

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

120 WRIT PETITION NO.2433 OF 2020

NIVRUTI TUKARAM CHAUDHARI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner: Mr. Salgare Vitthal G.

AGP for Respondent No. 1: Mr. P. S. Patil

Advocate for Respondents No. 2 to 4:

Mr. S. S. Manale

...

**CORAM: S. V. GANGAPURWALA &
S. G. DIGE, JJ.**

DATE: 10th JANUARY, 2022

PER COURT:

1. The Petitioner challenges the order revising his pay and claiming recovery.

2. Mr. Salgare, learned Counsel for the Petitioner submits that the Petitioner was appointed as Primary Teacher. He is possessing the qualification of SSC with *Sahitya Sudhakar* and *Hindi Shikshan Nisnant*. The qualification of *Sahitya Sudhakar* and *Hindi Shikshan Nisnant* is equivalent to B.Ed. In view of that, the Petitioner was considered as a Trained Primary Teacher and he has been paid the pay scale of

Trained Primary Teacher. When the Petitioner was on the verge of the retirement, the Respondents revised the salary of the Petitioner and claimed recovery from the pensionary benefits. According to the learned Counsel, the same is illegal. The learned Counsel relies upon the Judgment of the Apex Court in case of **State of Punjab and others Vs. Rafiq Masih (White Washer), etc.** reported in 2015(4) SCC 334.

3. The learned Counsel further submits that the Respondents did not consider the Government Resolution dated 01.11.1977 and the Government Resolution dated 23.07.1963, thereby granting equivalence to the Degree in *Sahitya Sudhakar* and *Hindi Shikshan Nisnant with B.Ed. degree*. According to the said Government Resolutions, the Petitioner is entitled for the pay scale of a Trained Primary Teacher.

4. Mr. Manale, learned Counsel for the Respondents submits that the Petitioner was erroneously considered as a Trained Primary Teacher. He did not possess the qualification of

D.Ed. nor B.Ed. *Sahitya Sudhakar* and *Hindi Shikshan Nisnant* is only to be considered equivalent for Hindi subject. The learned Counsel relying on the Judgment of the Apex Court in case of **Shiv Dass Vs. Union of India and others** reported in (2007) 9 SCC 274 submits that in view of the delay and laches on the part of the Petitioner in filing this Petition the relief will have to be restricted only for past 3 years.

5. We have considered the submissions canvassed by the learned Counsel for respective parties.

6. It appears from the record that the Petitioner was paid the pay scale of a Trained Primary Teacher since beginning and he was paid the same till the date of his retirement. It is not the case of fraud or misrepresentation on the part of the Petitioner. The Apex Court in case of **State of Punjab and others Vs. Rafiq Masih (White Washer), etc.** (*supra*) has laid down following parameters-

- “(i) Recovery from employees belonging to Class-III and Class-IV service (or Group C and Group D service)*
(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
(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) In any other case, where the Court arrives at the conclusion, that recovery if made from the employees, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employers right to recovery.”

7. The case of the Petitioner is squarely covered under the parameters laid down by the Apex Court. The Petitioner is Class-III employee. The Petitioner had retired and from retiral benefits the recovery is being claimed. The Petitioner is not guilty of misrepresentation or fraud.

8. In view of the above, the recovery of Rs.8,91,071/- claimed by the Respondents is quashed and set aside. In case the amount is recovered by the Respondents, the same shall be

re-paid to the Petitioner preferably, within four (04) months.

9. As far as re-fixation of the pay-scale is concerned, we do not find any error on the part of the Respondent in revising the pay scale. The qualification of *Sahitya Sudhakar* and *Hindi Shikshan Nisnant* was equivalent to the extent of Hindi subject. The Petitioner is not appointed to teach Hindi subject. The Petitioner does not possess the qualification of Trained Primary Teacher.

10. In view of that, the revision done by the Respondents is proper. The pensionary benefit shall be paid to the Petitioner as per the revision done.

11. With the aforesaid observations and directions, the Writ Petition is disposed of. No costs.

[S. G. DIGE, J.]

[S. V. GANGAPURWALA, J.]

marathe