



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15452 OF 2023

1. Prabhakar S/o Bhika Kothawade,
Age: 59 years, Occu: Retired from Service
R/o Plot No.13 B, Behind Bafna Petrol
Pump, Fagane, Tq. & Dist. Dhule.

... **Petitioner**

V/s.

1. The State of Maharashtra
Through its Secretary,
School Education & Sports Department,
Mantralaya, Mumbai-32.
2. The State of Maharashtra,
Through its Secretary,
Finance Department,
Mantralaya, Mumbai - 400 032.
3. The Accountant General- I,
Accounts & Entitlement,
Maharashtra, 2nd Floor, Pratishtha Bhavan,
New Marine Lines 101,
Maharshi Karve Road,
Church gate, Mumbai - 400020.
4. The Accountant Officer,
Education Department,
Dhule, Tq. & Dist. Dhule.
5. The Education Officer (Secondary),
Zilla Parishad, Dhule,
Tq. & Dist. Dhule.
6. The Headmaster,
Chhaganmal Sahebrao Bafna
High School, Fagner,
Tq. & Dist. Dhule.

... **Respondents**

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Ms. M.Y. Mali, Advocate for the Petitioner
Mr. P.K. Lakhotiya, AGP for the Respondent-State
Mr. Shaik Ashraf Patel, Advocate for the Respondent No.6

...

**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.**
DATE : 17th January, 2024

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.
2. The Petitioner is before this Court on a solitary ground. He retired from service on 31.12.2023 and recovery of purported excess payments on the basis of wrongful pay fixation, was initiated on 10.01.2023 post his retirement. The pay fixation was carried out on 29.08.2017.
3. The learned advocate for the Petitioner makes a solemn statement on instructions that the Petitioner was never called upon to tender any undertaking as regards the pay fixation. The Petitioner was not instrumental in creating his wrong pay fixation. No laches or oblique motives are attributed to his conduct. There is no allegation of fraud.
4. The learned AGP has opposed this petition contending that the time span between the payment of the excess amount and the recovery of the amounts is just five years.

5. The law of recovery of excess payments with regard to Class-III and Class-IV employees has been settled in the matters of **Syed Abdul Qadir V/s. State of Bihar; 2009 (3) Supreme Court Cases 475** and **State of Punjab and others V/s. Rafiq Masih (White Washer) and others; 2014 (4) Supreme Court Cases 334.**

6. In the above backdrop, it is undisputed that the Petitioner was a Junior Clerk falling in the Class-III category. Recovery has been initiated after his retirement. Mala fides or ulterior motives are not attributed to his conduct. A statement is made that an undertaking was never issued.

7. In view of the above, since this issue is no longer *res integra*, **the petition is partly allowed.** The impugned order dated 10.01.2023 issued by the school is quashed and set aside. The gratuity purportedly pending with Respondent No.3 shall be paid to the Petitioner with interest as is prescribed under the Payment of Gratuity Act, 1972 for the period from 01.02.2023 till 31.01.2024. The amount shall be paid on or before 15.02.2024.

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

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]