



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 5193 OF 2024

PETITIONER : Omprakash Baburaoji Gaidhane, Aged
54 Years, Occu. Service, R/o. Om Sai
Shri Ram Nagar, Tah. Tumsar, District
Bhandara.

//VERSUS//

RESPONDENTS : 1. State of Maharashtra, through its
Secretary, Department of Rural
Development and Water Conservation,
Mantralaya, Mumbai.

2. The Zilla Parishad Bhandara, through
Chief Executive Officer, Bhandara.

3. Education Officer (Primary), Zilla
Parishad, District – Bhandara.

4. The Head Master, Zilla Parishad High
School Mohadi, Tah. Mohadi, District
Bhandara.

Mrs. S.S. Wandile, Advocate for the Petitioner.
Mr. A.V. Palshikar, AGP for Respondent No.1.
None for Respondent Nos.2 to 4.

CORAM : SMT. M.S. JAWALKAR AND
RAJ D. WAKODE, JJ.

RESERVED ON : 25th SEPTEMBER, 2025.
PRONOUNCED ON : 14th OCTOBER, 2025.

JUDGMENT :- (PER : RAJ D. WAKODE, J.)

Heard Mrs. S.S. Wandile, learned counsel for the petitioner, Mr. A.V. Palshikar, learned Assistant Government Pleader for respondent No.1.

2. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the parties.

3. The petitioner has approached this Court seeking challenge to the impugned order dated 01/07/2024, passed by respondent No.2 – Chief Executive Officer, Zilla Parishad, Bhandara, thereby directing the recovery of excess payment made towards the Grade Pay difference from GP-4300 to GP-4500, in respect of teachers who were promoted from Assistant Lower Division Graduate Teacher to Assistant Secondary School Teacher (Higher Grade), similar to the petitioner.

4. The petitioner was appointed on 11/03/1991 as an Assistant Primary Teacher. At the time of appointment, the petitioner held the qualification of S.S.C. and D.Ed. He subsequently completed his B.A. and B.Ed. The petitioner was promoted from the post of Assistant Lower Division Graduate Teacher to Assistant Secondary School Teacher (Higher Grade) by Respondent No.2, *vide* promotion order dated 06/05/2013, which is placed on record at page No.15 (Annexure-1).

5. Upon promotion, as the petitioner's responsibility increased, he became eligible for a promotional increment, and was accordingly given a promotional increment of Rs.610/- w.e.f. 01/07/2013 *vide* Government Resolution dated 05/05/2010.

Furthermore, as per the Government Resolution dated 27/02/2009, in cases where there is no change in salary scale upon promotion, an increase in Grade Pay is to be given. Consequently, the Finance Department approved an additional Grade Pay of Rs.200/- w.e.f. 01/07/2013, resulting in a pay fixation of Rs.9300-34800 with GP-4500.

6. It is pertinent to note that the said pay fixation was accepted by the Competent Authorities of the Government and the Zilla Parishad, and the same was extended not only to the petitioner but also to other similarly situated teachers.

7. Respondent No.2, *vide* order dated 24/09/2018, issued a clarification stating that a person who is promoted and posted to a position with the same salary scale is not entitled for a promotional increment. Accordingly, *vide* order dated 02/08/2019, it was directed that excess payments made on account of such increments will be recovered from those persons who had received the increase, on the ground that if a person is promoted and posted to another post with the same salary scale, there is no requirement for pay fixation in respect of the concerned teacher.

8. The aforesaid order dated 02/08/2019 was challenged by various teachers working under the Zilla Parishad, Bhandara, by filing Writ Petition Nos.6771/2019, 6772/2019, 6780/2019 and 6827/2019 before this Court. This Court, *vide* its common judgment dated 24/08/2021, held that such recovery was not permissible, and accordingly, quashed the order dated 02/08/2019, passed by the Chief Executive Officer, Zilla Parishad, Bhandara, to the extent that it

directed recovery of the excess payments made to each petitioner. The copy of the said judgment is placed on record at page No.28 (Annexure-7).

9. Despite having suffered the aforesaid judgment dated 24/08/2021, respondent No.2 has issued another communication dated 01/07/2024, thereby directing the recovery of excess payment made towards the Grade Pay difference from GP-4300 to GP-4500, in respect of teachers who were promoted from Assistant Lower Division Graduate Teacher to Assistant Secondary School Teacher (Higher Grade). The petitioner is one such Assistant Teacher who is now subjected to recovery of the alleged excess payment, and has therefore approached this Court seeking quashing and setting aside of the impugned order dated 01/07/2024, passed by respondent No.2 – Chief Executive Officer, Zilla Parishad, Bhandara.

10. Mrs. Wandile, learned counsel for the petitioner, contends that the petitioner was serving as an Assistant Lower Division Graduate Teacher and was duly promoted to the post of Assistant Secondary School Teacher (Higher Grade) *vide* order dated 06/05/2013. Therefore, the petitioner was entitled for the enhanced increment in grade pay. She submits that the aforesaid grade pay was granted on account of the promotion, as the petitioner was legally entitled for the same, and not due to any misrepresentation or fraud on the part of the petitioner.

11. She further submits that the petitioner is a Class-III employee and the recovery pertains to payments made over a period exceeding five years. Hence, such recovery is not permissible in view

of the law laid down by the Hon'ble Apex Court in the case of *State of Punjab and Ors. Etc. Vs. Rafiq Masih (White Washer) Etc. (AIR 2015 SC 696)*. Therefore, she submits that the impugned order dated 01/07/2024, issued by respondent No.2, is clearly unsustainable in the eyes of law and deserves to be quashed and set aside.

12. This Court, on 05/09/2024, issued notice for final disposal to the respondents. The notice was duly served upon respondent Nos.2 to 4. Respondent Nos.2 to 4 engaged Ms. Veena S. Mool, learned counsel, to appear on their behalf in the present petition. However, it appears that, till date, respondent Nos.2 to 4 have not filed their reply opposing the claim of the petitioner. It is also pertinent to note that, when the matter was called for final hearing today, none appeared on behalf of respondent Nos.2 to 4.

13. Since the petitioner is an employee of respondent No. 2 – Zilla Parishad, Bhandara, and is working in respondent No. 4 – School run by Zilla Parishad, Bhandara, and is challenging the impugned communication dated 01/07/2024 issued by the Chief Executive Officer, Zilla Parishad, Bhandara, and in view of the fact that similar issues were raised in Writ Petition Nos.5256/2024 and 5257/2024, which were decided by this Court *vide* judgment dated 14/10/2025, we proceed to decide the present writ petition in accordance with the view taken by this Court in the said writ petitions.

14. We have heard the learned counsel for the petitioner and perused the material on record. At the outset, it may be stated that respondent No.2 has not contended that the order of promotion was passed on account of any misrepresentation or fraud committed by

the petitioner. Neither it is the case of respondent No.2 that the petitioner was granted the benefit of pay fixation on the post of Assistant Secondary School Teacher (Higher Grade) based on any misrepresentation or fraud.

15. It is pertinent to mention that the order of promotion was issued on 06/05/2013, whereas the impugned communication directing recovery on the basis of the said promotion was issued on 01/07/2024 i.e. after a lapse of more than 11 years.

16. The petitioner was granted the benefit of revised Grade Pay from 01/07/2013, which continued until 01/03/2023, when the Grade Pay was revised and since then, the petitioner has been drawing a reduced salary. However, it is undisputed that the petitioner received payments based on the higher Grade Pay from 01/07/2013 to 01/03/2023 i.e. for a period of more than ten years. In our considered view, the observations in the case of **Rafiq Masih (White Washer) Etc.** (supra) in paragraph 12(i) to 12(iii), which are reproduced hereinbelow, are squarely applicable to the facts of the present case.

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group ‘C’ and Group ‘D’ service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.”

17. In that view of the matter, the impugned order dated 01/07/2024, passed by respondent No.2 – Chief Executive Officer, Zilla Parishad, Bhandara, insofar as it directs recovery of excess payment made to the petitioner, is unsustainable in the eyes of law and deserves to be quashed and set aside.

18. In our view, the aforesaid judgment clearly covers the present case, and therefore, for the reasons stated above, we propose to allow the present writ petition. Accordingly, we proceed to pass the following order:

ORDER

- (a) The writ petition is **allowed**.
- (b) The impugned order dated 01/07/2024, passed by respondent No.2 – Chief Executive Officer, Zilla Parishad, Bhandara to the extent it directs the recovery of excess payment made to the petitioner, is hereby quashed and set aside.
- (c) Rule is made absolute in aforesaid terms. The parties to bear their own costs.

(RAJ D. WAKODE, J.)

(SMT. M.S. JAWALKAR, J.)