

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

WRIT PETITION NO. 2928 OF 2022

Prabhavati Shivajirao Patil .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Sharad V. Natu, Advocate for the Petitioner.
Shri P. S. Patil, Addl.G.P. for the Respondent Nos. 1 and 2.
Shri Rahil Kazi, Advocate h/f Shri P. R. Katneshwarkar,
Advocate for the Respondent Nos. 3 and 4.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 11TH JULY, 2023.**

FINAL ORDER :

. Heard learned advocate for the petitioner, learned Additional Government Pleader and the learned advocate Mr. Rahil Kazi holding for advocate Mr. P. R. Katneshwarkar for respondent Nos. 3 and 4/management and the school.

2. The petitioner was appointed by respondent Nos. 3 and 4 as a teacher. There was some dispute as to when the petitioner completed the probation and from which date she was given continuity in service. By latter decision, it was held that she was appointed with effect from 08 October, 2009 on a probation of two years and was granted continuity from 08 October, 2011. However, she was paid salary for the intervening period, the

period which was earlier considered to be the date of appointment viz 01 September 2008. The salary was stopped by the management by the impugned communication dated 15 November, 2021.

3. It appears that pursuant to the directions of this Court in Civil Application No. 8338 of 2022 dated 13 October, 2022, the Divisional Deputy Director approved the appointment and also granted continuity with effect from 08 October 2009 and 08 October 2011 respectively.

4. It appears that the Divisional Deputy Director by communication dated 29 December, 2022 (Exhibit – C) in Civil Application No. 4405 of 2023 directed the Head Master/respondent No. 4 to recover the excess payment made to the petitioner and then to pay the arrears as per the revised pay fixation. Pursuant thereto the Head Master by the communication dated 21 January, 2023 (Exhibit – D) of the Civil Application No. 4405 of 2023 called upon the petitioner to deposit the excess payment before she was paid the arrears and regular salary.

5. After hearing both the sides on the last date while hearing the civil application, we had directed the learned Additional Government Pleader to take instructions as to why the innocuous prayer of the petitioner is not being considered by the respondent Nos. 1 and 2 to draw the arrears and deduct the excess payment

therefrom.

6. The learned Additional Government Pleader submits that inspite of communication issued, instructions are still awaited.

7. Apparently there is no dispute regarding anything. Excess payment that was made to the petitioner is admitted by her. She merely intends that such recovery should be set off against the arrears receivable by her pursuant to the revised pay fixation under the VI and VII Pay Commissions.

8. The learned advocate Mr. Natu for the petitioner would submit that based on the impugned communication the petitioner is not being allowed to sign the muster and discharge the duties for non refund of the excess payment.

9. The learned advocate for respondent Nos. 3 and 4 submits that they had called upon the petitioner to sign the muster, but she refused.

10. In the light of the above, writ petition is disposed of by directing the respondent Nos. 3 and 4 to prepare the pay bills of the petitioner regarding the arrears pursuant to the revised pay fixation, forward the salary bills to the respondent Nos. 1 and 2 authorities, who shall process the pay bills. However, this exercise shall be done by appropriating the excess payment received by the petitioner. The entire exercise shall be concluded

within a period of six (06) weeks from today.

11. The petitioner shall now attend the school and the respondent Nos. 3 and 4 shall permit her to sign the muster.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/July 23