(2009) 3 SCC 475* and a decision by division bench of this court in writ petition no. 8033 of 2012 [*Gangadharrao s/o Vithalrao Shelake and others vs The State of Maharashtra and others*] decided on 29-04-2014 wherein the division bench has observed thus:

> *"8. Firstly, indisputably the amount which was paid to the petitioners was by the mistake committed by the respondents as reflected in para No. 5 of the affidavit-in-reply filed by the respondent Nos. 1 to 3. According to the respondents, the Directors of Higher*

Education – respondent No. 2 inadvertently vide its letter dated 15-11-2003 issued to the Joint Director, Higher Education, Nagpur Region, Nagpur, has informed that the benefits of the G.R. Dated 14-09-1999, is made applicable to the reaching and non – teaching employees of the University and its affiliated colleges. Therefore, it is the mistake committed by the respondents and for which the petitioners cannot be held responsible. The petitioners have not received monetary benefits by fraud or misrepresentation. The Supreme Court in the case of Syed Abdul Qadir and Ors. Vs. State of Bihar and Ors., reported in 2009 3 SCC 475, in the facts of that case held that " beneficiaries therein had either retired or were on the verge of the retirement and so as to any hard-ship to them, recovery of amount wrongly paid was stopped and the respondents therein were directed to repay the recovered amount and stop the recovery. " This Court in the case of Association of College and University Superannuated Teachers (Maharashtra) (supra), held that, if the amount in excess paid to the such an employee for the reasons not attributed to such an employee in that case, in so far as the amount which is already recovered from the pension of the members of the petitioner's association, was directed to be returned to the employees from whom it was deducted within a period three months from the date of passing of order along with interest at the rate of 12 per cent per annum.

9. Therefore, in the light of the discussion in foregoing paragraphs, we are of the considered view that the amount recovered from the petitioners should be paid back to them with an interest at the rate of 12 % per annum. Accordingly, the respondents are directed to repay/refund the amount to the petitioners with 12 % interest per annum withing three (3) months from today. "

6. Learned counsel for petitioners contends that in similar set of facts, division bench of this court had passed an order in favour of

petitioners in writ petitions bearing no. 9054 of 2010 and 1054 of 2013 decided on 22-11-2011 and 01-10-2013 and further points out that challenges to those decisions by the State government before the apex court had not been sustained. He, therefore, urges that petitioners herein although during pendency of writ petitions have been refunded the amount yet, no interest on the same has been paid. In ordinary course the amount should have been paid back to petitioner with interest in view of decisions referred to hereinabove.

7. Learned Assistant Government Pleader Mr Kendre submits that while upon petition being filed by petitioners, realizing that the amount could not have been legitimately recovered from them, immediately the amounts have been paid back to the petitioners and they have accepted remittance without any demur. He further contends that while the amounts were deducted in 2010 and the petitioners subsequently retired in 2012 and 2013 respectively, such a claim for refund had not been made. In the circumstances, while respondents have fairly paid back the amount, petitioners' request for interest may not be proper and may not be indulged into.

8. Although, learned Assistant Government Pleader submits as aforesaid, the petitioners had redeposited the amount pursuant to direction by respondent no. 5 in 2010 and have superannuated in

2012 and 2013, but, the fact remains that recovery so ordered against petitioners had not been proper and legitimate. The petitioners had been fair and obedient to comply with directions for deposit of the amount. Although, the amount so recovered had been subsequently paid back to them, in the relevant similar circumstances, this court had ordered refund to be made with interest.

9. In the circumstances, we consider it appropriate to follow the suit since there had been a loss to the petitioners in the interregnum during the period of retention of amount by respondents. We, accordingly, hold the respondents liable to pay interest to the petitioners on the amount refunded to them for the period of retention of the amount i.e. from the date of deposit of the same by petitioners to the date of paying it back at the same rate as referred to in aforesaid reproduced order. It is expected that interest would be paid to the petitioners in right earnest, preferably within a period of three months from the date of receipt of writ of this order.

10. Rule made absolute in aforesaid terms.

11. Writ petition is accordingly disposed of.

S. M. GAVHANE
JUDGE

SUNIL P. DESHMUKH
JUDGE

pnd/-