

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR

Writ Petition No. 1324 of 2020

Shri Waman s/o. Sudam Meshram

...Petitioner

**Versus**

The Accountant General (Accounts & Entitlement)-I,

Nagpur through its Senior Accounts Officer and others

...Respondents

Shri A.Z. Jibhkate, Advocate for Petitioner.

Shri A.M. Deshpande, AGP for Respondent Nos.1 to 4.

**CORAM : NITIN JAMDAR AND  
ANIL S. KILOR, JJ.**

**DATED : 28 JANUARY 2021**

**P.C.:**

Notice has been issued in this petition on 9 June, 2020. The Respondents are served.

2. The Petitioner was appointed as an Assistant Teacher in the Respondent-School on 1 July 1992. On 30 March 1999, the approval was granted to the petitioner's appointment by the Education Officer. The Petitioner was promoted to the post of Headmaster and retired from service on 30 June 2018. The retiral benefits were not being released. the

3. The Petitioner had sought two components of retiral benefits: gratuity and the other is the pension. The Petitioner has filed this petition challenging the order dated 13 November 2019 wherein recovery is sought to be made from the Petitioner. The said order refers to the gratuity of Rs.644700/- and excess recovery of Rs.532109/- to be adjusted from pension and the total amount of Rs.1176809/- to be recovered from gratuity to be credited to the head overpayment of pay and allowances.

3. Learned Counsel for the Petitioner submitted that no recovery could be made from a retired an employee receiving pension outside the ambit of Rule 134-A of the Maharashtra Civil Service (Pension) Rules, 1982. Learned Counsel submits that even the impugned order refers to the said Rule. He further submitted that Rule 134-A contemplates a reasonable opportunity to be given to the pensioner to show cause why the amount due to be recovered and the Petitioner has averred on oath in the petition that no such opportunity is given.

4. On 9 June 2020, the Division Bench passed the following order while issuing the notice :

- “1] *Heard learned advocate for the petitioner.*
- 2] *Issue notice to the respondents, returnable on 02/09/2020.*
- 3] *Shri S.P. Deshpande, learned Addl. GP waives notice for the respondent nos. 1 to 4.*
- 4] *By an interim order, we direct the respondents to take steps to ensure that the amount of gratuity receivable by the petitioner is paid to him till 31/07/2020.*

5] *The technical issues in the matter shall be sorted out by the respondents amongst themselves and they will not be heard to say that default in complying with this order was because of some compliances required to be made. All the respondents will be held jointly liable for non-compliance of this interim order.”*

5. The reply-affidavit sworn on 8 September 2020 is tendered in the Court. It is stated that an amount of gratuity of Rs.1175809/- has been refunded to the Petitioner. That the Petitioner has not been given an opportunity is not denied.

6. According to the learned Counsel for the Petitioner, there is confusion in the amount mentioned in the affidavit in reply as gratuity amount is not Rs.1175809/-. It is also the petitioner's contention that no recovery itself was warranted and the Education Officer has opined so. According to the Petitioner, all these facts would have been placed before the Authority had an opportunity been given.

7. Regarding the petitioner's contention based on Rule 134-A, we find that same requires acceptance. The Rule contemplates a reasonable opportunity before recovery, which has not been given.

8. In these circumstances, the order dated 13 November 2019 regarding recovery will have to be quashed and set aside, and it is set aside. It is clarified that the amount already refunded to the Petitioner is not to

be disturbed. If any balance remains and the Respondents are proceeding to recover the amount from the Petitioner, they will follow the mandate of Rule 134-A and give a reasonable opportunity to the Petitioner. Needless to state such action, if any, should be taken within a reasonable time.

8. Writ Petition disposed of in above terms.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]