

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6170 OF 2016

Shri Vikram Haridas Wagaj
R/o. Nanaj, Tal. North Solapur,
Dist. Solapur – 413 222.

...Petitioner

Versus

1] The State of Maharashtra
Through the Secretary,
School Education Department
Mantralaya, Mumbai 400 032.

...Respondents

2] Solapur Zilla Parishad,
Solapur, Through its
Chief Executive Officer.

3] The Education Officer
[Primary], Zilla Parishad,
Solapur.

Mr.N.V. Bandiwadekar i/b. Mr.S.V. Mane for the petitioner.
Mr.A. S. Kulkarni for respondent nos.2 & 3 – Zilla Parishad.
Mr.V. M. Mali, AGP, for the State-respondent no.1.

**CORAM : B.R. GAVAI AND
DAMA SESHADRI NAIDU, JJ.**

DATE : 5th APRIL 2019.

ORAL JUDGMENT (Per B. R. Gavai, J) :

1. Rule. Rule made returnable forthwith. Heard by consent of parties.

2. Petition arises out of an illegality committed by respondent nos.2 & 3.

3. The brief facts giving rise to the filing of the present petition are thus:

- i) The petitioner came to be appointed in the School of Thane Zilla Parishad as an Assistant Teacher in the Primary School in the year 1981. At the time of said appointment, the petitioner was having qualification of S.S.C., D.ED and also graduation in Art Faculty. Further during the period when he was in the service of respondent-Thane Zilla Parishad, he had acquired B.Ed qualification in the year 1983 and as such vide order dated 4th April 1984, he was put in the scale of graduate teacher with effect from month of April, 1984.
- ii) Since the petitioner married to another Primary Teacher who was working in the Solapur Zilla Parishad, he requested to transfer his services to Solapur Zilla Parishad. The said request was granted and accordingly the petitioner was relieved from Thane Zilla Parishad on 20th July, 1989 and joined Solapur Zilla Parishad on 27th July 1989 in Primary School, Padsali, Tal. Madha.
- iii) The petitioner on attaining age of superannuation retired on 31st May 2015. However, after retirement, the petitioner was issued communication dated 30th December 2015 calling upon him to submit a document pointing out as to when and in what

circumstances he was appointed as Graduate Teacher. The petitioner was informed that unless he produced the said document, his pensionary benefits would not be released. The petitioner accordingly replied to the said communication vide his reply dated 7th January 2016 alongwith necessary documents. However, inspite of the said reply submitted by the petitioner, no pension and the other retirement benefits were paid to the petitioner. Hence, the petitioner has approached this Court by way of the present petition.

4. Notice came to be issued by the Division Bench of this Court on 18th January 2017. After receipt of the notice, order came to be passed on 10th February 2017 thereby holding that the petitioner was illegally paid the salary under scale of graduate teacher and an amount of Rs.8,96,472/- was deducted from pensionary benefits payable to the petitioner. Hence, present petition.

5. Heard Mr.Bandiwadekar, learned Counsel for the petitioner and Mr. Kulkarni, learned Counsel for the respondent – Zilla Parishad.

6. Learned Counsel appearing for the Zilla Parishad submitted that there is relevant order of Thane Zilla Parishad which shows that the petitioner was only working as Assistant teacher in the Primary School and not Assistant Teacher in Graduate Scale. He, therefore, submits that impugned order is in accordance with law and warrant no interference. We feel sorry to say that not only the impugned order and the submissions advanced across the bar are totally

ignorance of law laid down by the Supreme Court, but also the impugned order and submission advanced by the learned Counsel for the respondent are contrary to the fact situation of the case.

7. The impugned order dated 27th July 1989 by which the petitioner was permitted to join School at Village Padsali by the Block Education Officer, Madha would reveal that the petitioner joined as Graduate Primary Teacher.

8. Indisputably, the salary which was drawn by the petitioner and paid by respondent no.2 - Zilla Parishad in the School in Padsali, from month of June 1989 onwards was on the basis of the last drawn salary by the petitioner in the Thane Zilla Parishad. In this situation, the communication which was impugned in the petition directing the petitioner after his retirement to submit the document prior to 1989 is not warranted.

9. Be that as it may, the petitioner has produced on record order dated 4th April 1984 issued by the Block Development Officer, Panchayat Samiti, Sahapur in Thane Zilla Parishad. In the factual scenario, the petitioner submitted sufficient evidence to show that he was paid the Graduate Teacher Scale by Thane Zilla Prishad. However, the situation is more glaring after receipt of the notice issued by this Court. Then responding to the notice, an order was passed on 10th February 2017 thereby deducting an amount of Rs.8,96,472/- from the pensionary benefits payable to the petitioner.

10. In this extraordinary circumstances, we are of the considered opinion that this amounts to interference with the administration of justice. The least that was expected by the Zilla Parishad was to join adjudication of the petition before passing such castigating order. So the impugned order is totally contrary to the settled legal position of the Division Bench of this Court to which one of us (B.R. Gavai, J) was the member. The judgment has considered entire legal position and has also held in paragraph 16 after referring to the Judgments of the Hon'ble Apex Court in the following cases :

- (i) *Shyam Babu Verma and Others Vs. Union of India and Others*, reported in 1994 2 SCC page 521,
- (ii) *Sahib Ram V./s. State of Haryana and Others*, reported in 1995 Supp (1) Supreme Court Cases page 18,
- (iii) *Syed Abdul Quadir' & ors*, reported in (2009) 3 Supreme Court Cases page 475.
- (iv) *Chandi Prasad Uniyal and others V/s. State of Uttarkhand and others*, reported in (2012) 8 Supreme Court Cases Page 417
- (v) *State of Panjab & others Vs. Rafiq Masih (WhiteWasher)* (2014) 8 SCC 883 reported in (2014) 8 Supreme Court Cases page 883.

The Division Bench of the Apex Court has observed thus :

- “(i) *that the amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardship but not as a matter of right. (emphasis supplied)*
- (ii) *the relief against recovery was granted by Courts in Syed Abdul Quadir's case, Shyam Babu Verma and Sahib Ram's*

case (supra) not because of any right. (emphasis supplied)

(iii) Recovery is impermissible in law, if :

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year of the order of recovery.*
- (iii) Recovery from 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."*

11. It could be seen that the present case falls clearly under the exceptions carved out by the Hon'ble Apex Court in Clause (I), Clause (ii) and Clause (iii).

12. In the result, the petition deserves to be allowed. Rule is made absolute in the above terms. Writ Petition is allowed in terms of Prayer Clauses (d1) and (d2). No order as to costs.

13. The Writ Petition is allowed in the following terms :

- (i) It is therefore held that the action of respondent treating the petitioner service as an Assistant Teacher and not Assistant Teacher in the Graduate Scale is totally illegal and it is declared that the petitioner was entitled and

was rightly continued as Assistant Teacher in the Graduate scale

(ii) The Pension shall be paid to the petitioner from the month of May 2019 on the basis of his last drawn salary in the Scale of Graduate Primary Teacher.

(iii) The already recovered amount alongwith arrears for which the petitioner would be entitled to in accordance with order shall be paid to the petitioner within a period of one month from the date of uploading of the order, alongwith interest @12% p.a. from the date of recovery and from the date of the arrears of pension the petitioner was entitled to.

[DAMA SESHADRI NAIDU, J.]

[B.R. GAVAI, J.]