

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

1023 WRIT PETITION NO. 7699 OF 2024

Vinayak Vitthal Jadhav

VERSUS

The State Of Maharashtra Through Its Secretary And Others

...

Mr. Vijay A. Dhakne - Advocate for the Petitioner

Mr. S. B. Pulkundwar - AGP for Respondent Nos. 1 to 5

...

CORAM : R. G. AVACHAT

AND

NEERAJ P DHOTE, JJ.

DATED : 31ST JULY, 2025

PER COURT : -

1. Heard the learned Advocate for the Petitioner and the learned AGP for Respondent Nos. 1 to 5.

2. The Petitioner was appointed as an 'Untrained Assistant Teacher' on 01.10.1998 with Respondent No. 6 – School. The Petitioner sought voluntary retirement on 31.12.2022. During his service tenure, the Petitioner received increments and the benefits of the Assured Career Progression Scheme [ACPS]. After the voluntary retirement, the papers of the Petitioner were forwarded to Respondent No. 5 for calculating the pensionary benefits. During verification, Respondent No.5 found that the Petitioner was given the benefit of ACPS from the incorrect date and the Petitioner was eligible to receive the said benefit from the year 2024. Thus, the order of recovery of Rs. 11,43,120/- was

passed. Being aggrieved by the same, the Petitioner has approached this Court by way of the present Writ Petition.

3. The learned Advocate for the Petitioner submits that it was the Headmaster of the School and the concerned authorities, who had fixed the pay-scale of the Petitioner from time to time, and the Petitioner was not responsible for the same. He submits that, it is a settled position in law that the recovery from Class – ‘C’ and ‘D’ employees after their retirement is impermissible. He submits that the impugned order of recovery was passed in violation of principles of natural justice. He, therefore, submits that the Petition be allowed and the impugned order be quashed and set aside.

4. The Petition is vehemently opposed by the learned AGP appearing for Respondent Nos. 1 to 5. He submits that the information which was to be provided in the prescribed format for granting monetary benefits under the ACPS etc., was signed by the Petitioner himself. He further submits that, in the said format, the Petitioner had mentioned an incorrect period under the column ‘Trained Primary Teacher’. He submits that, this was the misrepresentation which was made by the Petitioner. He submits that, if the order of recovery was made on the basis of misrepresentation by the employee, the recovery is always permissible. He, therefore, prays that the Petition be dismissed.

5. After hearing both the sides and perusing the papers on record, it is clear that the impugned order of recovery was passed against the Petitioner without giving an opportunity of hearing to him. Both, the Advocate for the Petitioner and the learned AGP for Respondent Nos. 1 to 5, are *ad idem* that the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 are applicable to the Petitioner. Rule 134-A of the said Rules provides the mechanism for recovery and adjustment of excess amount paid. The said provision mandates that the Government shall give an opportunity to the Petitioner to show cause as to why the amount due should not be recovered from him. Admittedly, there is no adherence to the said Rule. Hence, without going into the merits of the case, we partly allow this Writ Petition in the following terms:

ORDER

- [i] Petition is partly allowed.
- [ii] The impugned order of recovery is quashed and set aside.
- [iii] The concerned Respondent-authority shall grant opportunity of hearing to the Petitioner and thereafter decide the issue of excess payment/recovery.
- [iv] The concerned authority shall release the retiral benefits in favour of the Petitioner within a period of three (3) months

on the basis of calculations which according to them were
as per entitlement.

6. The Petition is, accordingly, disposed off.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE