



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8317 OF 2006
WITH CIVIL APPLICATION NO. 4561 OF 2017

Shrikant Trimbak Kulkarni

VERSUS

1. The State of Maharashtra
2. The Director of Education
3. The Divisional Dy. Director of Education
4. The Education Officer (Secondary Zilla Parishad)
5. The Senior Auditor, Education Department
6. The Head Master, Pratap Vidya Mandir

Mr. P. B. Patil, Advocate for the petitioner

Mr. V. M. Jaware, AGP for the respondent/State

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

DATE : 21.08.2024

PER COURT :

We have heard both the sides.

2. The petitioner *inter alia* is challenging the decision of the respondent authorities whereby they concluded after re-fixation of his salary that he was over paid and directed recovery is to be made from his salary by installments, by the impugned communication dated

25/08/2001.

3. The learned Advocate for the petitioner submits that a similarly placed colleague of the petitioner who had also suffered a similar order had challenged it in Writ Petition No. 4298 of 2007. The petition was allowed. A similar order has been passed in the petitioner's matter by the respondent no.3-Divisional Deputy Director of Education holding him not to have been appointed as higher secondary teacher. He would submit that this Court did not disturb the re-fixation but relying upon **State of Punjab and others vs. Rafiq Masih (White Washer)**, reported in **(2015) 4 SCC 334** the order was quashed and set aside to the extent it directed recovery. He would submit that though in that matter some recoveries were already made, in the petitioner's case no recovery has ever been made but his gratuity has been withheld. He would submit that though petitioner has a good case on merit, by passage of time, he is merely soliciting quashment of the impugned decision to the extent it directs recoveries to be made.

4. Having heard both the sides, since the petitioner was class-III employee and the recovery sought to be made for a period in excess of five years before the impugned order of recovery was passed, petitioner's case would be covered by categories (i) and (iii) of paragraph no.18 of

Rafiq Masih (supra). Hence the order.

ORDER

(i) The Writ petition is allowed partly. The impugned communication/order only to the extent directing recovery for the over payment revealed on account of re-fixation is quashed and set aside.

(ii) The respondent shall take appropriate steps for release the gratuity as early as possible and in any case within six (06) weeks.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

SSP