

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
WRIT PETITION 4771 OF 2018

Shyam s/o. Dashrath Wagde,
aged about 50 yrs, Occ. Service,
r/o. Adarsh Nagar,
Tahsil Hinganghat, Dist Wardha.

.....PETITIONER

...V E R S U S...

1. Education Officer (Secondary),
Zilla Parishad, Wardha.

2. Aadarsh Madhyamik Vidyalaya,
Selu (Murpad),
Post Sawli (Wagh), Tahsil Hinganghat,
District Wardha.

3. Hinganghat Shikshan Sanstha,
Behind Kunawar Petrol Pump,
Padmavati Nagar, Nandgaon Chourasta,
Hinganghat, District Wardha, through
its Secretary/President Shri W.N. Gaulkar

..RESPONDENTS

Ms. Aarti Singh, counsel for petitioner.
Mr. S.M. Ukey, Addl.AGP for respondent 1/State.
Mr. Anjan De, counsel for respondent 2.
Mr. A.D. Mohagaonkar, counsel for respondent 3.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE :12.04.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally
by consent.

3. The petitioner is assailing the communication dated

16.7.2018 issued by respondent 2, which communication is predicated on the letter dated 30.12.2017 issued by the Education Officer (Secondary), Zilla Parishad, Wardha, whereby recovery of Rs. 5,20,264/- (Rupees Five Lakhs Twenty Thousand Two Hundred Sixty Four) is ordered from the salary of the petitioner.

4. Facts lie in an extremely narrow compass.

5. Petitioner was appointed as Assistant Teacher on the establishment of respondent 2 on 3.10.1998.

6. It appears to be common ground that the post on which the petitioner was appointed, was held by Mr. T.K. Gaulkar, who was terminated on 21.3.1996.

7. Mr. T.K. Gaulkar, challenged the termination before the School Tribunal, which dismissed the appeal. Mr. T.K. Gaulkar approached the High Court in Writ Petition 220/1999, which the learned Single Judge dismissed vide order dated 7.7.2009. Mr. T.K. Gaulkar, however, succeeded in Letters Patent Appeal 483/2009, which was allowed vide judgment dated 19.9.2017. Mr. T.K. Gaulkar was held entitled to reinstatement with effect

from 1.5.1996 with 50% back wages, out of which, 25% was to be paid by the Management and 25% was to come from the public exchequer.

8. According to the Education Officer, the appointment of the petitioner was approved with effect from 3.10.1998 and the condition was that the order in appeal preferred by Mr. T.K. Gaulkar shall bind the petitioner. It is further contended that the petitioner gave an undertaking that if the decision in the pending litigation goes in favour of Mr. Mr. T.K. Gaulkar, the petitioner shall refund the entire salary received.

9. It is on such broad facts, that the recovery is ordered and which is assailed before us in writ jurisdiction.

10. We have perused the undertaking dated 2.9.2002 which is placed on record by the Education Officer, and which is the only undertaking to which our attention is invited. We note that the undertaking dated 2.9.2022 is obtained from the petitioner nearly four years after the approval to the appointment of the petitioner.

11. Even *de hors* the said aspect, we have no hesitation in recording that an undertaking to refund the salary received for the work discharged cannot, but be considered unconscionable. Such undertakings are considered in plethora of cases and are held to be unconscionable. The interaction between an employee, who is in need of employment and the mighty state is an interaction between David and Goliath. One of the recent decisions which considers an undertaking to pay back the amount received is of the High Court at Madhya Pradesh in ***Ghanshyam Shukla vs. State of Madhya Pradesh and Others (Writ Petition 8706/2017)*** which also considers the decision of the Hon'ble Supreme Court in ***High Court of Punjab and Haryana and others ..vs.. Jagdev Singh, (2016)14 SCC 267.***

12. We agree with the articulation of the Madhya Pradesh High Court.

13. In this view of the matter, we declare that there cannot be any recovery from the petitioner from the salary which is received for the period for which he has worked.

14. We quash the letters/orders impugned.

15. Needless to observe, if any amount is already recovered, the same shall be refunded to the petitioner within the next four weeks, failing which, the amount withheld shall attract interest @ 12% per annum.

16. The petition is disposed of in the aforesaid terms.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)

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