

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

WRIT PETITION NO. 6771/2019

Yadaorao S/o Ramji Gaikwad,
aged around 54 years, Occupation : Service,
R/o Shrinagar, Murmadi (Lakhni), Post. Tah-Lakhni,
District Bhandara.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
Through its Secretary,
Department of Rural Development and
Water Conservation, Mantralaya, Mumbai.
2. The Zilla Parishad, Bhandara,
Through its Chief Executive Officer, Bhandara.
3. The Education Officer (Primary),
Zilla Parishad, Bhandara.

RESPONDENTS

**WITH
WRIT PETITION NO. 6772/2019**

Dhananjay Shalikram Biranwar,
aged 53 years, Occu. Service,
R/o 22, Vidyanagar Colony, Nagpur Road,
Tah. & District Bhandara.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
Through its Secretary,
Department of Rural Development and
Water Conservation, Mantralaya, Mumbai.
2. The Zilla Parishad, Bhandara,
Through Chief Executive Officer, Bhandara.
3. The Education Officer (Primary),
Zilla Parishad, Bhandara.

RESPONDENTS

**WITH
WRIT PETITION NO. 6780/2019**

Surendra S/o Harishchandraji Patil,
Aged 55 years, Occupation : Service,
R/o Plot No.19, Vidhut Colony No.2,
Vyankateshnagar, Takiya Ward, Behind Maida Mill,
Bhandara, Tah. and District Bhandara.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
Through its Secretary,
Department of Rural Development and
Water Conservation, Mantralaya, Mumbai.
2. The Zilla Parishad, Bhandara,
Through Chief Executive Officer, Bhandara.
3. The Education Officer (Primary),
Zilla Parishad, Bhandara.

RESPONDENTS

WITH
WRIT PETITION NO. 6827/2019

Gyanchand S/o Tarachand Jambhulkar,
aged 55 years, Occupation : Service,
R/o Plot No.55, Balaji Nagar, Khat Road,
Tah. & District Bhandara.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
Through its Secretary,
Department of Rural Development and
Water Conservation, Mantralaya, Mumbai.
2. The Zilla Parishad, Bhandara,
Through its Chief Executive Officer, Bhandara.
3. The Education Officer (Primary),
Zilla Parishad, Bhandara.

RESPONDENTS

Smt. Sharda S. Wandile, counsel for the petitioners.
Shri D.P. Thakare, Additional Government Pleader for the respondent no.1 in
Writ Petition Nos. 6772 of 2019 and 6780 of 2019.
Ms S.S. Jachak, Assistant Government Pleader for the respondent no.1 in Writ
Petition Nos. 6827 of 2019 and 6771 of 2019.
Shri R.S. Khobragade, counsel for the respondent nos.2 and 3.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE : 24TH AUGUST, 2021.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Heard finally considering the short issue involved.

2. The challenge raised in these writ petitions being similar they are being decided by this common judgment. For sake of convenience the facts in Writ Petition No.6772 of 2019 are being referred.

3. The petitioner was appointed as Assistant Teacher (Primary) in Zilla Parishad, Bhandara on 01.01.1988. He was thereafter posted as a Graduate Assistant Teacher for teaching Classes 5 to 7. On completion of twelve years service as Graduate Assistant Teacher, he was granted higher pay-scale. On 11.08.2011, the petitioner was promoted as a Secondary Assistant Teacher (Higher Grade) to teach Classes 9 and 10 until further orders. Thereafter on 12.12.2012 he was granted allowance of Rs.200/- for discharging duties in the Naxal Affected Area. According to the Zilla Parishad since the order dated 11.08.2011 was not an order of promotion but was merely a placement order and the grant of promotional increment as well as allowance was erroneous the same was sought to be withdrawn by passing the order dated 02.08.2019. By the said order which is impugned in the present writ petitions the excess payment made from the date of placement is sought to be recovered.

4. The learned counsel for the petitioners submitted that all the petitioners fall in Class-III of the Zilla Parishad Services. The orders of promotion dated 11.08.2011 in Writ Petition Nos.6772 of 2019, 6780 of

2019 and 6827 of 2019 as well as dated 14.05.2012 in Writ Petition No.6771 of 2019 came to be issued by the Zilla Parishad in due course. The petitioners had no role to place in the same and without there being any misrepresentation of any fact or allegation of fraud the benefits granted to the petitioners pursuant to those orders were sought to be withdrawn. The petitioners having discharged duties on the posts where they were accordingly placed, they were entitled to retain the monetary benefits received by them and there was no justification in withdrawing the same. Moreover by virtue of the impugned orders, the petitioners had been deprived of the benefit of the increments which have been otherwise they were entitled to. Placing reliance on the decisions in *Sahib Ram Versus State of Haryana & Others* [1995 Supp(1) SCC 18], *Syed Abdul Qadir & Others Versus State of Bihar & Others* [2009 AIR SCW 1871] and *State of Punjab & Others Versus Rafiq Masih (White Washer)* [AIR 2015 SC 696], it was submitted that as the petitioners belong to Class-III and the excess payment having been made to them for a period exceeding five years, the order of recovery was unjustified as held aforesaid. It was thus submitted that the impugned orders were liable to be set aside.

5. The learned counsel appearing for the respondent nos.2 and 3 supported the orders of recovery. It was stated that instead of passing the

orders of placement the orders of promotion were erroneously issued by the Zilla Parishad. Since the petitioners were not entitled to higher pay-scale the excess payment made was liable to be recovered. On the basis of complaints received by the Zilla Parishad the recovery had been directed and there was no basis for permitting the petitioners to retain the excess amounts received by them. It was thus submitted that no interference was called for with the impugned orders.

6. We have heard the learned counsel for the parties and we have perused the material on record. At the outset it may be stated that the Zilla Parishad in paragraph 6 of its reply has clearly stated that the orders of promotion were erroneously issued to the petitioners. It is not the case of the Zilla Parishad that on account of any misrepresentation by the petitioners or any fraud committed by them such orders of promotion came to be issued. On that basis they were granted benefit of salary on the post of Assistant Teacher (Higher Grade). The orders of promotion are dated 11.08.2011 and 14.05.2012. After a period of more than seven years the mistake was realized and the recoveries have been ordered. We find that the observations in the case of *Rafiq Masih* (supra) in paragraph 12(i), (iii) and (iv) which are reproduced hereinbelow are squarely applicable to the facts of the present case.

“12. *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, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii)*
- (iii) Recovery from 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)"*

The petitioners belong to Class-III of the Zilla Parishad services and the excess payment has been made to them for a period exceeding five years. The petitioners have also discharged duties on the posts where they were placed. In that view of the matter the order dated 02.08.2019 passed by the Zilla Parishad through its Chief Executive Officer insofar as it directs recovery of the excess payment made is found to be unsustainable.

7. It was sought to be urged that the increments to which the petitioners are entitled should also be restored. We are not inclined to go into that aspect since the same would involve consideration of various factual aspects. It is open for the petitioners to approach the Competent Authority for making such grievance in accordance with law.

Accordingly, the order dated 02.08.2019 passed by the Chief Executive Officer, Zilla Parishad, Bhandara to the extent it directs recovery of the excess payment made to each petitioner is quashed. The petitioners are at liberty to approach the Competent Authority for seeking relief in the matter of grant of increments and other monetary benefits if any admissible to them. If such request is made, the same shall be considered by the Competent Authority on its own merits in accordance with law.

8. Rule is made absolute in aforesaid terms. The parties to bear their own costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)