



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11706 OF 2019

1. Satish s/o Vishwasrao Patil,
age 45 years, Occ. Service.
2. Samadhan s/o Bhilla Vyavahare,
age 37 years, Occ. Service.
3. Kamalabai d/o Ramdas Ahire,
age 48 years, Occ. Service.
4. Manukumar s/o Ashok Patil,
age 31 years, Occ. Service.
5. Wahid Ali s/o Hamid Ali Sayyed,
age 43 years, Occ. Service.
6. Shaikh Gulabnabi s/o Shaikh Gaffar Mansuri,
age 48 years, Occ. Service.
7. Gopal s/o Vasant Patil,
age 43 years, Occ. Service.
8. Sarika d/o Devidas Borse,
age 33 years, Occ. Service.

All R/o Late Anubai Magu Sonawane
Aided Tribal Primary Ashram School,
Navagaon Kukdel-Shahada, Tq. Shahada,
Dist. Nandurbar.

Petitioner.

Versus

1. The State of Maharashtra,
(Through it's Secretary)
Tribal Development Department
Mantralaya, Mumbai – 32.
2. The Commissioner,
Tribal Development, Nashik.

3. The Additional Commissioner,
Tribal Development, Nashik.
4. The Project Officer,
Integrated Tribal Development Project,
Nandurbar, District Nandurbar. Respondents.

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Mr. V.A. Dhakne, Advocate for petitioner.
Mr. A.M. Phule, AGP for respondent nos.1 to 4.

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CORAM	:	SMT. VIBHA KANKANWADI & S. G. CHAPALGAONKAR, JJ.
Reserved on	:	15th April, 2024
Decided on	:	08th May, 2024

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FINAL ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The Petitioners are impugning the order dated 31.7.2017 passed by Respondent No.4- Project Officer, Integrated Tribal Development Project, Nandurbar thereby directing recovery of excess payment made towards one level promotional pay scale from the petitioners by deducting the amount from their monthly salaries in twelve equal installments.

2. Mr. V.A. Dhakane, learned advocate appearing for the petitioners submit that petitioners are the employees of Late Anubai Magu Sonawane Aided Tribal Primary Ashram School, Navagaon Kukdel-Shahada, District Nandurbar. The school is run by Adivasi Pardhi Saanskrutik and Shaikshanik Mandal, Shahada. The School receives grant-in-aid as Private Tribal Ashram School. The petitioners have been appointed on

their respective posts as Shikshan Sevak, Cook, Helper in group “C” and “D” posts since 15.6.2007. Services of the petitioners have been duly approved by the competent authorities of Tribal Development Department.

3. The petitioners contend that the School is situated at village Navagaon, within tribal area recognized under the Government Resolution dated 9.3.1990. The Additional concessional benefits were made available to its employees in terms of the Government Resolution dated 6.8.2002. Accordingly, one level promotional pay scale was extended to petitioners no.1 and 2 from 15.6.2010 and petitioner nos.3 to 8 from 15.6.2007. However, due to insufficient number of the students at village Navagaon, the school came to be transferred at village Kukdel vide order dated 29.11.2012. Although, the school was transferred to village Kukdel, petitioners were continued with one level promotional pay scale benefit, however, vide impugned order dated 28.2.2017 respondent nos.1 to 4 stopped the additional benefits and directed recovery of excess payment made to the petitioners on the ground that place of transfer of the school does not fall within the tribal area. Respondent No.4 further directed such recovery in 12 equal installments from current salary of the petitioners.

4. Mr. Dhakane, learned advocate for the petitioners submits that it is not a case of fraud or misrepresentation on the part of the petitioners. They continued their services in the same school, which was initially run in the tribal area at village

Navagaon. Later on, under the Government orders that is transferred to village Kukdel. Petitioners, who were extended benefit of one month promotional pay scale as per their eligibility for working in tribal area continued to receive the same even after transfer. No fault can be found with the petitioners. He would submit that excess payment made to class-3 or class-4 employees cannot be subjected to recovery after the period of 7 to 8 years; that causes great inconvenience to them. Relying upon the law laid down by the Supreme Court of India in case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 Supreme Court Cases 334** he would submit that action under impugned order is unsustainable and liable to be quashed and set aside.

5. Mr. A.M. Phule, learned AGP appearing for the respondent nos. 1 to 4 supports the impugned order. He would submit that the petitioners have received the promotional pay scales applicable to the employees working in the tribal area. However, on transfer of the school to non-tribal area, such benefit was not admissible to them. Salary bills of the petitioners were submitted by the school as per pay scale for the tribal area although school ceased to exist in the tribal area. Petitioners have knowingly received such benefit and made unjust enrichment. The respondent no.4 has rightly stopped benefit and directed recovery of excess payment made. The petitioners cannot object the same.

6. We have considered the submissions advanced by the learned advocates appearing for the respective parties. We have gone through the record tendered into service. It is not in dispute that the petitioners are class-3 and Class-4 employees working on Ashram School receiving 100% grant-in-aid. The State Government has framed policy under Government Resolution dated 6.8.2002 to grant promotional pay scales to the employees serving in the tribal area. Village Navagaon is recognized as Tribal Area as per the Government Resolution dated 9.3.1990. Petitioners were appointed while the School was operational at village Navagaon i.e. Tribal area. In pursuance of the Government Policy under Resolution of 2002, petitioners were bestowed with benefit of promotional pay scale. Admittedly, the school was transferred to non-tribal area under Governments order since 29.11.2012. However, petitioners were paid salary at the same scale that they were drawing while working in the tribal area till the impugned order came to be passed on 28.2.2017. Respondent no.4 not only stopped the promotional pay scale, but also directed recovery of excess payment made from 2012 onwards from the petitioners salary.

7. The Supreme Court of India in case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** (supra) considered the similar situation and laid down broader principles as regards to recovery of excess payment made to the employees. Paragraph no.18 of the said judgment states as under :-

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, summarize 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."*

8. Mr. Phule, learned AGP submits that the Supreme Court has further elaborated the scope of application of aforesaid principles in case of **High Court of Punjab and Haryana and others Vs. Jagdev Singh reported in 2016 (14) SCC 267** and observed that the principles enunciated in case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** would not be applicable when the officer has given an undertaking while opting for revised pay scale. He would submit that the petitioners themselves have given undertaking

in the month of December 2021 and admitted that their entitlement to promotional pay scale was only during the service at tribal area. Therefore, he urged to follow the course as laid down in case of High Court of Punjab and Haryana and others Vs. Jagdev Singh (supra). We are afraid to accept the aforesaid contentions. It appears that the petitioners are made to submit undertaking in the year 2021 during pendency of this writ petition, whereas, under the impugned order, recovery is sought to be made for the period from 2012 to 2017. In view of this factual backdrop, when petitioners had no occasion to submit any undertaking while receiving salary, the law espoused in case of High Court of Punjab and Haryana and others Vs. Jagdev Singh would have no application in the facts of the present case. The case of the petitioners would be governed by clause (i) of paragraph no.18 in case of Rafiq Masih (White Washer) (supra). Resultantly, we proceed to pass the following order.

ORDER

- i. Writ Petition is partly allowed.
- ii. The impugned order dated 31.7.2017 issued by the Project Officer, Integrated Tribal Development Project, Nandurbar is hereby quashed and set aside to the extent of directions for recovery of the excess payment made towards one level promotional pay scale from petitioners monthly salaries.
- iii. We declare and hold that excess amount made towards one level promotional pay scale till

the impugned order dated 31.7.2017 shall not be recoverable from the petitioners and, if any recovery is made in pursuance of the impugned order, the same shall be reverred to the petitioners.

- iv. Writ Petition stands disposed off in aforesaid terms. No costs.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)
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