

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4167 OF 2018

Prafullachandra s/o Balkrishna Bhavsar,
age: 65 years, Occ: Pensioner,
R/o Plot No.30, Saraswati Colony,
Shahada, Tq. Shahada,
District Nandurbar.

Petitioner

Versus

01 Principal Accountant General,
(Account and Entitlement) I,
Maharashtra, 2nd Floor,
Pratishta Bhavan,
New Marine Lines, 101,
Maharashi Karve Road,
Churchgate, Mumbai.

02 Treasury Officer,
Nandurbar,
District Collector Office
Premises, Nandurbar.

03 Education Officer (Secondary),
Zilla Parishad, Nandurbar.

04 Head Master,
Shrikrishna Madhyamik Vidyalaya,
Shahada, Tq.Shahada,
District Nandurbar.

Respondents

Mr.S.S.Deshmukh, advocate for the petitioner.
Mr.S.D.Ghayal, AGP for Respondents No.1 to 3.
Mr.Y.G.Birajdar, advocate for Respondent No.4.

**CORAM : Z.A.HAQ AND
S.M.GAVHANE, J J.**

DATE : 05th March, 2020.

ORAL JUDGMENT (Per Z.A. Haq, J.) :

01 Heard. Rule. Rule made returnable forthwith.

02 The petitioner has prayed that the communications issued by the Respondents No.1 and 2 on 01.03.2018 and 06.03.2018, directing recovery of amount of Rs.70,321/- from the petitioner, be quashed.

03 The facts on record show that excess payment of Rs.70,321/- was made to the petitioner wrongly towards the leave encashment and, therefore, the recovery of the amount is sought from him. The action is taken by the authorities after the *Lok Ayukta* passed an order on 09th November, 2017 on the complaint made by Shri S.F.Jain, who was working in the Provident Fund Unit.

04 The petitioner relies on the communication issued by the Education Officer (Secondary) on 21/23.11.2016, which shows that the petitioner was not entitled for leave encashment of 28 days, the amount being Rs.37,150/-. On instructions from the petitioner, the learned advocate submitted that the petitioner is not disputing this and the petitioner is entitled for the balance amount of Rs.33,171/-.

04 After examining the material on the record and considering the rival submissions, we feel that it would not be appropriate to examine the disputed questions in the extraordinary jurisdiction. In our view, interests of justice would be subserved by passing the following order:

[i] According to the petitioner, amount of about Rs.35,000/- is already recovered by the respondents and recovery of balance amount is not made because of the interim orders passed by this Court. Whatever amount is recoverable from the petitioner, as per the order passed by the *Lok Ayukta* and as per the impugned communications, the same shall be deposited by the petitioner with the concerned authority till 30.04.2020.

[ii] If the amount is deposited till 30.04.2020, the petitioner is permitted to make representation to the concerned authority, pointing out his entitlement for leave encashment and in case such representation is made, it shall be decided within one month from the date of receipt of the representation.

(iii) In case the petitioner fails to deposit the amount as

per this order till 30.04.2020, the same shall be recovered from the petitioner and in such case, the claim of the petitioner for reimbursement towards the leave encashment, shall not be considered by the concerned authority.

05 Rule is made absolute in the above terms. In the circumstances, the parties to bear their own costs.

S.M.GAVHANE
JUDGE

adb

Z.A.HAQ
JUDGE