



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

WRIT PETITION NO. 10931 OF 2024

Motiram S/o. Laxman Pendor,
Age. 60 years, Occ. Pensioner,
R/o. Rajgad, Tq. Kinwat,
Dist. Nanded.

...Petitioner.

Versus

1. The State of Maharashtra.
2. The Commissioner,
Tribal Development, Nashik.
3. The Additional Commissioner,
Tribal Development, Amravati.
4. The Project Officer,
Integrated Tribal Development
Project, Kinwat, Dist. Nanded.
5. The Accountant General (A & E)
II, Maharashtra, Nagpur-01,
Pension Wing, Old Building,
Civil Lines, Nagpur.
6. The Assistant Accountant General/
Sr. Accounts Officer,
Maharashtra, Nagpur-01,
Pension Wing, Old Building,
Civil Lines, Nagpur.
7. The Head Master,
Anudanit Adiwasi Ashram
School, Kherda, Tq. Kinwat,
Dist. Nanded.

...Respondents.

Advocate for Petitioner : Mr. V.A. Dhakne
AGP for Respondent Nos. 1 to 5 : Mr. A.A.A. Khan
Advocate for Respondent No. 7 : Mr. S.K. Dhanture h/f. Mr. R.V. Gore

**CORAM : R. G. AVACHAT AND
ABASAHEB D. SHINDE, JJ.
DATE : 11.09.2025**

ORAL JUDGMENT (Per : Abasaheb D. Shinde, J.) :

. Rule. Rule made returnable forthwith. With the consent of the parties taken up for final hearing at the admission stage.

2. By this Writ Petition under Article 226 of the Constitution of India, the petitioner is seeking following reliefs :

“A) To quash and set aside the impugned order dated 09.08.2023 issued by the Assistant Account General/ Sr. Accounts Officer, Office of the Account General, Nagpur to the extent of recovering of over payment of pay and allowances of Rs. 14,25,006/- (Fourteen Lakh Twenty Five Thousand Six Rupees) from the petitioner and to quash and set aside the impugned recovery of Rs. 14,25,006/- made by the respondent no.4 from the payment of leave encashment and gratuity amount of the petitioner on 18.01.2024 and 29.01.2024, by issuing a writ of Certiorari or any other appropriate writ, order or direction as the case may be.

B) To direct the respondents to repay the amount of pay and allowances of Rs. 14,25,006/- (Fourteen Lakh Twenty Five Thousand Six Rupees) recovered from the gratuity amount and other pay and allowances of the petitioner to the petitioner alongwith a interest @ 12 p.a., by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be.

C) To quash and set aside the impugned new revised pay fixation order dated 11.04.2023 and new revised one step pay scale fixation order dated 11.04.2023 issued by the respondent no. 7 to the petitioner, by issuing a writ of Certiorari or any other appropriate writ, order or direction as the case may be.

D) To direct the respondents to pay the amount of pay and allowances of Rs. 14,25,006/- (Fourteen Lakh Twenty Five Thousand Six Rupees) to the petitioner which is recovered from the gratuity/ pension amount and other pay and allowances of the petitioner, pending hearing and final disposal of this petition.”

3. It is a case of the petitioner that the petitioner was working as a Hostel Superintendent in Class – III (Group ‘C’) in an aided Tribal Primary Ashram School, Kherda, Tq. Kinwat, Dist. Nanded, run by Sant Tukdoji Maharaj Adivasi Shikshan Prasarak Mandal, Kherda, for a period between 01.08.1994 and 30.09.2022. It is further case of the petitioner that after following the due procedure, he came to be appointed as Hostel Superintendent in Group ‘C’ in the said Ashram School initially on 01.08.1994 and his service has been duly approved by respondent no. 3 – Additional Commissioner, Tribal Development, Amravati, and respondent no. 4 – the Project Officer, Integrated Tribal Development Project, Kinwat, District Nanded. It is further case of the petitioner that the petitioner was given the pay scale of trained Hostel Superintendent since his initial appointment by respondent no. 3 herein vide order dated 28.10.2016 by virtue of order dated 16.09.2015, passed by this Court in Writ Petition No. 8386/2015. It is further asserted by the petitioner that the service of the petitioner was

continuous and satisfactory without any complaints whatsoever.

4. The petitioner has further asserted that respondent no. 1 issued Government Resolution dated 06.08.2002, thereby, providing certain additional benefits to the employees working in tribal/remote/naxalite area wherein, all those employees of Group 'A' to 'D' post working in those area were given one level promotional pay scale (one step up pay scale) and pursuant to the said policy, respondent no. 3, therefore, has extended the benefit of one level promotional pay scale to the petitioner.

5. It is also contention of the petitioner that the petitioner was given the pay scale of trained Hostel Superintendent since his initial appointment by respondent no. 3 on 28.10.2016 and the pay scale given to the petitioner was duly verified by conferring the benefits of 5th and 6th pay commission vide its order dated 21.12.2016. The petitioner further contends that while fixing the said pay fixation of the pay scale no undertaking as such was taken by either of the respondents and thus, the petitioner was conferred with the pay fixation as per 5th and 6th pay commission without any demur.

6. The petitioner also asserted that while the petitioner was on the verge of superannuation and ultimately when the petitioner retired on attaining the age of superannuation on 30.09.2022, respondent no. 7 – Headmaster of the Ashram School forwarded the proposal for grant of pensionary benefits to the petitioner before six months i.e. 06.04.2022 after a due verification, to respondent nos. 5 and 6, herein. The petitioner also further submits that the said proposal was routed through respondent no. 3 – the Additional Commissioner, Tribal Development, Amravati.

7. The petitioner further contended that the pension proposal of the petitioner was returned back by respondent nos. 5 and 6 vide its communication dated 25.08.2022, thereby, calling upon respondent nos. 3 and 4 for verification of the revise pay fixation of the petitioner by observing as follows :

“This office is unable to process the pension case for want of following : REVISED PAY OF RS. 10700+2800 ON 01/01/2006 MAY BE GOT VERIFIED BY PAY VERIFICATION UNIT ALSO CLARIFY HOW THE PAY OF RS. 13840+2800 HAS BEN ARRIVED ON 01/07/2006.”

8. The petitioner, therefore, contends that pursuant to the said objection by respondent nos. 5 and 6, respondent no. 7 – Headmaster of the Ashram School again re-verified the earlier pay fixation order dated 21.05.2016, paid to the petitioner and issued a new revised pay fixation order on 11.04.2023 and have again re-submitted to respondent nos. 5 and 6. The petitioner further submits that on 09.08.2023, though respondent no. 6 – the Assistant Accountant General / Senior Accounts Officer, Maharashtra, has granted the pensionary benefits to the petitioner, however, respondent no. 6 without giving any opportunity to the petitioner straight away recovered over payment of pay and allowances to the extent of Rs. 14,25,006/- from the gratuity as well as pensionary benefits of the petitioner and thus, the petitioner has prayed that the said action of the respondents/authorities firstly in recovering the amount of Rs. 14,25,006/- from the pensionary benefits of the petitioner and so also, further act of the respondents of revising the pay fixation vide order dated 11.04.2023, is bad in law and, therefore, the same is liable to be quashed and set aside.

9. An affidavit-in-reply has been filed on behalf of respondent no. 4 – Project Officer, Integrated Tribal Development Project, Kinwat, thereby, stating that respondent no. 7 – Headmaster has issued a new revise pay fixation order on 11.04.2023, so also, the action initiated by respondent no. 6 by issuing a letter dated 09.08.2023, thereby, recovering an amount of Rs. 14,25,006/- was forwarded to the office of respondent no. 4. It is thus submitted by respondent no. 4 that the action of re-fixation as well as asking respondent no. 4 to recover the said excess payment made to the petitioner is at the behest of respondent no. 7. In short, the stand of respondent no. 4 is that in all this process, it is respondent no. 6 who has initiated an action of recovery and respondent no. 7 who has revised the pay fixation of the petitioner.

10. We have heard the learned counsel for the petitioner, learned AGP appearing for State and learned Advocate Mr. Dhanture holding for Mr. Gore for respondent no. 7.

11. Learned counsel for the petitioner would submit that the action of respondents in recovering the amount of Rs. 14,25,006/- under two heads i.e. 8,06,000/- from the payment of leave encashment on 18.01.2024 and an amount of Rs. 6,19,006/- from the gratuity amount on 29.01.2024, making total amount of Rs. 14,25,006/- is arbitrary, unreasonable and against the principles of natural justice. Learned counsel would further submit that admittedly while the pay fixation of the petitioner was made right from beginning no undertaking whatsoever has been obtained from the petitioner by respondents at any point of time. It has also been contended by the learned counsel for the petitioner that the action of recovery from the pensionary benefits of the petitioner has been taken when the petitioner

attained the age of superannuation and retired from the service on 30.09.2022 and the said action of respondent no. 6, thereby, initiating recovery from the pensionary benefits of the petitioner under the garb of entitlement of the petitioner in receiving the pay scale from the revise pay fixation is contrary to the law laid down by the Hon'ble Apex Court in the case of **State of Punjab and Others Versus Rafiq Masih (White Washer) and Others, (2015) 4 SCC 334**, and the learned counsel for the petitioner would further submit that when the pay fixation of the petitioner was made and while the petitioner was given the pay scale as a trained Hostel Superintendent, no undertaking was taken from the petitioner to the extent that in future if any excess amount is paid to the petitioner under mistaken pay fixation, the petitioner is supposed to refund the said excess payment and once it is found that the petitioner has received the said pay scale and payment without any mischief, misrepresentation or fraud, in that case, the petitioner cannot be faulted with and the amount from the pensionary benefits of the petitioner cannot be recovered.

12. Learned counsel for the petitioner also placed reliance on the judgment of the Hon'ble Apex Court in the case of **Syed Abdul Qadir and Others Versus State of Bihar and Others, (2009) 3 SCC 475**, and more particularly by inviting our attention to paragraph no. 59 of the said judgment which reads thus :

“59. 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.”

13. Learned counsel for the petitioner would also place reliance upon sequel of orders passed by this Court viz. Order dated 25.06.2025 in the case of **Gangadhar Janardhan Admane and Others Versus The State of Maharashtra and Others in Writ Petition No. 6442/2023**, judgment and order dated 09.02.2024 in the case of **Khan Almas Zohara D/o. Gulam Ahmed Khan Versus The State of Maharashtra and Others in Writ Petition No. 6763/2023**, common order dated 23.03.2023 passed in the case of **Shaikh Amir Shaikh Kadar Versus The State of Maharashtra and Others in Writ Petition No. 3320/2023** along with connected Writ Petitions, so also, judgment and order dated 12.02.2018 in the case of **Prabhakar Ramdas More and Others Versus The State of Maharashtra and Others in Writ Petition No. 695/2016**, to buttress his submission that

once it is found that the employee is not at fault while fixing the pay scale of the employee and the excess payment made to the said employee without there being any fault on the part of the said employee or no fraud or misrepresentation is practiced by the employee while receiving the said pay scale or payment thereon, the authorities cannot recover the excess payment that too, after the said employee attains the age of superannuation and retired from the service and thus, the learned counsel for the petitioner have prayed that the Writ petition may be allowed as prayed for.

14. After hearing the learned counsel for the petitioner as well as the learned AGP for the respondent nos. 1 to 5, we are of the considered view that the action of respondent no. 6 impugned in this Writ Petition is unsustainable for more than one reason. That, it is an admitted fact that while the pay fixation of petitioner was fixed and the pay scale was conferred on the petitioner, no undertaking whatsoever was obtained from petitioner at that time and secondly, admittedly, when the petitioner retired from the service on 30.09.2022 and when the proposal for grant of his pensionary benefits was submitted to respondent no. 6 by respondent no. 7, at that time for the first time respondent no. 6 raised an objection regarding pay fixation of the petitioner and directed that an amount of Rs. 14,25,006/- be recovered from the pensionary benefits of the petitioner and in fact has already been recovered the said amount without either giving notice to the petitioner or affording any opportunity of hearing to the him. Thirdly, the petitioner has not obtained the pay fixation and the payment pursuant thereto either by playing fraud or by misrepresentation.

15. Thus, we are of the considered view that the case of the petitioner is squarely covered by the judgment of the Hon'ble Apex Court in the case of **State of Punjab and Others Versus Rafiq Masih (supra)** as well as the judgment of the Hon'ble Apex Court in the case of **Syed Abdul Qadir and Others Versus State of Bihar (supra)** as well as various orders passed by this Court as referred above and we, therefore, are inclined to allow this Writ Petition by adopting the same course as has been adopted by this Court in **Writ Petition No. 644/2023 in the case of Gangadhar Janardhan Admane and Others (supra)**, thereby, quashing and setting aside the impugned order or action of respondent no. 6 effecting recovery of Rs. 14,25,006/- from the pensionary benefits of the petitioner by further directing respondent no. 6 to repay the said amount to the petitioner on or before 31.10.2025. In case, the respondent no. 6 fails to pay the amount within the aforesaid period the respondent no. 6 shall be liable to pay simple interest at the rate of 6% per annum on the delayed payment.

16. We, therefore, make the rule absolute in terms of prayer clause 'A', 'B' and 'D' as above.

17. As far as prayer clause 'C' thereby, challenging the action of revise pay fixation initiated vide order dated 11.04.2023 issued by respondent no. 7 herein is concerned, as observed by this Court in the case of **Gangadhar Janardhan Adhmane (supra)**, respondent no. 7 is at liberty to issue a notice within 21 days from today to the petitioner calling upon the petitioner to show cause on the mistake in calculating the pay scale. After granting the petitioner a reasonable opportunity of hearing, a reasoned order be passed within a period of 90 days from the date of issuance of

notice. If the petitioner is aggrieved by the order of employer, he is at liberty to challenge the same. We further observe that if the mistake is noticed and correction is made by the employer, the same shall be made effective prospectively and the pension shall be re-calculated prospectively. We, therefore, dispose of the Writ Petition in above terms with no order as to costs.

(ABASAHEB D. SHINDE, J.)

(R. G. AVACHAT, J.)

spc/