



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2653/2010

1. Uttamrao s/o Prabhakar Jadhav, Aged 50 years, Occupation-Service (Clerk), Shri Shivaji Jr. College, Savna, Tq. Mahagaon, District Yavatmal.
2. Kisan s/o Bhavru Dhangar, Aged 52 years, Occu.: Service (Helper), Shri Tajmal Gandhi Jr. College, Brahmangaon, Tq. Umarkhed, District Yavatmal.
3. Prakash s/o Maroti Thakre, Aged 46 years, Occ. : Service (Helper), Shri Shivaji Higher Secondary School, Savna, Tq. Mahagaon, District Yavatmal.
4. Chandrakant s/o Prabhakar Kulkarni, Aged 52 years, Occ. Service(Assistant), Saraswati Jr. College, Paras, Tq. Balapur, District Akola.
5. Asadkhan s/o Hamjakhan, Aged 52 years, Occu. : Service (Clerk), Fulsing Naik College, Pusad, District Yavatmal.
6. Vilas s/o Dadarao Bonde, Aged 53 years, Occu. Service (Laboratory Attendant), Shri Shivaji Bahu-uddeshiya Higher Secondary School and Jr. College, Shivaji Nagar, Amravati-444 603.
7. Shaligram s/o Mahadevrao Parde, Aged 56 years, Occu. Service(Laboratory Attendant), Shri Shivaji Bahu-uddeshiya Higher Secondary School and Jr. College, Shivaji Nagar, Amravati.

PETITIONERS

.....VERSUS.....

1. State of Maharashtra, through its
 - a. Secretary, General Administration Department, Mantralaya, Mumbai-32.
 - b. Secretary, Secondary and Higher Secondary Education, Mantralaya, Mumbai-32.
 - c. Secretary, Technical Education, Mantralaya, Mumbai-32.
2. Director of Technical Education, Maharashtra State, 3, Mahapalika Marg, Post Bag No. 1967, Mumbai-400 001.
3. Deputy Director of Technical Education and Training, Amravati Region, Amravati.
4. Accounts Officer, Technical Education & Training, Amravati Region, Amravati.
5. District Technical Officer, Akola, Tah. And District Akola.

6. District Technical Officer, Yavatmal,
Tah. and District Yavatmal.
7. District Technical Officer, Amravati,
Tah. and District Amravati.

RESPONDENTS

Shri R.L. Khapre, Senior Advocate with Shri R.G. Kavimandan, counsel for
the petitioners.

Shri H.D. Marathe, Assistant Government Pleader for the respondents.

CORAM : **NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.**

DATE : **JANUARY 23, 2024**

ORAL JUDGMENT (PER : NITIN W. SAMBRE, J.)

On December 08, 2010, this Court had granted **RULE** and interim relief in terms of Prayer Clause (iii) subject to each of the petitioners executing an undertaking to the effect that in the event the petition is dismissed, they shall have no objection to deduct the amount recoverable from their retiral benefits.

2. All the petitioners were working as non-teaching employees in different grant-in-aid schools. By the instant writ petition, the petitioners have prayed for quashing and setting aside of (a) Condition No.1 in Government Resolution dated July 12, 2004 by declaring that the scheme of time-bound promotion for all employees in private schools including the employees in the vocational courses is applicable with effect from October 01, 1994; (b) the order dated October 03, 2009 issued by the Respondent no.3-Deputy Director of Vocational Education and Regional Training, Amravati Region, Amravati; (c) the audit objection dated October 31, 2009 raised by the respondent no.4-Accounts Officer, Amravati in respect of the petitioners; and (d) the order of recovery like

the one dated November 27, 2009 passed by the respondent nos.5, 6 and 7. The petitioners have also prayed for issuance of a direction to the respondents to fix the pay-scale of the petitioners as per the recommendations of the Sixth Pay Commission by treating that they are properly given the benefit of time-bound promotion scheme in pursuance of the Government Resolution dated April 30, 1998 and July 23, 1998 and also by treating the pay-fixation of the petitioners made as per the recommendations of the Fifth Pay Commission as just and proper.

3. After the respondent no.1 started vocational education stream viz. Bifocal Courses which were identified as Minimum Competency Vocational Education as is reflected in the Government Resolution dated February 01, 1980 and the clarificatory Government Resolution dated February 20, 1980. Since the admissions to these courses were at +2 Level, the said vocational institutions were covered by the definition of 'School' as provided under the Secondary School Code. As such, the service conditions of the petitioners are governed by the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. So as to work on the issue of stagnation in service in relation to all such employees who do not have any promotional avenues inspite of having put twelve years of approved service, the scheme for grant of Time-Bound Promotion i.e. for conferring the next higher pay-scale was brought into effect.

4. In the aforesaid background, in view of the existing policy, the petitioners were given the Time-Bound Promotion having regard to their date of entry in service pursuant to the scheme as on October 01, 1994. It is claimed by the petitioners that while extending such benefit, support was drawn by the respondent-Authorities from the Government Resolutions dated April 30, 1998 and July 23, 1998. Accordingly, the pay-scale of the petitioners was fixed as per the Fifth Pay Commission with effect from January 01, 1996 having regard to the benefit to be extended of Time-Bound Promotion. According to the petitioners, the respondent no.3-Deputy Director of Technical Education *vide* order dated October 03, 2009 directed the respective Accounts Officers of the district in the Region to effect recovery of the additional payments made to the petitioners from June 01, 1994 to June 01, 2004 based on which the Accounts Department raised an objection as to the pay-scale of the petitioners. As a sequel of aforesaid objection, on November 23, 2009 recovery was ordered from the petitioners, which has prompted them to prefer this writ petition.

5. Our attention is invited by the learned counsel for the petitioners to the fact that all the petitioners have superannuated, but for the petitioner no.7. In view of the order passed by this Court, the recovery is informed to have been not effected. The learned counsel for the petitioners would urge that the benefit of the next higher pay-scale is

rightly extended in favour of the petitioners so as to overcome the issue of stagnation. As such, he would claim that the benefit extended was as per the policy that was existing and that being so, the respondent-Authorities have erred in ordering recovery against the petitioners which runs contrary to the scheme reflected in the Government Resolutions dated April 30, 1988 and July 12, 2004. He would further claim that the excess amount, if any, paid to the petitioners was not on account of any misrepresentation or fraud on the part of the petitioners. According to him, if the excess payment was made by the employer i.e. respondent-Authorities herein by applying wrong principle for calculation, such amount post superannuation cannot be recovered. As such, the act on the part of the respondent-Authorities not only causes financial hardship to the petitioners but also they would be put to financial stress having already utilized the amount received by them.

6. For substantiating the aforesaid submission, the learned counsel for the petitioners has drawn support from the judgments of the Apex Court in *Syed Abdul Qadir & Others Versus State of Bihar & Others* [2009 AIR SCW 1871] and *State of Punjab & Others Versus Rafiq Masih (White Washer) etc.* [AIR 2015 SC 696].

7. While countering the aforesaid submissions, the learned Assistant Government Pleader would strenuously urge that the plain reading of the above said resolutions would reflect that the petitioners

were not entitled for the benefit, for the educational institutions in which they were serving were conducting vocational courses which were not covered by those resolutions. According to him, the Government Resolution dated June 08, 1995 is for granting Time-Bound Promotion after twelve years of service by non-teaching employees which is restricted only to the State Government and not to the educational institutions where the petitioners were serving. He would further claim that the benefit of the Government Resolution dated October 08, 1997 also cannot be extended to the petitioners as it is the University and Affiliated Colleges and the Degree and Diploma Level Colleges which are conducted under the aegis of Higher and Technical Education can draw benefit therein. According to him, the Government Resolution dated April 30, 1998 was specifically for the non-teaching employees of the private schools. In this background, he would urge that the benefits under the Government Resolutions dated June 08, 1995, October 08, 1997 and April 30, 1998 cannot be extended to the petitioners who were non-teaching employees and discharged duties in Minimum Competency Vocational Courses. He would add that the services of the petitioners were controlled by the State Government through the Directorate of Vocational Education and Training and that being so, the benefit under the aforesaid Government Resolutions cannot be said to have been extended to the petitioners.

8. In the aforesaid background, he would urge that the petitioners were knowing about the non-applicability of the scheme to the vocational courses, still the petitioners have chosen to draw the benefit and as such, the impugned decision of effecting recovery from the petitioners is quite justified.

9. We have appreciated the aforesaid submissions.

10. It is not in dispute that all the petitioners have stood superannuated while working in Class-III and Class-IV cadres such as Assistant, Clerk, Laboratory Attendant, Helper, etc. The non-applicability of the Government Resolutions and the benefit thereunder to the petitioners is not for the reason that the petitioners have misrepresented or practised any fraud on the State Government for drawing the benefits, at least such is not the case of the respondent-Authorities. If we carefully consider the law laid down by the Apex Court in *Syed Abdul Qadir* (supra), it is worth to reproduce what the Apex Court has observed in paragraphs 27 and 28:-

27. *This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in equity,*

exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, 1995 Supp(1) SCC 18; Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; VGanga Ram vs. Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Others (2006) 11 SCC 709; Purshottam Lal Das & Others vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Others vs. Manjeet Singh and Another, [2006] 8 SCC 647; and Bihar State Electricity Board & Another vs. Bijay Bahadur & Another [2000] 10 SCC 99. 1995 AIR SCW 1780, 1997 AIR SCW 2754, 2006 AIR SCW 5252, 2006 AIR SCW 5325, 2006 AIR SCW 6035.

28. *Undoubtedly, the excess amount that has been paid to the appellants-teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.”*

11. The observations of the Apex Court in paragraphs 7, 9 and 10 of the judgment in *Rafiq Masih* (supra) are also worth mentioning which read as under :-

“7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer’s right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, “for doing complete justice in any cause” would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

8.

9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality, can be found in Articles 14 to 18, contained in Part III of the Constitution of India, dealing with “Fundamental Rights”. These Articles of the Constitution, besides assuring equality before the law and equal protection of the laws; also disallow, discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracized section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the “Directive Principles of State Policy”. These

Articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice – social, economic and political, by inter alia minimizing monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.

10. *In view of the aforestated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.”*

12. As such, if we appreciate the case of the petitioners in the backdrop of the law laid down by the Apex Court as referred hereinabove, it cannot be inferred that at any time during the services rendered by the petitioners they have misrepresented or practised fraud in the capacity of employees for drawing excess payment. We have reason to believe from the record that it is the employer who applied wrong principle for calculating pay and allowances.

13. The petitioners having already superannuated would be facing great hardship in case if we permit the respondents to cause recovery from their pension amount as not only the petitioners would be financially stressed but also the petitioners would be suffering financial hardship. As such, it would be iniquitous (unfair) to recover the amount which is voluntarily released by the respondent-Authorities in favour of the petitioners.

14. That being so, we deem it appropriate to pass the following order :-

- I. The order dated October 03, 2009 passed by the respondent no.3-Deputy Director of Technical Education and Training, Amravati Region, Amravati and the Audit Objection dated October 31, 2009 raised by the Accounts Officer, Vocational Education and Training, Regional Office, Amravati are quashed and set aside.
- II. The respondents are hereby restrained from causing any recovery against the petitioners as has been mentioned in the orders impugned.
- III. We further direct that the recovery, if any, effected from the petitioners, particularly the petitioner no.7 be undone by repaying the said amount.

15. The writ petition is allowed in aforesaid terms. Rule accordingly. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

APTE