



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

WRIT PETITION NO. 5256 OF 2024

PETITIONER : Pyarelal Hiralal Choudhari, Aged 57
Years, Occu. Service, R/o. Near New
Bus Stop, Shriram Nagar, Tumsar,
District : Bhandara – 441912.

//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 Mitewani, Tah. Tumsar, District
Bhandara.

Mrs. S.S. Wandile, Advocate for the Petitioner.
Mr. A.V. Palshikar, AGP for Respondent No.1.
Mr. B.N. Jaipurkar, Advocate 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, and Mr. B.N. Jaipurkar, learned counsel for respondent Nos.2 to 4.

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 holds the educational qualification of B.A. B.Ed. and was appointed as an Assistant Lower Division Teacher on 01/01/1988 by respondent No.2, in respondent No.4 – School, which is run by respondent No.2. 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 14/05/2012, which is placed on record at page No.14 (Annexure-1). The petitioner was earlier given the status of Graduate Teacher with retrospective effect from 30/06/1995. Accordingly, the petitioner was given a time-bound promotion with retrospective effect from 30/06/2007, *vide* order dated 03/12/2016, upon completion of 12 years of service as Graduate Assistant Teacher.

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.660/- w.e.f. 16/05/2012 *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. 16.05.2012, 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.29 (Annexure-8).

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 14/05/2012. 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 is on the verge of retirement, and that 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. Mr. B.N. Jaipurkar, learned counsel appearing for the contesting respondent Nos.2 to 4, has invited our attention to an undertaking dated 01/09/2021, allegedly given by the petitioner, consenting to the recovery of excess payment made. He contends that since the petitioner had voluntarily given such an undertaking, the recovery of the excess payment is justified on the basis thereof. He further relies upon the judgment of the Hon'ble Apex Court in the case of ***High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh (AIR 2016 SC 3523)***, to contend that if an undertaking is given by an employee, then the recovery of the excess payment made by the employer is justified.

13. We have heard the learned counsel for the parties 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.

14. It is pertinent to mention that the order of promotion was issued on 14/05/2012, 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 12 years.

15. The fact remains that the petitioner is a Class-III employee and is on the verge of retirement, being 57 years old at the time of filing this petition. The petitioner was granted the benefit of revised Grade Pay from 16/05/2012, which continued until 01/09/2021, 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 16/05/2012 to 01/09/2021 i.e. for a period of more than nine 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.”

16. 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.

17. The contention of the contesting respondent Nos.2 to 4 that the impugned order is justified in directing the recovery of excess payment on the basis of the undertaking dated 01/09/2021 is being recorded only for the purpose of rejection. The reason being that the said undertaking was obtained by respondent No.2 from the petitioner on 01/09/2021, which is placed on record at page No.48. The petitioner had been granted the benefit of promotion to the post of Assistant Secondary School Teacher (Higher Grade) along with the corresponding pay scale with effect from 14/05/2012, and was receiving the said pay until 01/09/2021. However, from 01/09/2021, the pay was revised under the 6th Pay Commission, and the petitioner was drawing a reduced salary, as stated in paragraph 8 of the petition. Thus, the aforesaid undertaking was obtained by respondent No.2 on 01/09/2021 and not on 14/05/2012 when the promotion was given and the higher pay scale was granted.

18. In view of the aforesaid facts, in our opinion, the view taken by the Hon'ble Apex Court in the case of *Jagdev Singh* (supra) is not applicable to the present case. In the case of *Jagdev Singh* (supra), the employee had furnished an undertaking and was granted the revised pay scale at the initial point of time. While opting for the revised pay scale, the employee undertook to refund any excess payment if subsequently deducted or demanded. Accordingly, the

Hon'ble Apex Court held that the employee, having been clearly placed on notice at the time of the initial payment that any excess amount paid would have to be refunded, was bound by the undertaking furnished at that stage.

19. However, in the present case, the record reveals that no undertaking was obtained from the petitioner when the pay scale was revised. As per the law laid down in the case of *Jagdev Singh* (supra), an undertaking must be obtained from the employee when the revised pay scale is made applicable and the payment of such pay scale commences. In the present case, the undertaking was obtained at a belated stage, and hence, such undertaking amounts to an afterthought on the part of respondent No.2, intended solely for the purpose of justifying recovery.

20. The Aurangabad Bench of this Court, while dealing with a similar situation in the case of *Gautam Sakharam Mairale Vs. The State of Maharashtra & Ors, vide its judgment dated 09/11/2023 in Writ Petition No.14296/2023 with connected matters*, took a similar view and rejected the undertaking obtained by the employer at a belated stage.

21. 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.)

Vijaykumar