

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

WRIT PETITION NO.1502 OF 2018

Bapurao s/o Tukaram Ekambe
Age : 63 years, Occupation : Pensioner,
R/o Bhutan Hipparga, Plot No.6,
Galli No.4, Tq.Degloor, District Nanded.

...PETITIONER

-VERSUS-

1) The State of Maharashtra,
through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.

2) The Chief Executive Officer,
Zilla Parishad, Nanded.

3) The Senior Accounts Officer,
Zilla Parishad, Nanded.

...RESPONDENTS

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Advocate for the Petitioner : Shri Kulkarni Girish N. (Mardikar)
AGP for Respondent 1 : Shri S.R. Yadav Lonikar
Advocate for Respondents 2 and 3 : Shri Kadam Nitin S.
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**CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.**

DATE :- 04th August, 2021

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 is aggrieved by the remarks of

respondent No.3 dated 17.08.2013 vide which, the amount of Rs.50,566/- has been recovered from the petitioner's pensionary benefits on the ground that the said amount was paid in excess as a result of the mistake in fixation of his salary as an Assistant Teacher between January, 2006 and December, 2011.

3. The petitioner joined employment in 1982. He stood superannuated on 31.12.2011. By the impugned remarks dated 17.08.2013, the amount of Rs.50,566/- is recovered from his pension. The stand taken by respondent No.3 is that the Department noticed wrong fixation of pay scale of the petitioner payable during the period January, 2006 to December, 2011 based on the Sixth Pay Commission's recommendations. It is fairly stated by the respondent Zilla Parishad that the petitioner was not instrumental in preparation of his pay structure and had not played any fraud on the Department so as to gain extra payment and therefore, caused unjust enrichment.

4. In the above facts of the case, it is apparent that the law laid down in the matters of *Shyam Babu Verma vs. Union of India*, (1994) 2 SCC 521, *Syed Abdul Qadir vs. State of Bihar*, 2009 (3) SCC 475 and *the State of Punjab and others vs. Rafiq Masih (White Washer) and others*, 2015 (4) SCC 334, would be

applicable to the case of the petitioner. He is not alleged to have participated in the wrong fixation of his pay scale. There is no allegation that he has played a fraud. The employer has not taken a written undertaking from the petitioner to repay the amount if it is eventually noticed that he is a beneficiary of excess payment of salary. He superannuated on 31.12.2011 and the recovery has been caused on 17.08.2013.

5. In view of the above, this Writ Petition is allowed in terms of prayer clause “A”, which reads as under :-

“(A) By issuing Writ of certiorari remarks in pension order dated 17.08.2013 respect of recovery of the excess amount paid to the petitioner of Rs.50,566/- may kindly be quashed and set aside.”

6. Respondent No.3 shall, therefore, refund the amount of Rs.50,566/-, without interest, to the petitioner as expeditiously as possible and in any case, on or before 30.10.2021, failing which, the amount shall carry interest @ 6% p.a. from September, 2013.

7. Rule is made absolute in the above terms.