

Digitally
signed by
BASAVRAJ
GURAPPA
PATIL
Date:
2022.09.27
11:13:40
+0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2303 OF 2018
IN
WRIT PETITION NO. 3237 OF 2009
WITH
WRIT PETITION NO. 3237 OF 2009**

Milind Narayan Kamble

..... Applicant /
Petitioner

Vs.

Dy. Director of Education of Pune
Division & Ors.

..... Respondents

Mr. S. G. Kudle for the Applicant
Mr. K. S. Thorat, AGP for the State

**CORAM: S.V.GANGAPURWALA &
R.N. LADDHA, JJ.**

DATED : SEPTEMBER 23, 2022

P.C.

1 The learned Counsel for the Petitioner submits that the Applicant was granted pay scale of 5500-9000 with Grade Pay of 4200. However, the same was cancelled without notice to the Petitioner and the Petitioner was brought down to the pay scale of 4500-7000. An amount of Rs.92,142/- was also withheld. The same is illegal.

2 The learned AGP submits in fact the pay scale that the Petitioner was entitled at the relevant time was Rs.4500-7000 but

the Management has erroneously fixed the pay scale 5500-9000. The same was illegal and that is why the order was passed refixing the pay and recovery being claimed.

3 The recovery that has been claimed is from class-III employee. The apex Court in the case of *State of Punjab v. Rafiq Masih (2015) 4 SCC 334* has laid down five parameters where recovery may not be claimed.

4 It has been held that if the recovery is claimed after lapse of five years from Class III and Class IV employee, same should not be made. It has also been held that if it is not on a misrepresentation of the employee in such case the recovery may not be made. Hardship would be caused to such employee.

5 In the present matter, it is not the case of the Respondents that the pay scale was fixed upon misrepresentation of the Petitioner. The recovery claimed is, after a period of more than five years. The Petitioner has attained the age of superannuation. All the parameters laid down in the judgment of the apex Court in the case of Rafiq Masih (supra) are met with in the present matter. Moreover, the pay scale, earlier granted was cancelled without hearing the Petitioner and without notice to the Petitioner.

- 6 In light of the above, we pass the following order :
- a. The order of recovery against the Petitioner is quashed and set aside.
 - b. If any amount is recovered from the Petitioner on the ground of wrong fixation of the pay scale, same shall be refunded to the Petitioner, preferably within six months.
 - c. The Dy. Director of Education shall reconsider the case of the Petitioner with regard to the pay scale payable to the Petitioner at the relevant time including time bound promotional pay scale and take decision afresh.
 - d. The Petitioner may appear before the Dy. Director of Education, Pune Division, Pune on 11th October 2022 and put forth his stand with regard to the applicable pay scale from time to time.
 - e. The Dy. Director of Education, after hearing the Petitioner, shall take decision afresh with regard to the applicable pay scale to the Petitioner, preferably within three months from the date of appearance of the Petitioner.
 - e. Depending upon the decision taken by the Dy. Director of Education, the parties may take further steps.
 - f. The Civil Application is disposed of.
 - g. The learned Counsel for the Petitioner submits that at this stage, in view of the order passed in the civil application, the Petitioner is not pressing the Writ Petition.

h. The Writ Petition also stands disposed of. No costs.

(R.N. LADDHA,J.)

(S.V. GANGAPURWALA, J.)