

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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WRIT PETITION NO. 3579/2019

- 1) Pandurang s/o Sadashiv Shrirame
Aged about 49 years, occu: service
R/o Z.P. High School, Ayudh Nirmani Chanda
Tahsil Bhadrawati, Dist.Chandrapur.
- 2) Ramchandra Pochanna Digdeotulwar
Aged about 50 years, service
R/o Z.P. High School, Bramhapuri
Tah.Bramhapuri, Dist.Chandrapur.
- 3) Bhimrao Urkudaji Durge
Aged about 54 years, Service
R/o Z.P. High School, Bhadrawati
Tah. Bhadrawati, Near Nag Mandir,
Dist.Chandrapour.
- 4) Vilas Dashrath Hajare
Aged about 54 years, Service
R/o Z.P. (Ex Govt.) Netaji High School
Warora,Tah. Warora,
Dist.Chandrapur.

..PETITIONERS

v e r s u s

- 1) Zilla Parishad, Chandrapur
Through the chief Executive Officer
Chandrpaur.
- 2) Chief Executive officer
Zilla Parishad, Chandrapur.
- 3) Education Officer
Zilla Parishad (Primary)
Chandrapur.

4) Head Master
Z.P High School Ayudh Nirmani
Chanda, Tah. Bhadrawati Dist. Chandrapur.

5) Head Master
Z.P. High School, Tah. Bhadrawati
Dist. Chandrapur.

6) Head Master
Z.P (Ex.Govt) Netaji High School
Warora, Tah. Warora, Dist. Chandrapur.

RESPONDENTS

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Dr. Renuka Sirpurkar, Advocate for petitioners

Nobody is present for respondents 1,2,3,4,5,6 though served -

**CORAM: SUNIL B. SHUKRE &
ANIL L. PANSARE, JJ
DATED : 8th December, 2021.**

ORAL JUDGMENT: (PER SUNIL B. SHUKRE, J.)

1. Heard learned counsel for the petitioners. Nobody is present for respondent nos.1,2 and 3 who are duly served and who are duly represented by their counsel. Nobody is present also for respondent nos.4,5 and 6 though duly served. The respondent nos.1 to 3, however, have filed their reply in the matter.

2. The notice in this case has already been issued for final disposal. But, it appears that by remaining absent before this Court the respondents do not wish to seriously contest the claim made in this

petition.

3. In view of the above, we have heard this petition finally, by issuing Rule.

4. The petitioners are the Assistant Teachers working in different Schools of Zilla Parishad, Chandrapur. Their grievance is that benefit of their pay upgradation and revision in the pay-scale was granted to them by an order passed on 02/12/2003 and the benefits were directed to be made available to the petitioners from the date of the order i.e. dated 02.12.2003.

5. Further submission by the learned counsel for the petitioners is that this order dated 02.12.2003 was modified by the respondent nos.1 to 3 and decision was taken on 08.01.2008 to make available the benefits of revision in pay-scale and pay upgradation not from 02.12.2003 but from the respective dates of acquisition of higher qualifications by the petitioners and, thus, availability of this benefit was further pushed back, thereby increasing the volume of benefits made available to the petitioners which, in fact, were paid to them. It is further submitted that later on, another order dated 13.01.2017 was

passed by respondent no.1 directing that there being no provision made in any of the applicable Government Resolutions for making available such benefits from the date of acquisition of qualifications, the first order dated 02.12.2003 stood revived and these benefits were made applicable to the petitioners again from 02.12.2003. The grievance of the petitioners now is that as a result of this latest order dated 13.01.2017 which was communicated to the petitioners not immediately after passing of the order but about two years later in the year 2019, the recovery of the so-called excess amount paid to the petitioners is being effected which is causing great hardship to the petitioners.

6. It is the submission of the learned counsel for the petitioners that such recovery is unfair, unreasonable and iniquitous which outweighs the right of the employer to recover the amount from the relatively disadvantaged group like the petitioner, and that too when the petitioners were not at fault but it were the respondent nos.1 to 3 who had committed the mistake. Reliance has been placed upon the law laid down by the Hon'ble Apex Court, in the case of State of Punjab & others vs. Rafiq Masih and others, reported in (2015) Vol.4 SCC 334.

7. The facts of the case are already stated while summarizing the submissions of the petitioners in the earlier paragraphs. The facts would show that the recovery of the excess amount paid to the petitioners has actually been started from the year 2019 when, as per the order dated 08.01.2008, which was passed about 11-years before starting of the recovery, higher benefits of pay upgradation were paid to the petitioners. They also show that in granting higher pay benefits to them from the date of acquisition of their qualifications, the petitioners were not at fault and it was the decision of the respondent nos.1 to 3. They also show that petitioners being Assistant Teachers and respondent nos. 1 to 3 being in supervisory capacity are in a position to dominate the will of the petitioners placed lowly *vis-a-vis* the respondent nos.1 to 3.

8. In the case of Rafiq Masih (cited *supra*), the Hon'ble Apex Court has held that even though an employee has a right to recover the amounts paid in excess to the employee as sometimes, mistakes do occur in calculating the pay and other benefits but the other relevant factors must be considered by the employer before taking a decision for actually recovering the amount paid in excess. It is further held that if the employer ignores other considerations then it would be for the

Court to consider as to whether or not these considerations would justify quashing of the order of recovery of excess amount or not. The other considerations as held, revolve around the effect of the recovery on the employee concerned. The Hon'ble Supreme Court has observed that if the effect of recovery from the employee concerned means more unfair, or more wrongful, or more improper or more unwarranted recovery, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary to make the recovery. The Hon'ble Apex Court has further observed that in such a case, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover. In Paragraph 18, the Supreme Court has further held that even though it is not possible to visualize all kinds of hardship which may visit the employee in an unfortunate case where payments have been mistakenly made by the employer in excess of the entitlements of the employee, some of the instances where recovery by the employer from the employee would be impermissible in law could be illustrated and, accordingly, these instances have been categorically mentioned in paragraph 18. We deem it proper to reproduce the observations of the Apex Court made in paragraphs 8 and 18 so as to enable us to understand the issue in a better way, which read as under :-

“8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee’s right would outbalance, and therefore eclipse, the right of the employer to recover.”

18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C Group D service).*
- (ii) Recovery from the retired employees, or the*

employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

9. From the facts narrated above, it would be very clear that this is a fit case wherein it can be said that if the employer is permitted to recover the excess amount paid to the petitioners who are subject to supervision and superintendence of respondent nos. 1 to 3, it would be far more wrongful, far more improper, far more iniquitous than what it would be if the employer is not permitted to recover. It could also be said that the right of the employees against any recoveries to be made from them outweighs the right of the employer to effect recovery from them.

10. Thus, this petition having a great substance in it, deserves to be allowed. The Petition is allowed. The impugned order dated 13.01.2017 is hereby quashed and set aside and the order dated 08.01.2008 is hereby confirmed. We direct that the pay scales of the petitioners which were already fixed as per the order dated 08.01.2008 be restored, within a period of four weeks from the date of this order.

11. Rule is made absolute in the above terms. No costs.

JUDGE

JUDGE

sahare