

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

WRIT PETITION NO.2629 OF 2012

Laltaprasad M. Yadav .. Petitioner
Versus
State of Maharashtra through
Secretary & Ors. .. Respondents

Mr. Rahul G. Walia for petitioner
Mr. Kedar Dighe, Asst. Government Pleader for respondent No.1
Mr. H.C.Pimple for respondent Nos.2 to 4 Corporation.

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

DATE : 18th January 2018.

P.C.

1] Rule. Rule made returnable forthwith. Heard by consent.

2] The petitioner has approached this Court being aggrieved by the order dated 19th May 2012. By the impugned order, the respondent No.2 has directed a recovery to be made of the excess amount paid to the petitioner.

3] A perusal of the record would reveal that the petitioner was initially appointed as an Assistant Teacher from 1st July 1992. It further appears that immediately a proposal for grant of approval was sent by the respondent No.5 to respondent No.2. It also appears that the said proposal could not be decided since the petitioner had crossed maximum age on the date of his appointment and his case was pending before the Education Officer. It also appears that the Education Officer vide his order dated 12th December 2003 condoned the issue of over age. Subsequently vide order dated 6th September 2004, the appointment of petitioner as Head Teacher came to be approved.

4] The impugned order came to be passed on 19th May 2012. The petitioner immediately approached this Court subsequent to the passing of impugned order. In response to the notice issued by this Court Mr. Rajiv Tadavi, Deputy Education Officer in the employment of Mumbai Municipal Corporation has filed his reply.

5] The petition is mainly opposed on the ground that it involves various disputed questions on fact. It is with regard to the

petitioner's appointment as an Assistant teacher and the fact regarding condonation of his over age is also not disputed. Not only that, but a perusal of the reply would reveal that the period for which the petitioner was under suspension has also been condoned.

6] A perusal of the said affidavit would also reveal that it cannot be said that the approval which was granted to the petitioner was granted on some mis-representation. All the relevant details were available with the respondent authorities when the approval was granted vide order 6th September 2004.

7] In this view of the matter, we find that the recovery at the fag end of petitioner's service will not be permissible. The Apex Court in the case of Sayyed Abdul Qadir and Ors. Vs. State of Bihar and Ors., reported in (2009) 3 S.C.C. 475 in para 5 has held that if an amount is paid to the employee, recovery on the basis of such erroneous fixation would not be permissible.

8] In this view of the matter, Rule is made absolute by quashing and setting aside the impugned orders dated 19th May 2012 and 19th

March 2012.

9] It is informed that the petitioner has already been superannuated from the service. A perusal of report would reveal that in para 4(I) the Corporation itself has stated that it will release the dues of the petitioner after completion of all the formalities within a reasonable period. We direct the Corporation that the regular pension should be paid to the petitioner from the month of March 2018 on the basis of his last drawn salary and all the arrears shall be cleared within a period of three months from today.

Petition disposed of accordingly. No costs.

(B.P.COLABAWALLA, J)

(B.R.GAVAI, J.)