



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

Writ Petition No. 2527 OF 2023

Indakar s/o Gopalrao Khandekar
Age : 62 years, Occ. Retired as a Naik/Peon,
R/o : At Kolhewadi, Post Lahuri,
Tal. Kaij, Dist. Beed.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.
2. The Accountant General
Office of the Accountant General (A&E)-II,
West High Court Road, Civil Lines,
Nagpur, Maharashtra 440001.
3. The Education Officer (Secondary),
Zilla Parishad, Beed.
4. The Treasury Officer,
District Treasury Office,
Court Road, Near District Collector Office,
Shriram Nagar, Beed.
5. The Head Master,
Badebaba Vidhya Mandir,
Lahuri, Tal. Kaij,
Dist. Beed.
6. The Secretary,
Badebaba Shishan Prasarak Mandal,
Lahuri, Tal. Kaij,
Dist. Beed.

...Respondents

— — —

Mr. Amol B. Chalak, Advocate for the Petitioner.

Mr. P.S. Patil, Addl.GP for Respondent/State.

Mr. N.L. Jadhav, Advocate for Respondent No.5 & 6 (**Absent**)

— — —

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ..**

DATE : 26 SEPTEMBER 2024

FINAL ORDER [Per: Shailesh P. Brahme, J.] :

. Rule. Rule is made returnable forthwith. Heard both the sides finally at the admission stage.

2. The petitioner is superannuated employee of the respondent no.5 and 6/Management who is challenging the order dated 21.11.2022 passed by the respondent no.2/Accountant General and further action of recovering overpaid amount.

3. The petitioner was working as a peon with the respondent no.5/school. He was terminated on 30.07.1994 as an offence was registered against him and he was being prosecuted. He was acquitted of the offence. He preferred appeal before the School Tribunal against termination. After his acquittal, the appeal was allowed on 21.12.2020. He was reinstated on 05.01.2001 and superannuated on 31.08.2021.

4. After superannuation, the Head Master of the respondent no.5/school submitted proposal of the petitioner for retiral

benefits, wherein deficiencies were raised. There was exchange of communication between the school and the Education Department. The respondent no.2 directed recovery of amount of Rs.5,06,424/- from the retiral benefits of the petitioner due to overpayment. Out of that amount, Rs.4,15,800/- was directed to be deducted from gratuity and the balance amount of Rs.90,624/- was to be recovered from pension. This order is under challenge in the present petition. An amount of Rs.4,15,800/- has already been recovered from the gratuity. Due to the interim orders, the recovery of the balance amount has been stalled.

5. Learned Counsel for the petitioner submits that the recovery for overpayment of pay and allowance is arbitrary and high handed. The petitioner was Class-IV employee and was not responsible for overpayment. It is further submitted that he had actually discharged the services. It is further submitted that the recovery is for the period exceeding five years. It is further submitted that the action of recovery is extremely harsh and iniquitous. Reliance is placed on the judgment of **State of Punjab and Others Vs. Rafiq Masih (White Washter) etc.**, i(2015) 4 SCC 334.

6. Learned AGP for respondent nos. 1 to 4 supports impugned action. He would submit that the petitioner cannot be given benefit of wrong fixation of pay or wrong calculation of total service. It would be amounting to unjust enrichment. It is

further submitted that when the petitioner was not entitled to the payment, it is imperative for him to refund the amount.

7. We have considered the rival submissions of the parties. There is no dispute that the petitioner was Class-IV employee of respondent no.5 and 6 who was superannuated on 31.08.2021. His service was terminated on 30.04.1997 and he was reinstated on 05.01.2001. There was issue of calculation of his pensionable service and fixation of pay. The petitioner cannot be said to be responsible for the wrong calculation or incorrect fixation of pay.

8. The appeal preferred by him against termination was allowed and he was directed to be reinstated with 70% backwages and consequential benefits meaning thereby, the service for the intervening period was protected. After reinstatement, he rendered service up to 31.08.2021. In such a situation, it can be safely concluded that he had earned his emoluments.

9. The petitioner has rightly placed reliance on the judgment of the Supreme Court in the matter of State of Punjab and Others (supra). The present case is squarely covered by the ratio due to following facts :

- i Petitioner is Class-IV employee.
- ii Recovery was clamped after his retirement and the duration of over payment was exceeding five years.

- iii He was not responsible for excess payment.
- iv It would be iniquitous and causing hardship to him to refund the amount.

10. For the reasons stated above, we pass following order :

ORDER

- a. The writ petition is allowed in terms of prayer clause 'A'.
- b. The amount recovered shall be refunded to the petitioner within a period of four weeks. In case of delay the amount shall carry interest @ 6% per annum.
- c. The respondents shall revise the retiral benefits and shall disburse arrears to him if any and shall pay revised pension.
- d. Rule is made absolute in the above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE