

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION (WP) NO.2894 / 2020

1. Savita d/o Wamanrao Kale
aged about 52 years,
Occu. Retired teacher,
R/o Khandvi, Tq. Jalgaon Jamod, Dist. :
Buldhana.

.... Petitioner(s)

// VERSUS //

1. State of Maharashtra,
Through principal Secretary, Rural
Development and water conservation
Department, Mantralaya, Mumbai-32
2. Divisional Commissioner, Amravati
Division, Amravati.
3. The Chief Executive Officer, Zilla
Parishad, Buldhana.
4. The Deputy Finance and Accounts
Officer, Zilla Parishad, Buldhana.
5. Block Development Officer, Panchayat
Samittee Jalgaon Jamod, Dist. Buldhana.

... Respondent(s)

Ms Sonali Gadhave, Advocate for the Petitioner
Ms H.N. Jaipurkar, AGP for the Respondent Nos.1 and 2/State
Shri Tariq Mohammad Zaheer, Advocate for the respondent Nos.3 to 5.

**CORAM : ANIL S. KILOR, J.
DATED : 20.02.2023**

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. In this writ petition, a challenge is raised to the recovery of gratuity amount on the ground of excess amount received by petitioner, vide order dated 05.12.2018 passed by Deputy Finance and Accounts Officer, Zilla Parishad, Buldhana and partly upheld by the Divisional Commissioner, Amravati Division, Amravati in appeal vide order dated 30.11.2019.
4. The brief facts of the present case are as under:

The petitioner was working as Assistant teacher in the Zilla Parishad Marathi Higher Secondary School. She served for 22 years 7 months 21 days and took voluntary retirement on 05.10.2018. It was informed to the petitioner that as she did not complete the MSCIT course within stipulated period, as per the Government Resolution No.2009/14/02/12 dated 02.09.2003, an increment granted to the petitioner from 01.07.2008 to 30.09.2017 is recoverable and accordingly, it was further informed that the petitioner is not entitled for

gratuity of Rs.2,35,730/- and the recovery was directed at the rate of Rs.6,000/- per month from the pension amount.

5. The said order was challenged in the appeal before the Divisional Commissioner which came to be partly allowed by holding that recovery of Rs.6,000/- per month from the pension is illegal, but the recovery of gratuity amount is held valid vide order dated 30.11.2019, the same is under challenge in this writ petition.

6. The learned counsel for the petitioner submits that the MSCIT certificate was submitted by the petitioner, though it was not submitted within stipulated time. It is submitted that no show cause notice was given to the petitioner before passing the order holding the petitioner not entitled for gratuity amount and for initiation of recovery of Rs.6,000/- per month from the amount of pension.

7. It is submitted that it was never informed to the petitioner that the non-submission of the MSCIT certificate within stipulated time will make her disentitled to receive the increment.

8. It is therefore, submitted that the recovery of gratuity amount and thereby the recovery on the ground of excess payment towards

increment, is illegal and bad in law, in the light of the judgment of the Hon'ble Supreme Court of India in the case of *State of Punjab and others V/s. Rafiq Masih (White Washer) and others*¹.

9. The learned counsel for the petitioner has further placed reliance upon the judgments of the Hon'ble Supreme Court of India as well as the judgments of the Division Bench of this Court, which are as follows:

(a) *Smt. Jayshree Trimbak Takalkar Vs. The Chief Executive Office and anr.* in Writ petition No.4616 of 2016 dated 22.12.2017,

(b) *Vishnu Vs. State of Maharashtra and others*²,

(c) *Rajan Madathil Vs. State of Goa Through Chief Secretary and Others*³,

(d) *Dadaji Kisanji Maske Vs. Divisional Commissioner and Others*⁴,

(e) *Ayajuddin Vs. Divisional Commissioner and Others*⁵,

(f) *Prasad Vinayak Sohoni Vs. The Treasury Officer, Thane and Anr.* in Writ Petition No.1192 of 2021 dated 12.01.2022,

1 (2015) 4 SCC 334

2 2021 DGLS(Bom.) 1533

3 2021 SCC OnLine Bom 132

4 2021 SCC OnLine Bom 4159

5 2021 SCC OnLine Bom 4160

- (g) *Union of India Vs. Inuganti Venkata Narasimha Murthy*⁶,
- (h) *Union of India Vs. Puran Chandra*⁷; and
- (i) *Kapil Dev Chaturvedi Vs. State of U.P. Thru. Prin. Secy. Finance and Others*⁸.

10. On the other hand, the learned counsel for the Zilla Parishad submits that the petitioner had submitted an undertaking to the effect that if the Zilla Parishad finds any excess amount is made, the same can be recovered from the amount of gratuity and pension. It is submitted that in view of the undertaking, the petitioner is not entitled to raise any challenge to the recovery of excess amount paid to the petitioner, post retirement. For this purpose, the learned counsel for the Zilla Parishad has placed reliance upon the judgment of the Hon'ble Supreme Court of India in the case of *High Court of Panjab and Hariyana and others Vs. Jagdev Singh*⁹ and the judgment of the Division Bench of this Court in the case of *Ananda s/o Vikram Baviskar Vs. State of Maharashtra and others*¹⁰.

11. The learned AGP supports the impugned order passed by the Divisional Commissioner.

6 2021 SCC OnLine Chh 3825

7 2021 SCC OnLine Chh 3683

8 2020 SCC OnLine All 933

9 (2016) 14 SCC 267

10 2022(2) Mh.L.J. 698

12. In the light of the rival submissions of the parties, I have perused the writ petition, the documents filed along with the writ petition and the reply as well as the impugned orders.

13. In this case, there is no dispute that the petitioner was appointed as Assistant Teacher in the Zilla Parishad Marathi Higher Secondary School and after serving the Zilla Parishad 22 years 7 months and 21 days, she took the voluntary retirement.

14. The compliance of submission of MSCIT certificate was made by the petitioner after taking the voluntary retirement on 05.10.2018, though the course was completed in the month of September 2017.

15. The undertaking on which the respondent/Zilla Parsihad is relying upon, shows that it was not voluntarily submitted by the petitioner but it was obtained by the Zilla Parishad on a printed format provided by the Zilla Parishad. There is no separate undertaking but it was printed on a page of which upper portion is having two certificates, certifying that there is no departmental inquiry pending and there is nothing to be received from the Panchayat Samiti Jalgaon Jamod and at the bottom of the said page, there is a printed undertaking. It appears

that, it is a practice of the Zilla Parishad to obtain such certificate and undertakings at the time of preparation of case for pension.

16. In the above referred backdrop, at this stage, it is necessary to refer to observations made by the Hon'ble Supreme Court of India in the case of *Rafiq Masih* (supra), which reads thus:

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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 far outweigh the equitable balance of the employer's right to recover.”

17. The law laid down by the Hon'ble Supreme Court of India in the case of *Rafiq Masih* (supra) has been followed in all the cases relied upon by the petitioner, holding the recovery post retirement, as illegal. Thus, considering the admitted facts of the present case, I am of the opinion that the case of the petitioner is covered by the law laid down by the Hon'ble Supreme Court of India in the case of *Rafiq Masih* (supra).

18. As far as the judgment of the Hon'ble Supreme Court of India in the case of *High Court of Panjab and Hariyana and others* (supra) is concerned, wherein the Hon'ble Supreme Court of India has held that, if there is an undertaking, the principles enunciated in the judgment in the case of *Rafiq Masih* (supra) will not apply the said judgment is of no help to the respondent Zilla Parishad, in view of the observations made herein above as regards the undertaking obtained by the Zilla Parishad in routine manner at the time of retirement and which does not appear to be voluntary.

19. It is also admitted fact that, the time of submission of the MSCIT certificate was extended by the Government time to time and still a decision as regards the same is pending with the Government.

20. Moreover, there is no documents filed by the Zilla Parishad to show that there are directions by the State Government to recover the amount of increment, in case of failure to submit the MSCIT certificate within stipulated time. It is significant in this case because undisputedly the petitioner has submitted MSCIT certificate, though, not in time.

21. Thus, there is no basis for recovery of amount from the petitioner on the ground that excess amount towards increment was paid to the petitioner. On this ground also the recovery is bad. In the circumstances, I pass the following order:

(i) The writ petition is **allowed**.

(ii) The order passed by the Divisional Commissioner, Amravati Division, Amravati dated 30.11.2019, to the extent of upholding the order of Deputy Finance and Accounts Officer, Zilla Parishad, Buldhana not to pay the amount of gratuity to the petitioner, is hereby quashed and set aside.

Rule is made absolute in the above terms. No costs.

[ANIL S. KILOR, J.]

Digitally signed by NIRANJAN
DOMAJI THAWRE
Signing Date: 24.02.2023
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