IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4274 OF 2016

Nandkumar S/o Pundlik Sanap
Age-51 years, Occu Service as
Full Time Librarian at Smt. Dankunwar
Hindi Kanya Vidyalaya, Jalna
R/o Sukhshanti Nagar, Mantha Road,
Jalna, Tq. & Dist. Jalna.

..PETITIONER

-VERSUS-

1. The State of Maharashtra,
Through : The Secretary,
School Education Department,
Mantralaya, Mumbai – 32.

2. The Deputy Director of Education,
Aurangabad Division,
Aurangabad.

3. The Education Officer (Secondary),
Zilla Parishad, Jalna.

4. The Headmistress,
Smt. Dankunwar Hindi Kanya
Vidyalaya, Jalna, Dist. Jalna.

5. The Accounts Officer (Education),
Zilla Parishad, Jalna,
2nd Floor, Administrative Building,
Collector Office, Jalna.

..RESPONDENTS

…...

Advocate for Petitioner : Mr.G.K. Kshirsagar
AGP for Respondent Nos.1 to 3 & 5 : Mr. S.K. Tambe
Advocate for Respondent No.4 : Mr. S.R. Kolhare

…...

**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.**

DATED : 29th MARCH, 2023.

ORAL JUDGMENT : (Per Ravindra V. Ghuge,J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner has put forth prayer clauses “B”, “C”, “D”, “E”, “F” and “G” as under :-

> *“B) This Hon’ble Court may be pleased to hold that, the pay fixation of the petitioner has been correctly fixed commensurate with the pay scale of Rs.1400-2600 paid to him w.e.f. 15.12.1995 and corresponding scales of pay to the said pay scale upto the year, 2009 i.e. implementation of VI-Pay Commission.*
>
> *C) By issue of writ of certiorari or any other appropriate writ, order of direction in the like nature, the consequential action of the respondent authorities to the communication dated 29.3.2009 of effecting the recovery to the tune of Rs.20,000/- per month from the salary of the petitioner from the month of February, 2016 onwards and the order of re-fixation of his pay under the communication dated 29.3.2009 may kindly be held as illegal, arbitrary and beset-aside accordingly.*
>
> *D) By issue of writ of mandamus or any other appropriate writ, order of direction in the like nature, the respondents No.1 to 5 may kindly be directed to continue to pay the salary of the petitioner in the pay scale of Rs.9300-34800 with grade pay of Rs.4200/-.*
>
> *E) By issue of writ of mandamus or any other appropriate writ, order of direction in the like nature, the respondents No.1 to 5 may kindly be directed to pay the arrears of salary accruing on account of revision at the time of implementation of VI-Pay Commission.*
>
> *F) By issue of writ of mandamus or any other appropriate writ, order or direction in the like nature, the respondents No.1 to 5 may kindly be directed to refund the amount of Rs.20,000/- recovered on account of alleged wrong pay fixation under the*

impugned order dated 29.3.2009.

G) Pending the hearing and final disposal of this Writ Petition, the respondents No.2 to 5 may kindly be restrained from effecting any deductions from the salary of the petitioner towards the recovery on account of alleged wrong pay fixation done under the impugned order dated 29.3.2009."

3. The Petitioner has now superannuated. He acquired the qualifications of B.Com in 1987, B.Lib. in 1990 and M.Lib. in 1994. As a part time librarian, his pay scale was Rs. 1400-2600 w.e.f. 07.10.1991. His services were approved by the communication dated 09.01.1996 w.e.f. 15.05.1995. It is his contention that though he was working as part time librarian from 1991 to 1995, he was paid half the pay scale of Rs.1400-2600 and was actually paid Rs.700-1300.

4. It is contended that the Petitioner was approved as a full time librarian in the pay scale of Rs.1400-2600 w.e.f. 15.05.1995 and was benefited by the Vth Pay Commission Recommendations. The pay scale was accordingly revised to Rs.5500-9000. He claims that he was given the pay scale of Rs.5000-8000.

5. It is further contended that the Government of Maharashtra constituted a committee headed by Shri V.V. Chiplunkar for the purposes of determining the pay scale to be paid to the diploma holder librarians and graduate librarians. On the basis of the recommendations of the said Committee, the Government resolved on 28.06.1994, that the schools having students in excess of 1000, will get one post of full time librarian. There is no dispute with regard to the said Government Resolution dated 28.06.1994. It is further submitted that as the school had a strength beyond 1000, the

Petitioner became a full time librarian in 1995. Approval was also accorded. The claim of such librarians to be placed in the pay scale of Rs.1400-2600, initially, was accepted after a litigation in the High Court and which was confirmed by the Hon'ble Supreme Court. The Review Petition filed by the State Government was also dismissed.

6. The Petitioner submits that he has been rightly placed in the pay scale of Rs.5500-9000. Such pay scale was extended to him from 1999 till 2016. The Petitioner has superannuated on 28.02.2023.

7. The Petitioner has pleaded that, on the basis of a complaint made by a reporter of a news paper, it was alleged that the Petitioner was given a wrong pay fixation. This was brought to the notice of the Accounts Officer (Education), Jalna. He intimated the Principal of the college vide communication dated 18.03.2008 that the Petitioner has been given a wrong pay fixation and that his records may be perused and appropriate decision may be arrived at. The mistake be corrected.

8. The Petitioner submits that no action was taken on the said communication. Respondent no.3 forwarded a communication dated 30.12.2008 and the case of the petitioner's pay scale was taken up for correction. According to the Vth Pay Commission recommendations, he was entitled for a pay scale of Rs.4000-6000. Respondent No.2 responded with a communication dated 29.03.2009 and directed the Education Officer to place the petitioner in the pay scale of Rs.4000-6000 instead of the wrong pay scale granted to him of Rs.5000-8000.

9. The Petitioner further submits that the said communication

dated 29.03.2009 was not acted upon and consequently, the VI[th] Pay Commission Recommendations were made applicable. His pay scale grew to Rs.9300-34800. He, therefore, continued to receive the pay scale of Rs.9300-34800 with the grade pay of Rs.4200/-. His salary used to be deposited in his salary bank account at Jalna.

10. The grievance of the Petitioner is that the pay scale of Rs.9300-34800 underwent change in February, 2016. Since it was held that he was eligible to the earlier pay scale of Rs.1400-2600 and was wrongly placed in the pay scale of Rs.5500-9000, which led to placing him in the pay scale of Rs.9300-34800, the pay scale was scaled down. He approached this Court by preferring this Writ Petition. The first order dated 12.04.2016 passed by this Court protected the Petitioner to the extent of deduction from the salary on the basis of the impugned order of recovery of excess amount paid from February 2016. Consequent to the said order of this court, the pay scale of the Petitioner was correspondingly reduced so as to be in tune with the earlier pay scale to which he was entitled to viz:- Rs.4000-6000 instead of Rs.5000-8000. The recovery, however, was injuncted.

11. The learned advocate for the Petitioner fairly submits that a wrong pay scale was calculated when he was placed in the pay scale of Rs.5000-8000, erroneously,which consequently placed him in the pay scale of Rs.9300-34800. However, recovery ought not to be initiated since he was not at fault. He was not instrumental in a wrong pay fixation. He had not played any fraud on the employer. He had not participated in the decision making of the rise in pay scale. No laches or oblique motives have been attributed towards him. From 2016, owing to the impugned order of correction of his pay scale, till his superannuation in February, 2023, he has been

earning a pay scale which, according to the employer, is an appropriate pay fixation.

12. The learned A.G.P. representing respondent nos.1, 2, 3 and 5, places reliance upon the affidavit in reply filed on behalf of Respondent no.3 dated 20.07.2016. He points out that as the Petitioner was earlier a part time librarian, the pay scale of Rs.1400-2600 was paid to him w.e.f. 15.12.1995. The Bhole Commission's recommendations were taken into account at the time of granting the benefits of IVth Pay Commission pay scale to the librarians. Considering judgments of the various High Courts and the Hon'ble Supreme Court with regard to the pay scale of graduate teachers in library science and diploma holders, the State Government framed the scheme vide the Government Resolution dated 14.01.2016 regarding pay scale of graduate librarians. A ready reference chart is placed on record to indicate the change in the pay scales that have occurred on account of Bhole Commission and IVth, Vth and VIth Pay Commission recommendations. For ready reference, we are reproducing the said chart hereunder :-

अ.क्र.	वेतन आयोग	अर्हता	वेतनश्रेणी (रुपये)
१	भोळे आयोग	Graduate with diploma or degree in Library science (including existing incumbents who are Graduates with Diploma of certificate in Library science)	३६५—७६०
२	चौथा वेतन आयोग	ग्रंथपाल पदवीधर व ग्रंथशास्त्रातील पदवी अथवा पदविका व २७.१२.१९७९.	१४००—२३००
३	पाचवा वेतन आयोग		४५००—७०००
४	सहावा वेतन आयोग		५२००—२०२०० ग्रेड पे — २८००

		पुर्वीची नियुक्ती Librarian (graduate with Diploma or degree in Library science and appointed before 27 December 1979)	

13. The learned A.G.P. submits that the above chart indicates the pay scales available to full time librarians and not part time librarians. The petitioner was initially appointed as a part time librarian and subsequently, as the strength of the students crossed 1000, he became a full time librarian. He has the requisite qualifications of a graduate librarian.

14. In view of the above, there are two issues before us. Firstly, as to whether the excess amount paid from 2009 till 2016, should be recovered from the petitioner and secondly, whether the pay fixation has been rightly made in 2016, taking into account the Bhole Committee Recommendations and the IVth, Vth and VIth Pay Commission Recommendations. The Supreme Court has held in the case of ***Syed Abdul Qadir and others Vs State of Bihar and others*** *reported in* **(2009) 3 SCC 475,** in paragraph nos.53 to 59 as under :-

> "***53.*** *We now come to the question as to whether the amount that has been paid in excess to the appellant teachers should be recovered or not. It is the submission of the learned counsel appearing on behalf of the appellant teachers that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount that has been paid to the appellants cannot and should not be recovered, it having been paid without any misrepresentation or fraud on their part.*

***54.** From the record that has been produced before us, there is not an iota of doubt that officials of the State Government, responsible for issuing the Resolution dated 18-12-1989, were ignorant of the amended provisions of FR 22-C and it is their inaction, negligence and carelessness which has created all the chaos in the case on hand. Further, until January 1999, the officials of the Education Department of the Government of Bihar were unaware of the amendment in the said Rule until the Accountant General, Government of Bihar, on a query being made to him by the Director of Secondary Education, who is the Head of the Department of the Secondary Education in the State of Bihar, vide his letter dated 8-1-1999, responded to the said query that the officials of the Education Department came to know of the amendment in FR 22-C.*

***55.** That apart, it also appears from the record produced before us that while the Finance Department of the Government of Bihar was in favour of making the amended provisions of FR 22-C applicable to the appellant teachers after having come to know that the said Rule did not exist and had been substituted, the Department of Human Resource Development, Government of Bihar, wanted to apply the unamended provision to the appellant teachers so as to make available the benefit of additional increment provided for under FR 22-C to its teachers, unaware of the fact that even under FR 22-C they were not entitled to the additional increment as they were not discharging duties and responsibilities of greater importance on the promoted post.*

***56.** This further goes on to show that the authorities in the State of Bihar were not even aware of the basic requirement for grant of additional increment and the decision appears to have been taken without proper application of mind. Otherwise, there was no reason for the Finance Department to state in the counter-affidavit filed before the High Court that any affidavit filed on behalf of the Education Department may be ignored as the Finance Department was the competent authority. In this very affidavit, the Finance Department while admitting that the pay fixation by the Education Department was wrong, stated as under:*

> *"… the fixation of pay under Fundamental Rule 22-C has wrongly been made as it was not in existence. Pay fixation on the basis of a non-existent rule is a bona fide mistake."*

57. *This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.*

58. *The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar, V. Gangaram v. Director, Col. B.J. Akkara (Retd.) v. Govt. of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bijay Bhadur.*

59. *Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the*

> *Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."*

15. It is thus apparent that the Hon'ble Supreme Court concluded that the amount paid in excess to such employees should not be recovered, if they are not found to have played any fraud or mischief in the wrongful payment. As noted above, in the present case, it is not the contention of the Respondent that the Petitioner was a part of the committee or office which was incharge of carrying out the pay fixation of the employees in the Zilla Parishad. There is no allegation that the Petitioner has committed a fraud. There is no allegation that the Petitioner orchestrated a wrongful pay fixation so as to knowingly and consciously derive undue advantage of such wrong pay fixation. He, therefore, cannot be held guilty of causing a wrongful pay fixation so as to draw excess amounts. The doctrine of "unjust enrichment" would not be applicable to the case of the petitioner.

16. The learned A.G.P. relies upon the judgments delivered by the Supreme Court in ***Sahib Ram Verma Vs. State of Haryana*** *reported in* **(1995) Supp 1 SCC 18, Shyam Babu Verma and others Vs. Union of India and others** reported in ***(1994) 2 SCC 521 and Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others*** *reported in* ***(2012) 8 SCC 417,*** to contend that the petitioner had seven years for retirement when the recovery was initiated. He is class-III employee and not a class-IV employee. He

was not on the verge of retirement. He, therefore, cannot claim immunity from such recovery since it was not too late on the part of the Department in noticing it’s mistake, rectifying the said mistake and executing the action of recovery of amount.

17. This argument is contradicted by the Petitioner by contending that the communications dated 18.03.2008 and 29.03.2009, did not lead to any rectification action on the part of the respondents. Had they rectified their mistake, there would have been no reason for recovery. He submits that though the Petitioner acknowledges that there was a wrongful pay fixation, which put him in a higher bracket, as the Department itself has not initiated any action against him until 2016, he also believed that he was earning an appropriate pay scale. He further submits that he was protected by the first order of this Court dated 12.04.2016 and if the recovery is now to be initiated, it would have been done from the retiral benefits of the Petitioner as he has already superannuated on 28th February, 2023.

18. The learned A.G.P. submits that the act of the court should not prejudice any litigant. If this Court has protected the Petitioner in the first order, the said order should not prejudice the respondent and more so, since the respondent is the State authority and the excess amount paid to the Petitioner is from the State exchequer.

19. We do find that the submissions of the learned A.G.P. are well-pledged. However, we are concerned about balancing the equities while granting relief and in the present case, since the petitioner has retired and was not receiving excess amounts from the date of the impugned order 1st December, 2015, we, therefore, find it appropriate to conclude that the amount paid in excess to the

Petitioner from 2009 till December, 2015, need not be recovered from him.

20. With regard to the second issue, we find that the learned Advocate for the Petitioner has fairly stated, of course on instructions, that re-fixation of the pay scale carried out in 2016 pursuant to the impugned order, is appropriate and the Petitioner would not venture into questioning the same. The Petitioner is more concerned about the recovery since it would put heavy financial burden on a class-III employee and more so after his retirement. In view of the same and considering the record, we would conclude this litigation by recording that the re-pay fixation carried out in 2016 is sustainable.

21. In view of the above, this petition is partly allowed. The direction for recovering excess amount from the Petitioner, stands quashed and set aside. Rule is made partly absolute accordingly.

22. The learned advocate for the Petitioner points out that the pension papers of the petitioner, which should have been forwarded six months prior to his retirement, are at a stand still in view of the pendency of this matter. The learned AGP graciously submits that as this litigation is brought to end by this judgment, the Management can forward the pension papers in view of the pay fixation carried out in 2016 and will be processed without delay.

23. The learned counsel for the Management submits that the pension papers will be forwarded within 30 days from today. These statements are recorded.

24. We expect that the payment of regular pension of the

Petitioner should commence expeditiously and not later than 1st July, 2023. The arrears of pension should also be paid to the Petitioner within 90 days.

25. The learned Registrar (Judicial) shall forward a copy of this order to the office of the Accountant General at Nagpur.

(SANJAY A. DESHMUKH, J.) **(RAVINDRA V. GHUGE , J.)**

sga/