



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4963 OF 2007

Shridhar S/o. Baburao Gambhire,
Age; 60 Yrs., Occu; Pensioner,
R/o. Itkur Tq. Kallam,
Dist. Osmanabad.

...PETITIONER

-VERSUS-

1. The Chief Executive Officer,
Zilla Parishad, Osmannabad.
2. Education Officer (Primary)
Zilla Parishad, Osmanabad.
3. Head Master
Zilla Parishad Primary School,
Itkur, Tq. Kallam, Dist. Osmanabad.

...RESPONDENTS.

...
Shri Mayur Salunke, advocate h/f Shri V.D. Salunke, advocate
for the petitioner.

Shri Suhas B. Ghute, advocate for the respondents.

...

CORAM : KISHORE C. SANT
&
SUSHIL M. GHODESWAR, JJ.

Reserved on : 04 February 2026

Pronounced on : 17 February 2026

JUDGMENT (Per Sushil M. Ghodeswar, J.):-

1. Heard.
2. By this petition filed under Article 226 of the Constitution of India, the petitioner, who is a retired employee, is praying for quashing and setting aside the order dated 08.06.2007 passed by respondent No.1/ Chief Executive Officer, Zilla Parishad, Osmanabad. Vide the impugned order, respondent No.1 had directed recovery of excess payment made to the petitioner.
3. While issuing notice on 29.08.2007, this Court granted interim relief in terms of prayer clause D whereby, the respondents were restrained from recovering alleged excess payment already made to the petitioner during his service period. The said interim relief has been continued from time to time. On 01.10.2008, Rule was issued in this petition.
4. It is the case of the petitioner that he was initially appointed as an Assistant Teacher on 06.08.1971 and he was continued till 28.04.1972. However, he was discontinued from 29.04.1972 to 07.08.1972. Thereafter, the petitioner was re-appointed on the same post vide order dated 31.07.1972 and accordingly, he joined on 07.08.1972. The petitioner completed

his graduation in B.A. in June, 1973 with prior permission of the Education Officer (Primary). He became permanent teacher on 19.09.1975. Thereafter, he completed D.Ed. Course on 14.07.1979. Accordingly, the petitioner became trained graduate primary teacher for 5th standard on 14.07.1984. The petitioner's pay scale was revised and fixed from time to time on the basis of his qualification and seniority and he was being accordingly paid the pay scale till his retirement on 30.11.2005. However, on 02.07.2005, the Account Officer, Zilla Parishad, issued letter to the Headmaster of Zilla Parishad Primary School, Itkur, Taluka Kallam, District Osmanabad, where the petitioner was serving, for verification of pay scale of the petitioner and for compliance of deficiency in service book. In the letter dated 02.07.2005, the objection was raised that since the first appointment of the petitioner was made after 30.09.1970 and he is not possessing B.Ed. Qualification, therefore, his pay scale be re-fixed accordingly and the details of recovery amount be submitted. Based on the above letter dated 02.07.2005, the Headmaster of the school issued the letter dated 24.08.2005 to the petitioner stating therein that the Account Officer of Zilla Parishad has raised objection to the pay scale of the petitioner since his first

appointment was made after 30.09.1970 and he is also not having B.Ed. qualification. Therefore, the petitioner was asked to avail option whether, his pay scale should be as applicable to primary graduate teacher or as applicable to assistant teacher possessing D.Ed. qualification. It was mentioned that after availing any one option, the pay scale of the petitioner can be re-fixed and his pension papers can accordingly be processed.

5. According to the petitioner, the said objection was unnecessarily taken. Though he was given appointment after 30.09.1970, however, he was already selected in the month of May, 1970 along with several other candidates. The appointments were issued batch-wise and the petitioner was in the second batch. Therefore, it cannot be said that the petitioner was appointed after 30.09.1970. The petitioner stood superannuated on 30.11.2005. However, on 01.12.2005, the petitioner received the salary certificate to the effect that at the time of retirement, his pay scale was Rs.8500/-, therefore, the petitioner is entitled to receive pension on the basis of pay scale which was regularly paid to him till his retirement. The petitioner, therefore, submitted several representations requesting

to release his pensionary benefits. However, instead of releasing pensionary benefits, respondent No.3 issued revised pay fixation letter dated 31.12.2005 and calculated dues of Rs.2,80,000/- to be recovered from the petitioner. According to the petitioner, the letter dated 31.12.2005 is erroneous. The actual pay scale of the petitioner was Rs.8500/-, however, the respondents have wrongly shown it as Rs.6800/-. Respondent No.3/ Headmaster issued another letter dated 04.03.2006 thereby, demanding the consent from the petitioner for taking further steps regarding recovery from pension amount of the petitioner.

6. Being aggrieved by the letters dated 31.12.2005 and 04.03.2006, the petitioner preferred Writ Petition No.3450/2006. The said writ petition came to be allowed by this Court vide order dated 10.10.2006 and the matter was remanded for enquiry and decision afresh. Thereafter, the petitioner submitted all relevant documents before the respondents including Government Resolution dated 11.08.1999 pointing out that the action of the respondent is erroneous and illegal. However, the respondents did not consider the submissions of the petitioner and vide the impugned order dated 08.06.2007 held that since the

petitioner has not acquired B.Ed. qualification within five years, therefore, pay scale paid to him need to be withdrawn. As such, vide the impugned order, the recovery was directed from pension of the petitioner. Hence, the petitioner has approached this Court by filing the instant petition.

7. The learned advocate Shri Salunke appearing for the petitioner strenuously submitted that while passing the impugned order, the respondents have not properly considered the documents submitted by the petitioner and have erroneously directed recovery from pension of the petitioner. According to the learned advocate, even otherwise, on the verge of retirement of the petitioner on 30.11.2005, the objection about excess payment was raised on 20.07.2005. Therefore, the impugned action of recovery from pension amount is contrary to well settled guidelines of the Hon'ble Supreme Court in *State of Punjab and others vs. Rafiq Masih (White Washer) etc., AIR 2015 SC 696*.

8. The learned advocate Shri Salunke further relied upon the judgment of the Hon'ble Supreme Court in *Shyam Babu Verma and others vs. Union of India and others, (1994) 2*

SCC 521, to contend that if the higher pay scale was erroneously given to the employee for which he was not at fault, then it shall not be proper to recover any excess amount already paid to such employee. The learned advocate, therefore, prayed for allowing this petition.

9. On the other hand, the learned advocate Shri Ghute appearing for the respondents has strongly opposed the petition. In support of his submissions, he has relied upon the affidavit in reply dated 03.12.2007 filed by the respondents. According to the learned advocate, in view of the Government Resolution dated 14.11.1979, graduate primary teacher's pay scale of Rs.365-760/- was awarded to the petitioner in the year 1985 and therefore, in view of the scheme framed in the said Government Resolution, the petitioner ought to have completed/ obtained B.Ed. qualification within five years from 01.08.1985. According to him, in fact, the petitioner has not obtained the said qualification and therefore, he is not eligible to retain the pay scale of graduate primary teacher. The learned advocate tried to justify the impugned order and submitted that the instant petition be dismissed.

10. After hearing the learned advocates for the respective parties and going through the petition paper book as well as the affidavit in reply, we find that the issue involved in this petition as regards the excess payment made to the employee, is no longer *res integra*. The Hon'ble Supreme Court in ***Rafiq Masih (supra)*** has clearly observed in unequivocal terms that recovery would be impermissible from retired employees or employees who are due to retire within one year of the order of recovery. It is also impermissible when the excess payment has been made for a period in excess of five years before the order of recovery is issued. It would be apposite to reproduce the guidelines framed by the Hon'ble Supreme Court in ***Rafiq Masih (supra)*** as under:-

“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.*
 - (iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
 - (v) *In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”*

11. In the present case, the petitioner is already retired on 30.11.2005 and the objection was raised on 02.07.2005 just before few months of his retirement and the impugned order was passed on 08.06.2007. During the entire service tenure, no objection was raised by the respondents about the petitioner's qualification and pay scale. There is no allegation of fraud or misrepresentation on the part of the petitioner. In view of the aforesaid factual position and the settled legal principles laid down by the Hon'ble Supreme Court in ***Rafiq Masih (supra)*** and ***Shyam Babu Verma (supra)***, it is evident that the petitioner was neither guilty of any misrepresentation nor fraud and the alleged

excess payment, if any, was made by the respondents themselves during the course of his long service career. The objection regarding pay fixation was raised at the fag end of service and recovery has been sought after the petitioner's retirement, which is clearly impermissible in law.

12. However, it is equally well settled that pension is a statutory right governed by the applicable Pension Rules and the employee cannot claim continuation of an incorrect pay fixation contrary to the applicable statutory provisions. While recovery of the alleged excess amount is impermissible in view of the law laid down by the Hon'ble Supreme Court in *State of Punjab vs. Rafiq Masih (supra)* and *Shyam Babu Verma vs. Union of India (supra)*, the respondents cannot be precluded from regulating and re-fixing the pension of the petitioner in accordance with the applicable Rules. Therefore, though the direction of recovery deserves to be set aside, the respondents would be at liberty to re-fix the pension of the petitioner strictly in accordance with law. Such re-fixation, however, shall operate prospectively and no recovery shall be effected in respect of the amounts already paid to the petitioner till date. The impugned order, therefore, suffers

from arbitrariness to the extent it directs recovery from the petitioner after his retirement and deserves to be quashed and set aside to that limited extent. Hence, we pass the following order:-

ORDER

- (i) The writ petition is partly allowed.
- (ii) The impugned order dated 08.06.2007 passed by respondent No.1 is quashed and set aside to the extent it directs recovery of alleged excess payment from the petitioner.
- (iii) The respondents are restrained from effecting any recovery from the petitioner in respect of any amount already paid to him during his service tenure or from his pensionary benefits.
- (iv) The respondents are at liberty to re-fix the pension of the petitioner strictly in accordance with the applicable Rules and Government Resolutions, if required, within a period of eight weeks from today. However, such re-fixation shall operate prospectively and shall not result in recovery of any amount already paid.
- (v) No order as to costs.

12. Rule is made partly absolute in the above terms.