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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

930 WRIT PETITION NO.8452 OF 2020

Vishnu s/o Chiman Thakare,
Age: 59 years, Occu: Retired (Head Master),
R/o. Laxmi Nagar, Plot No.12, Erandol,
Dist. Jalgaon

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Education and Sport Department,
Mantralaya, Mumbai 32
2. The Chief Executive Officer,
Zilla Parishad, Jalgaon
3. The Education Officer (Primary),
Zilla Parishad, Jalgaon
4. Chief Accountant and finance Officer,
Zilla Parishad, Jalgaon
5. Block Development Officer,
Panchayat Samiti, Erandol,
Dist. Jalgaon

...RESPONDENTS

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Mr Paresh B. Patil, Advocate for petitioner;
Mr S. G. Sangle, A.G.P. for respondent No.1;
Mr M. S. Sonawane, Advocate for respondent Nos.2 to 5

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 15th July, 2021

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ORAL JUDGMENT : (Per : Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner, who has retired as an employee on 31/05/2019, is aggrieved by the impugned order dated 04/09/2019, issued by the Education Officer (Primary), Zilla Parishad, Jalgaon, vide which, an amount of Rs.1,23,909/- was recovered from the legal dues, inclusive of the gratuity amount, to be paid to the petitioner. The petitioner has, therefore, put forth prayer clauses (B) and (C) as under :

“B) By Writ of Certiorary or by appropriate like nature or by appropriate orders and directions, the impugned order dated 04/09/2019 passed by the Resp. No.3 against the petitioner to the of Recovery of excess amount Rs.1,23,909/- may kindly be quashed and set-aside, for that purpose this Hon’ble Court may pass appropriate orders and directions.

C) By issuance of appropriate Writ like nature or by appropriate orders and directions, the Resp. No. 2 to 5 kindly be directed to refund excess recovered amount Rs.1,23,909/- with 8% interest thereon to the petitioner forthwith and for that purpose this Hon’ble High Court may kindly be passed necessary orders, for that purpose this Hon’ble Court may pass appropriate orders.”

3. The undisputed factors in the present case are as follows :

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- a) The petitioner was an Assistant Primary Teacher prior to becoming a Grader Headmaster and he retired in the said capacity on 31/05/2019.
- b) The 5th Pay Commission recommendations were made applicable to the services of the petitioner for the period 01/01/1996 till 31/12/2005.
- c) The employer calculated the new pay-scale, to which the petitioner was entitled to, and started making the payment of such emoluments based on the calculations in the light of the 5th Pay Commission recommendations.
- d) There is no dispute that the petitioner was not directed by the employer to tender an undertaking that, if eventually it is noticed that his pay-scale was wrongly calculated and he was paid excess amounts, he would return the said excess amount.
- e) On 04/09/2019, like a bolt from the blue, respondent No.3 issued an order directing the recovery of the excess amount of Rs.1,29,909/- along with an amount of Rs.11,946/-, holding that petitioner was involved in the students uniform scam. The students uniform scam has been dealt with by this Court in a

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separate limb of litigation and as such, we are not considering that issue in this petition.

f) Pursuant to the above order, the amount of Rs.1,23,909/- was recovered in September 2019, which is three months after the retirement of the petitioner.

g) There is no allegation that the petitioner played a fraud on the employer or was instrumental in manipulating the calculations of his new pay-scale under the 5th Pay Commission recommendations.

4. We have perused the judgment delivered by the Honourable Apex Court in the matter of **State of Punjab & ors. Vs. Rafiq Masih (White Washer), (2015) 4 SCC 334**. We have also considered the judgment delivered by the Honourable Apex Court in the matter of **High Court of Punjab and Haryana & ors. Vs. Jagdev Singh, (2016) 14 SCC 267**.

5. Considering the law as is laid down, it is quite clear before us that neither had the petitioner played any role in the calculations of his new pay-scales, nor was he instrumental in manipulating such

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calculations so as to draw excess payments and indulge in unjust enrichment, thereby rendering him liable for recovery. There is no allegation of fraud against him in such calculations.

6. The learned Advocate for the employer submits on instructions, that the excess payments were made by the employer since it's concerned Section wrongly calculated a pay-scale payable to the petitioner and ended up in paying an excess amount of Rs.1,23,909/- for the period 01/01/1996 to 31/12/2005. It is also conceded on the basis of the record that no notice was issued to the petitioner, much less an opportunity of hearing having been given to him. The recovery was made three months after the retirement of the petitioner.

7. Considering the above and in view of the law laid down by the Honourable Apex Court in **State of Punjab Vs. Rafiq Masih (supra)** and in the case of **Syed Abdul Qadir Vs. State of Bihar, (2009) 3 SCC 475**, this petition is allowed in terms of prayer clause (B).

8. Respondent No.2 is directed to refund the said amount to the petitioner on or before 15/09/2021, failing which, the said amount

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would attract interest @ 6% p.a. from September 2019, till it is actually paid to the petitioner.

9. Rule is made absolute in the above terms.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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