



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

905 WRIT PETITION NO. 15389 OF 2019

NARENDRA GANGARAMPANT SATWASE,
Since deceased, through his L.Rs.:-

- 1-A) Aruna Narendra Satwase, (wife)
Age : 66 years, Occupation : Household.
- 1-B) Vishwajit Narendra Satwase, (son)
Age : 41 years, Occupation : Reporter.
- 1-C) Satyajeet Narendra Satwase, (son)
Age : 39 years, Occupation : Reporter.
A, B, C, all resident of
Ramkrishna Nagar, Vasmat Road,
Parbhani-431401.
- 1-D) Vaishali Narendra Satwase, (daughter)
Age : 38 years, Occupation : IT professional,
R/o Flat No.116, Samhita Elite,
Next to Christ Global School,
Hallihalli, Bangalore-560036.
- 1-E) Amarjeet Narendra Satwase, (son)
Age : 36 years, Occupation : Assistant Professor,
R/o Flat No.2, K1 Sector, Tarangan Kasliwal,
Nashik Road, Mitmita, Aurangabad-431003.
...Petitioners

VERSUS

1. THE STATE OF MAHARASHTRA.
Through Secretary,
Education and Sports Department,
Mantralaya, Mumbai-400032.
2. The Deputy Director of Education,
Secondary and Higher Secondary,
Pune.

3. The Divisional Deputy Director of Education, Latur Division, Latur.
4. The Education Officer (Primary), Zilla Parishad, Parbhani.
5. The Chief Finance and Accounts Officer, Zilla Parishad, Parbhani.

...Respondents

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Mrs.A.N. Ansari, Advocate for the Petitioners.

Shri M.M. Nerlikar, AGP for Respondent Nos.1 to 3/State.

Shri S.R. Yadav Lonikar, Advocate for Respondent Nos.4 and 5.

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**CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.**

DATE :- 13th June, 2024

ORAL JUDGMENT (*Per Ravindra V. Ghuge, J.*):-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The original employee, Narendra Gangarampant Satwase, has now passed away and his widow, and children who all are married and settled, are brought on record as legal heirs.

3. The deceased Petitioner has put forth prayer clauses

B and C as under :-

- “B) *It may be held that the petitioner is not entitled for any of the recovery as per entry of service book in page no.24, by issuing any appropriate writ order or direction as the case may be.*
- C) *The Respondents be directed to release the service pension with arrears and interest, in favour of petitioner from 01.03.2008, forthwith by issuing any appropriate writ order or direction as the case may be.”*

4. The deceased Petitioner was appointed as an Assistant Teacher, on 31.08.1972. He acquired B.Ed. qualification while in employment in 1978. He superannuated on 29.02.2008. One day prior to his superannuation, the deceased Petitioner submitted his service book for verification and during the exercise of verification of the service book, re-fixation of pay was done after noticing that the earlier pay fixation was erroneous. The deceased Petitioner was the Head Master, who did not submit his own pension proposal and as a consequence, the deadlock continued till he passed away on 31.01.2022.

5. We have considered the submissions of the learned Advocates for the respective sides. The learned Advocate Shri Yadav Lonikar has placed reliance on the Affidavit in Reply filed by the Education Officer (Primary), dated 30.08.2022.

6. It is obvious that the recovery of purported excess amount cannot be made at the fag end of the service tenure of an employee, keeping in view the law laid down by the Honourable Supreme Court in *Syed Abdul Qadir vs. State of Bihar and others, 2009 (3) SCC 475* and *State of Punjab and other vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334 = AIR 2015 SC 696*. On this count and in the light of said law, we set aside the impugned order of recovery. As such, we direct that there shall be no recovery as against the deceased Petitioner from his service benefits, payable to his widow.

7. The deceased Petitioner never questioned the re-fixation of his pay scale. It was after eleven years that the Petitioner preferred this Writ Petition and has only challenged the recovery towards excess payment and has prayed to release the pension with arrears and interest.

8. Since the Petitioner did not assail the pay re-fixation and accepted the same and as the Petitioner chose not to question the same in this petition, we have no reason to go into the issue

of pay re-fixation. The said pay re-fixation is, therefore, sustained.

9. For the reasons recorded herein above, having already quashed and set aside the order of recovery, this **Writ Petition is, therefore, partly allowed** with the following directions:-

(a) The Education Officer (Primary), who is before us, will issue an order to the present Headmaster of Primary School, at which school, the deceased Petitioner was earlier Headmaster, directing the present Headmaster to prepare the pension papers of the deceased Petitioner, within a period of 30 days.

(b) As the employee has passed away, if there is any compliance to be done or any signature is to be taken on his behalf, the present Headmaster shall approach the widow of the deceased employee, namely, Aruna Narendra Satwase, whose address is mentioned in the cause title of this petition and ensure that all the pension papers are completed within the said period of 30 days.

(c) Thereafter, the Headmaster shall forward the pension papers to the Education Officer (Primary), who shall

follow the procedure laid down in law and ensure that the pension proposal is cleared.

(d) The Authorities concerned shall ensure that the pension proposal is cleared and regular pension is paid to the widow, within 45 days from the date of receipt of the pension papers from the Headmaster.

(e) The arrears of pension also be calculated by the Competent Authority and such amount shall be paid to the widow within 30 days from the date the payment of pension has commenced.

(f) All retiral benefits would also be paid along with arrears of pension. Since the deceased employee has approached this Court belatedly, we are not granting interest.

(g) However, interest on the gratuity amount shall be calculated at the rate of 10% per annum, which is prescribed under the Payment of Gratuity Act, 1972, and the same shall be paid to the widow.

10. Rule is made partly absolute in the above terms.