IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11690 OF 2017
WITH
CIVIL APPLICATION NO.7675 OF 2020

Hilal S/o Shravan Baviskar,
Age-60 years, Occu-Retired,
R/o-Kurvel, Tq-Chopda,
Dist-Jalgaon.

...PETITIONER

VERSUS

1) The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai-32,

2) Chief Executive Officer,
Zilla Parishad, Jalgaon,

3) Education Officer (Primary),
Zilla Parishad, Jalgaon,

4) Block Development Officer,
Panchayat Samiti, Chopda,
Dist-Jalgaon,

5) Account Officer,
Zilla Parishad, Jalgaon,
Dist-Jalgaon,

6) Head Master,
Primary School, Loni,
Tq-Chopda, Dist-Jalgaon.

...RESPONDENTS

...
Mr.Prakashsingh B. Patil Advocate for Petitioner.
Mr.A.S. Shinde, A.G.P. for Respondent No.1.
Mr.S.B. Munde Advocate for Respondent No.2.
...

**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRAGADE, JJ.**

DATE : 10th OCTOBER, 2022

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule returnable forthwith. With the consent of the parties, Petition is taken up for final disposal at the admission stage.

2. Petitioner is a retired assistant teacher in a primary school run by respondent No.2 Zilla Parishad, Jalgaon. He got retired by superannuation on 29th February 2016. In fact after his retirement, it was communicated by respondent No.5 to respondent No.4 that there are no dues towards the petitioner. The petitioner had never claimed any amount of higher pay-scale from the respondents, therefore, the payment of salary of the petitioner was as per his pay-scale. Yet, after the retirement of the petitioner, respondent No.3 issued notice dated 21st June 2017 for the recovery of amount of Rs.2,87,382/-. The petitioner

states that the pay-scale of the petitioner was fixed by the respondents from time to time and there was due verification of the same as per his entitlement. Therefore, there was no scope for any demand from the petitioner. Under such circumstance, the said notice, which is violative of the principles of *audi alteram partem*, is void and illegal as well as is against the settled decisions of the Hon'ble Apex Court as well as this Court.

3. By way of Civil Application No.7675 of 2020, it was pointed out by the petitioner that in fact the notice dated 21st June 2017 was for the amount of Rs.8,84,605/- after deducting the amount of Rs.2,87,382/- from the gratuity and commutation of pension. It was wrongly submitted in the Petition that the said notice is to the extent of Rs.2,87,382/- only. In fact the respondents were not vested with any power to deduct the amount. According to the respondents, an excess amount of Rs.7,66,798/- has been paid, out of that the respondents have recovered amount of Rs.5,80,918/- and thereafter i.e. during the pendency of the Petition, another notice came to be issued on 28th October 2020 for the recovery of remaining amount of Rs.1,85,780/-. The said notice is also illegal and therefore, by the said Civil Application,

the applicant – petitioner prayed for amendment to the main Petition and accordingly that prayer was allowed. As the said prayer was allowed, in fact the Civil Application stood disposed of.

4. Heard learned Advocate Mr. Patil for the petitioner, learned AGP Mr. Shinde for respondent No.1 – State and learned Advocate Mr. Munde for respondent No.2.

5. It has been vehemently submitted on behalf of the petitioner that the facts are not in dispute and in fact the same are supported by the documentary evidence. When the petitioner was about to retire, certificate was issued by respondent No.6 on 31st December 2015 to respondent No.4 stating that there are absolutely no dues from the petitioner. Even on the next date of retirement, the certificate has been issued by respondent No.6 informing about the fact of retirement of the petitioner and the fact that there are no dues at all. The Accounts Officer, Zilla Parishad, Jalgaon i.e. respondent No.5 forwarded the service book of the petitioner by letter dated 19th October 2016 to respondent No.4 and then again on 11th January 2017 respondent No.6 issued no dues certificate to the petitioner. In spite of these facts, the impugned notice dated 21st June 2017

has been issued and during the pendency of the Petition, further notice has been issued on 28th October 2020 as regards the deduction already made and for recovery of remaining amount of Rs.1,85,780/-. All these deductions and notices are illegal and against the settled decision in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334***, which has been then relied upon by this Court in the decisions, in ***Dinesh s/o Shankar Patil vs. the State of Maharashtra and others (Writ Petition No.4298 of 2007, decided on 6th October 2015)***, in ***Ravindra s/o Ramchandra Patil vs. the State of of Maharashtra and others (Writ Petition No.5367 of 2016, decided on 18th July 2017), Prabhakar Ramdas More and others vs. the State of Maharashtra and others (Writ Petition No.695 of 2016, decided on 12th February, 2018, Nafees Ahmed Abdul Jabbar vs. the State of Maharashtra and others (Writ Petition No.7947 of 2019, decided on 3rd February 2020)***. Learned Advocate appearing for the petitioner, therefore, prayed for allowing the Petition.

6. Per contra, the learned AGP Mr. Shinde appearing for respondent No.1 – State and learned Advocate Mr. Munde

appearing for respondent No.2 vehemently submitted that the excess payment has been made and it appears from both the notices as to how the calculation ought to have been made and how the payment has been wrongly made. It has been demonstrated in the service book. When the payment was wrongly made due to wrong calculation, then the Government money should be taken back from the concerned employee, as that amount was not due towards him.

7. It will have to be held that the point is not *res integra*. The principles laid down by the Hon'ble Apex Court in ***State of Punjab and others vs. Rafiq Masih*** (supra) are the guidelines in respect of recovery of amount from the employee. In the said case, the Hon'ble Supreme Court has laid down the guidelines in respect of recovery of the amount from the employee and has categorized the situation where it would be impermissible to recover the amount. It is laid down by the Hon'ble Supreme Court that in following circumstances, it would be impermissible for the employer to recover the amount from the employee:

> " (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 employee, would be iniquitous or harsh or arbitrary to such an extent, as would for outweigh the equitable balance of the employer's right to recover. **"**

8. In other cases decided by this Court, referred above, the same principles and guidelines have been followed.

9. Considering the facts and circumstances of the matter, the case of the present petitioner would fall in category Nos. (i), (ii) and (iii). Important point to be noted is that the petitioner started his career on 23rd February 1988 and the service-book entry now states that the excess payment has been made since 1st January 1994. As aforesaid, he stood retired on 29th February

2016. It is very much surprising as to how none of the authorities could find out that the excess payment is being made since 1st January 1994 till even after the retirement of the petitioner. Rather, no dues certificates have also been issued by respondent No.6 on 2 to 3 occasions. The recovery so done and proposed to be done from the dues which would come as a result of 7th Pay Commission, is totally illegal and impermissible.

10. For the reasons recorded above, the Writ petition deserves to be partly allowed in view of the fact that the interest rate that has been claimed by the petitioner is 10% per annum and taking into consideration the present rate of interest in any Nationalized Bank, the petitioner is entitled to get interest at the rate of 6% per annum. Hence the following order:-

O R D E R

(I) The Writ Petition stands partly allowed.

(II) The notices issued to the petitioner on 21st June 2017 and 28th October 2020 are hereby held void and illegal.

(III) The respondents are directed to refund the amount of Rs.5,81,018/- (Rupees Five Lakh Eighty One Thousand and Eighteen only) together with interest at the rate of 6% per annum from the date of deduction till the date of realization of the entire amount, as expeditiously as possible, preferably within SIX MONTHS from today.

(IV) Rule is made absolute to the extent specified above. There shall be no order as to costs.

(V) Civil Application No.7675 of 2020 stands disposed of, in view of the above observations.

[Y.G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/OCT22