

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

WRIT PETITION NO.6773 OF 2019

Dilip Wamanrao Telrandhe,
Aged 61 years,
Occupation-Retired,
R/o. Plot No.21, Diamond Nagar,
Kharbi Road, Near Gajanan Mandir,
Nagpur, Tq. & District-Nagpur.

.. Petitioner

.. Versus ..

1] Divisional Commissioner,
Nagpur Division, Nagpur.

2] The Zilla Parishad, Nagpur,
Through its Chief Executive Officer,
Tq. & District-Nagpur.

3] Education Officer (Primary),
Zilla Parishad, Nagpur,
Tq. & District-Nagpur.

.. Respondents

Shri A.R. Deshpande, Advocate for the petitioner,
Ms. N.P. Mehta, A.G.P. for respondent no.1-State,
Shri I.S. Charlewar, Advocate for respondent nos.2 and 3.

**CORAM : SUNIL B. SHUKRE AND
SMT. M.S. JAWALKAR, JJ.**

DATED : 25.04.2022.

ORAL JUDGMENT : (Per : Sunil B. Shukre, J.)

The reply of the respondent nos.2 and 3 is taken on record.
Its copy is already supplied to the petitioner.

2. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. It is not in dispute that the petitioner is Kendra Pramukh and Group-C employee of the Zilla Parishad, Nagpur. It is also not in dispute that he retired on 31st October, 2015 on attaining the age of superannuation. However, while making payment of gratuity to the petitioner in May-2016, an amount of Rs.2,14,946/- was deducted without giving any notice to the petitioner. Later-on, on making an enquiry in that regard, the petitioner was informed by the communication dated 23.08.2017 that this recovery of Rs.2,14,946/- was rightly made by deducting the amount of recovery from the gratuity payable to the petitioner, as this was the amount which was paid in excess to the petitioner. Now, by the reply filed by the respondent nos.2 and 3, it is further clarified that as per the Govt. Resolution dated 24th August, 2017, it was necessary that the additional increment granted to the employees of the Zilla Parishad, on account of they be District Awardee Teachers should not be taken into

consideration while fixing the pay as per the Recommendations of 6th Pay Commission and therefore, while granting benefits of 6th Pay Commission Recommendations to an employee like the petitioner, it became necessary to deduct the said amount from the amount of the gratuity payable to the petitioner, which was rightly done by the respondents. The stand so taken by the respondents is against the law declared by this Court in several of its judgments and also the judgment of the Apex Court rendered in the case of **State of Punjab and others V/s. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334.**

4. In its judgment dated 05/04/2018, rendered in Writ Petition No.8165/2017 along with the connected matters and order dated 17/11/2017 rendered in Writ Petition No.625/2016, Coordinate Bench of this Court has taken a view that withdrawal of benefit already conferred upon a District Awardee Teachers in the nature of one additional increment is not in reality the effect of Govt. Resolution dated 24th August, 2017. This Court further held that the increment additionally granted deserves to be continued and its benefit deserves to be permitted to be availed of by the District Awardee Teachers, till their superannuation, unless it is withdrawn as per the law and that there was no order of withdrawal of that benefit. Thus, this Court finally held that the benefit already conferred upon the District

Awardee Teachers in the nature of one additional increment cannot be taken back and thus directed that it shall be restored and released in favour of the petitioners, who were the District Awardee Teachers, within a time stipulated in the judgment.

5. In the case of **Rafiq Masih** (supra), the Hon'ble Supreme Court has held that after retirement of Class-III and Class-IV employees or Group-C or Group-D employees, no recovery from these employees is permissible in law.

6. As stated earlier, the petitioner is Group-C employee and the recovery of alleged excess payment to the petitioner has been made after his retirement. This Court has also found that the District Awardee Teacher like the petitioner is entitled to receive the benefit of one additional increment conferred under District Awardee Teachers Scheme, till such employee reaches superannuation. Besides, as held in **Rafiq Masih** (supra), recovery of any excess payment from Group-C employee, after his retirement, is not permissible. This position of law, in our considered view, clinches with the whole case in favour of the petitioner and renders the recovery effected from the gratuity payable to the petitioner as illegal.

7. In the result of, the petition is allowed in terms of prayer clause (A). The refund of amount of Rs.2,14,946/- to the petitioner be made within twelve weeks from the date of receipt of copy of the order. If the recovery made from the gratuity of the petitioner has affected the fixation of pension payable to the petitioner, the petitioner would be at liberty to make an appropriate application for re-fixation of his pension so as to bring it in accord with the observations and findings recorded in this judgment.

8. Authenticated copy of the order be furnished to the parties to act upon. Rule is made accordingly. No costs.

(SMT. M.S. JAWALKAR, J.)

(SUNIL B. SHUKRE, J.)

Gulande