

Amk

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

WRIT PETITION NO. 1170 OF 2016

Smt. Manisha Mohan Vast	.. Petitioner
Vs.	
State of Maharashtra & Ors.	.. Respondents

Mr. Shaikh Nasir Masin a/w. Mr. Choudhari Moinuddin for the Petitioner.
Mr. Manish Upadhye, AGP for Respondent Nos.1 to 3-State.
Mr. Javed Shaikh a/w. Ms. Trupti Puranik for Respondent Nos.4 to 7-MCGM.

**CORAM : B. R. GAVAI &
DAMA SESHADRI NAIDU, JJ.**
DATE : 9th APRIL, 2019.

P. C. :

1. The Petitioner was appointed in July 1979 as a Trained Teacher in an aided school where she continued up to December 1984. Later in 1985, she joined another school. As both the schools were fully aided and recognized, the authorities, as the Petitioner claims, treated it as continuous service and granted her pay protection.
2. In course of time, the Petitioner was declared surplus in the school where she had been working. And in June 2004 she was absorbed in another aided school, where she eventually retired on 31.05.2010, after attaining the age of superannuation.
3. When the school concerned processed her pension papers after much correspondence, the Respondent Nos.4 to 7 have denied her the benefit of pension. Aggrieved, the Petitioner has filed this Petition.

4. Heard the learned Counsel for the Petitioner and the learned Government Pleader, besides the other Counsel for the Respondents.

5. The learned Counsel on either side have maintained the respective stands the parties have taken in the Writ Petition and the Reply.

6. Nevertheless, the petitioner's counsel has informed us that the issue raised in this writ petition stands squarely covered by a judgment in **Issak Abbas Hawaldar Vs. Block Education Officer & Ors. (Writ Petition No. 10692 of 2015)**. That judgment was rendered by a Division Bench, to which one of us (B.R. Gavai J) is a party.

7. In the Judgment, dated 7th November 2017, in **Issak Abbas Hawaldar**, the question was whether "overpayment of amount due to wrong fixation of the petitioner-teacher's pay-scale, based on Sixth Pay Report, could be recovered" from a retired employee's terminal benefits. The learned Division Bench has considered not only the statutory position but also the precedents governing the issue. It has, then, culled out the law on the subject as was held in those cases, especially, of the Supreme Court. It has thus observed:

"15. That from the judgments of Supreme Court, law on subject issue, stands crystallized as under :-

(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."*

8. Without much elaboration, we may note that in this writ petition, too, the authorities, through letter, dt.22.05.2012, sought to recover from the petitioner's terminal benefits the amounts she had allegedly been paid in excess as part of her salary. we hold that the case on hand, both on facts and law, squarely accords with **Issak Abbas Hawaldar** (supra). So, following the same ratio, we allow the Writ Petition. The authorities shall settle the petitioner's terminal benefits based on her last drawn salary.

9. No order on costs.

10. Needless to observe that the authorities shall back to the petitioner whatever amounts they have so far deducted from the petitioner's terminal benefits, in the name of excess salary. This repayment must be made expeditiously in three months.

[DAMA SESHADRI NAIDU, J.]

[B. R. GAVAI, J.]