

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5177 OF 2014

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| 1. | Nitin s/o Gajanan Bhandari
Age – 33 years, Occ - Service | PETITIONERS |
| 2. | Sunil s/o Mansaram Chaudhari,
Age – 38 years, Occ - Service | |
| 3. | Devidas Deepchand Chaudhari
Age - 30 years, Occ - Service | |
| 4. | Sau. Chitra Hitesh Rajbhoj,
Age - 28 years, Occ - Service | |

All R/o Kusumba,
Taluka and District - Dhule

VERSUS

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| 1. | The State of Maharashtra
Through its Secretary,
School Education and Sports Department
Mantralaya, Mumbai | RESPONDENTS |
| 2. | The Deputy Director of Education
Nashik Region, Nashik | |
| 3. | The Education Officer (Primary)
Zilla Parishad, Dhule
District – Dhule | |
| 4. | The Social and Cultural Association's
Adarsha Primary Vidya Mandir
Kusumba, Taluka and District – Dhule
Through its Head Master | |

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Mr. V. D. Hon, Senior Advocate i/b Mr. A. V. Hon, Advocate for
the petitioners

Mr. S. S. Dande, AGP for respondents No.1 and 2 - State

Mr. Rahul S. Pawar, Advocate for respondent No. 3

Mr. A. P. Deshmukh h/f Mr. Umakant Wagh, Advocate for respondent No. 4

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**[CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.]**

RESERVED ON : 28th MARCH, 2019
PRONOUNCED ON : 27th JUNE, 2019

JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Initially, by the present petition, the petitioners had challenged communication dated 9th May, 2014 issued by Education Officer (Primary), Zilla Parishad, Dhule – respondent No. 3 directing to redeposit alleged excess payment made to the petitioners during the period prior to January, 2014 for 2012-2013 and 2013–2014. Subsequently, by amending the petition, the petitioners requested to set aside corrigendum dated 31st March, 2015 to government resolution dated 25th June, 2013 thereby modifying grant in aid and reducing it from 100% to 20%.

3. Briefly stated, there is no particular dispute on factual aspects that petitioners possess requisite qualifications and were duly appointed and their services were approved by competent authority as assistant teachers, viz., about dates of appointments of the petitioners and dates of their regularization in service, as referred to in the writ petition.

4. Respondent No. 4 school is being run from quite a long time. Respondent No. 4 school management had filed writ petition No. 1642 of 2008 in respect of orders rejecting claims of disbursement of grant in aid for extra division. Pursuant to the directions of high court, respondents had filed affidavit in reply annexing decision of the government formulating policy dated 20th July, 2009. Under said policy, word "permanent" had been directed to be deleted from original order granting recognition on "permanent non grant basis". With deletion of word "permanent" institutions were considered to be eligible to receive grants and accordingly, respondents were directed to take appropriate decision expeditiously.

5. Subsequently, on 25th June, 2013, the State government issued a resolution sanctioning 100% grant in aid to several schools in the State, including to additional division sanctioned in

the year 1993-94 in present respondent No. 4 school having completed period of nine years.

6. In furtherance of aforesaid government resolution dated 25th June, 2013, Deputy Director of Education – respondent No. 2 had issued order on 4th July, 2013 to Education Officer – respondent No. 3 for releasing 100% grants to four posts occupied by petitioners. Education Officer had communicated the order to superintendent of Pay and P. F. Cell, Zilla Parishad, Dhule. Respondent No. 4 accordingly had submitted pay bills to government treasury and petitioners were disbursed salaries for the period June, 2010 to July, 2013, deducting income tax.

7. However, the authorities had stopped paying salary to the petitioners for the period subsequent to the same, refusing to accept their pay bills. Attempts to submit salary bills were responded to by a communication by education officer dated 9th May, 2014 that the petitioners were not eligible to receive salary grants for want of necessary approval from finance department of the State. Grant to additional division rests with discretion of the State Government and grants would be made applicable as and when government would take decision and purported to direct redeposit of amount released for the period 2012-13,

2013-14.

8. Respondent No. 4 had issued a letter dated 7th June, 2014 expressing inability to issue cheques towards salary payment of the petitioners as a fallout of aforesaid communication from the education officer. The bills, which were being submitted by head master were returned with instructions for recovery of the salary disbursed. Even representations by the petitioners in April, 2014 were not heeded. As such, the petitioners are before this court.

9. It appears that on 18th January, 2014, State government had issued a resolution for disbursement of grants under Maharashtra Appropriation Act, 2013 for the year 2013-14. During pendency of present writ petition, through an additional affidavit respondent No. 3 had placed on record an order dated 31st March, 2015 modifying and reducing 100% grant to additional division of respondent No. 4 under government resolution dated 25th June, 2013 to 20%.

10. Respondents, in their affidavit in reply have referred to that pursuant to government resolution dated 25th June, 2013 100% grant is sanctioned to respondent No. 4 and that salary for the period from June, 2010 to August, 2013 is disbursed. It is contention of the respondents that eligibility to receive grant in

aid does not give a right to claim salary from government. It is the prerogative of the government to sanction grant depending upon financial condition of the State. Having regard to that while resolution dated 25th June, 2013 would not have retrospective application, it had been directed to redeposit the amount. It was only in January, 2014 grants were sanctioned to teachers and staff of eligible schools and grants were released after sanction in budgetary session and since the grants under government resolution of 2013 were released without sanction from the government to respondent No. 4, same are to be recovered that being excess payment and is a financial irregularity and a mistake, as pay bills were submitted by the school. Having realized that excess payment had been drawn by head master, communication dated 9th May, 2014 had been issued by the education officer.

11. Respondent No. 2, in additional affidavit, has reiterated that government resolution dated 25th June, 2013 had declared respondent No. 4 to be eligible to receive grant in aid from 2010, however, since sanctioning of grants is the right of government, as per availability of funds, said grant had not been applicable with retrospective effect. It is only in government resolution dated 18th January, 2014 declared eligible class or division had

been sanctioned grants in legislative assembly and salary had been made available from the month of January, 2014.

12. In further additional affidavit, it has been purportedly referred to that the government had rectified the mistake committed under oversight of sanctioning 100% grant to respondent No. 4 division and resolution dated 31st March, 2015 is issued to that effect.

13. The scenario shows that while the petitioners appear to be qualified and eligible assistant teachers and have been appointed by following due procedure. Decision had been taken by the government in 2013 to grant 100% salary grant to their posts. It is not the case that they have played any role in the same. Further orders pursuant to the same had been passed by the deputy director of education and education officer. Grants were accordingly released and disbursed to the petitioners, while respondent No. 4 had submitted bills pursuant to the government resolution. In all this process, it is not the case that the petitioners have any hand in the same. It is also not disputed that the petitioners services fall in class III category.

14. The Supreme Court, in the case of “*State of Punjab and Others V/s Rafiq Masih (White Washer) and Others*” reported in (2015) 4 SCC 334,

has issued following guidelines -

“ 18. *It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*

(i) *Recovery from the employees belonging to **Class III and Class IV services** (or Group C and Group D service).*

(ii) *Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*

(iii) *Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

(iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*

(v) *In any other case, where the court arrives at the conclusion, **that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.*** ”

15. It is not the case of respondents No. 1 to 3 that recovery amount would have any significant addition to the State coffers. It appears, inconvenience suffered by petitioners would be far more than convenience to the respondent. Sufferance would be more on petitioners side than than on the other side. Recovery, in the circumstances would not be equitable.

16. Having regard to aforesaid, it appears to be expedient to allow the writ petition.

17. Thus, writ petition, is allowed in terms of prayer clauses "B" and "BB" to the extent of the petitioners and is disposed of. Rule is made absolute in aforesaid terms.

[R. G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE