

Hiteshkumar Manubhai Pathak Versus Vs State of Gujarat & Ors.

Court: Gujarat High Court

Date of Decision: Jan. 22, 2025

Hon'ble Judges: Nirzar S. Desai, J

Bench: Single Bench

Advocate: R V Deshmukh, Krina Calla

Final Decision: Partly Allowed

Judgement

Nirzar S. Desai, J

1. With the consent of the learned advocates appearing for the respective parties, the matter was taken up for final disposal today itself.

2. Rule. Learned Assistant Government Pleader waives service of notice on behalf of respondent Nos.1 to 3.

As far as respondent No.4 is concerned, it is brought to the notice of this Court by learned advocate Mr. Deshmukh that respondent No.4 School is

under Administrator now and, therefore, learned AGP would be in a position to waive the service of rule on behalf of respondent No.4. Hence,

learned AGP waives service of rule on behalf of respondent No.4.

3. By way of this petition, the petitioner has prayed for quashing and setting aside the order dated 27.9.2021 passed by the District Education Officer,

Botad - respondent No.3 herein reducing the petitioner's pay scale. The petitioner has also prayed for a direction that the petitioner is entitled to draw

the pay scale of higher secondary teacher which he was drawing at the time of filing of the petition. The petitioner has further prayed to declare that

he is entitled to the benefits of higher pay scale as per Government Resolution dated 16.8.1994.

However, at the outset, learned advocate Mr. Deshmukh fairly submitted before the Court that at the time when the petition was preferred, in the first

order dated 28.10.2021 passed by the coordinate Bench of this Court, he made a statement that he does not press the prayer with regard to benefit of

grant of higher pay scale is concerned with a liberty to file fresh petition. Therefore, the said prayer would not survive in the present petition.

4. In view of the above, the only prayer in respect of recovery of excess payment and the petitioner's entitlement to the original pay scale would

survive in this petition.

5. The brief facts as stated by learned advocate Mr. Deshmukh are as under :-

5.1 That pursuant to NOC dated 6.10.2006 issued by the District Education Officer, Bhavnagar, Shri Dhasa Vishi Gram Panchayat issued a public

advertisement in the local newspaper on 8.10.2006 whereby applications were invited for the post of Craft Teacher, the petitioner also applied for the

aforesaid post and after following due procedure and after getting the approval from the DEO, the petitioner was initially appointed on the post of

Craft Teacher on fixed monthly pay of Rs.4500/- vide order dated 13.6.2007.

5.2 Thereafter, as the Government revised the fixed remuneration of the petitioner from Rs.4500 to Rs.6000, the petitioner was also paid the said

remuneration of Rs.6,000 per month. Thereafter, on completion of five years service successfully, the petitioner was absorbed in the regular pay scale

and accordingly, he was paid regular pay scale of Rs.9300 - 34800 G. P. Rs.4400 vide order dated 14.8.2012 passed by the District Education Officer.

Thereafter, the petitioner's pay has been revised as per 7th Pay Commission and the petitioner was placed at level 7 Pay Matrix w.e.f. 1.1.2016.

5.3 According to the petitioner, after the petitioner completed 10 years after his absorption and while he was continued to get the pay scale of Rs.9300

- 34800 G. P. Rs.4800, the petitioner's pay scale was reduced to Rs.5200 - 20200 G. P. 2800 by order dated 27.9.2021 passed by the District

Education Officer, Botad.

6. Feeling aggrieved by the order dated 27.9.2021, the petitioner approached this Court by way of the present petition and after the petition was filed,

by subsequent order dated 25.10.2021, recovery of an amount of Rs.11,60,124/- was imposed upon the petitioner. Therefore, when the matter was

taken up for first admission hearing, the coordinate Bench of this Court passed order on 28.10.2021 which reads as under :-

1. At the outset, learned Advocate Mr.R. V. Deshmukh for the petitioner submits that he does not press for the prayer so far as non-

payment of high pay-scale is concerned with liberty to file afresh.

2. Heard learned Advocate Mr. R. V. Deshmukh on behalf of the petitioner and learned AGP Ms. Shah on behalf of the respondent State.

3. By this petition, the petitioner challenges an order dated 27.9.2021 passed by the respondent No.3 herein, whereby the petitioner has

been placed in a lower scale without according any opportunity to the petitioner and without giving any reason whatsoever in the order

concerned.

4. Having regard to the same, issue notice to the respondents returnable on 2.12.2021. Learned AGP Ms. Shah waives service of notice on

behalf of the respondent No.1.

5. By way of ad-interim relief, it is directed that no recovery shall be initiated from the petitioner pursuant to the order dated 27.9.2021 till

further orders. Direct service for rest of the respondents is permitted.

7. Mr. R. V. Deshmukh, learned advocate appearing for the petitioner submitted that as far as the question of recovery is concerned, as per the latest

decision of the Hon'ble Supreme Court in the case of Jagdish Prasad Singh v. State of Bihar and others, Civil Appeal No.1635 of 2013 decided on

8.8.2024 wherein by taking into consideration catena of decisions including the decision in the case of State of Punjab and others v. Rafiq Masih

(White Washer) and others, 2015 (4) SCC 334, the Hon'ble Supreme Court has disapproved recovery from an employee after 10 years when higher

pay scale was given to the employee without there being any fault or misrepresentation on the part of the employee. He, therefore, submitted that as

far as the aspect of recovery is concerned, the same is squarely covered and, therefore, the present petition would succeed on that ground.

7.1 Mr. Deshmukh further submitted that as far as the entitlement of the petitioner to the pay scale of Rs.9300 - 34800 G. P. Rs.4800 is concerned,

the same was paid to the petitioner right from the beginning and, therefore, the same was rightly paid and, therefore, when the petitioner was put in the

reduced pay scale of Rs.5200 - 20200 G. P. 2800 without there being any justification for the same, the said order is also absolutely erroneous and,

therefore, the same is required to be quashed and set aside.

7.2 However, learned advocate Mr. Deshmukh could not point out that what would make the petitioner entitled to the pay scale of Rs.9300 - 34800 G.

P. Rs.4800 and how the pay scale of Rs.5200 - 20200 G. P. 2800 is erroneously now being paid to the petitioner.

7.3 In view of the above submissions, learned advocate Mr. Deshmukh prayed for allowing the petition by quashing and setting aside the order dated

27.9.2021 passed by the District Education Officer, Botad - respondent No.3 herein reducing the petitioner's pay scale as well as the order dated

25.10.2021 by which recovery was sought.

8. Mrs. Krina Calla, learned Assistant Government Pleader appearing for the respondents vehemently opposed the petition and submitted from the

reply filed by the respondents wherein the respondents have tried to justify the reduction of petitioner's pay by submitting that a Craft Teacher is

entitled to a Pay Scale analogous to such post and, therefore, the petitioner was not entitled to the aforesaid pay scale and, therefore, the aforesaid

mistake was rectified by placing the petitioner in the pay scale of Rs.5200 - 20200 with G.P. Rs.2800/-. However, despite making best efforts, she

could not point out a judgment which has taken a contrary view than cited by learned advocate Mr. Deshmukh in the case of Jagdish Prasad Singh.

8.1 As far as recovery is concerned, except for making a submission that when a pay scale is erroneously granted to the petitioner, it is well within the

right of the State Government to recover the same, she rested the case.

8.2 However, she submitted that such kind of so-called errors in fixation of pay scale has been noticed by the State Government in number of cases

and, therefore, the State Government may be directed to take appropriate action in accordance with law against the erring officers if the Court deems

it appropriate. She, therefore, prayed for dismissal of the petition.

Except the above submissions, no other submissions were advanced by learned AGP.

9. I have heard learned advocates appearing for the respective parties and perused the record. As far as the aspect of recovery is concerned, which

even learned AGP Mrs. Calla could not point out any contrary decision and hence, I may deal with the said aspect of recovery first.

10. It is not the case of the State Government that on completion of five years service successfully, the petitioner was absorbed in the regular pay

scale of Rs.9300 - 34800 G. P. Rs.4400 on account of any misrepresentation on the part of the petitioner and, therefore, considering the aforesaid

aspect as well as considering the impugned order itself, which indicates that the petitioner was granted regular pay scale erroneously and considering

the fact that the impugned order dated 27.9.2021 passed by the District Education Officer, Botad - respondent No.3 herein does not attribute that on

account of any misrepresentation on the part of the petitioner, he was granted the said pay scale, the case of the petitioner qua recovery is required to

be considered by keeping the aforesaid fact in mind.

11. In view of the above observations made by Hon'ble fact, it is required to look at the Supreme Court in the case of Jagdish Prasad Singh v. State of

Bihar and others (Supra), more particularly paragraphs 21 to 24 which reads as under :-

21. We firmly believe that any decision taken by the State Government to reduce an employee's pay scale and recover the excess

amount cannot be applied retrospectively and that too after a long time gap. In the case of Syed Abdul Qadir and Others v. State of Bihar

and Others, this Court held that when the excess unauthorised payment is detected within a short period of time, it would be open for the

employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any

recovery. The relevant paras of the Syed Abdul Qadir (supra) are extracted hereinbelow : -

(2009) 3 SCC 475

57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the

excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was

made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of

rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to

relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had

knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected

within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any

particular case, order for recovery of the amount paid in excess.

59. Undoubtedly, the excess amount that has been paid to the appellant 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 appellant 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 appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the

appellant teachers should be made. (emphasis supplied)

22. Similarly, this Court in *ITC Limited v. State of Uttar Pradesh and others*, held as under :-

(2011) 7 SCC 493. We may give an example from service jurisprudence, where a principle of equity is frequently invoked to give

relief to an employee in somewhat similar circumstances. Where the pay or other emoluments due to an employee is determined and paid by

the employer, and subsequently the employer finds, (usually on audit verification) that on account of wrong understanding of the applicable

rules by the officers implementing the rules, excess payment is made, courts have recognised the need to give limited relief in regard to

recovery of past excess payments, to reduce hardship to the innocent employees, who benefited from such wrong interpretation.Ã¢â¬

(emphasis supplied).

23. In the case of State of Punjab and Others v. Rafiq Masih (White Washer) and others, this Court held as under :-

Ã¢â¬18. 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 hereinabove,

we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

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

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

(iii) Recovery from the 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.

3 (2015) 4 SCC 334 (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.Ã¢â¬

(emphasis supplied)

24. Recently, this Court in Thomas Daniel v. State of Kerala and others, held that the State cannot recover excess amount paid to the ex-

employee after the delay of 10 years.

12. In view of the above observations made by the Hon'ble Supreme Court whereby the entire law in respect of recovery of excess amount has been

taken into consideration, the facts of the present case is squarely covered by the above referred decision and, therefore, the order dated 25.10.2021

passed by the Principal of Shree R. J. H. High School, Dhasa is unsustainable and, therefore, the same is accordingly quashed and set aside.

13. The next question would be whether the order dated 27.9.2021 passed by the DEO, Botad reducing the pay scale of the petitioner from Rs.9300 -

34800 G. P. Rs.4400 to Rs.5200 - 20200 G.P. Rs.2800 can be said to be a legal order or not. Of course, the petitioner has been put to a lower pay

scale by the said impugned order, however, as can be seen from the reply, the corresponding pay scale of an employee would be as per the

qualification of that employee and post held by the employee and as the petitioner was holding the post of Craft Teacher corresponding pay scale of

Craft Teacher is Rs.5200 - 20200 G.P. Rs.2800 and hence, the action of the respondents of placing the petitioner in the correct pay scale as per his

entitlement cannot be said to be an illegal order. By the said order, only the respondents have taken corrective measures and sought to rectify the

mistake committed by them.

14. Further, I have also considered the fact that though the order dated 27.9.2021 is challenged by the petitioner, there is no justification coming

forward either by way of pleadings or during the course of argument and there was nothing to demonstrate before this Court that actually the

petitioner was entitled to the pay scale of Rs.9300 - 34800 G. P. Rs.4400 as against the reduced pay scale of Rs.5200 - 20200 G.P. Rs.2800. In

absence of there being any material to justify that the petitioner is entitled to the pay scale of Rs.9300 - 34800 G. P. Rs.4400, such submission cannot

be accepted and, therefore, the impugned order dated 27.9.2021 passed by the DEO, Botad reducing the pay scale of the petitioner from Rs.9300 -

34800 G. P. Rs.4400 to Rs.5200 - 20200 G.P. Rs.2800 can be said to be a legal order and does not warrant any interference by this Court. Therefore,

the prayer of the petitioner to quash and set aside the order dated 27.9.2021 cannot be accepted and the said prayer is rejected.

15. Since the other prayers with regard to grant of higher grade pay scale is not pressed by the petitioner, as reflected in the order dated 28.10.2021

passed by the coordinate Bench of this Court, there is no question of considering the said prayers.

16. In the result, the petition is partly allowed. The order dated 25.10.2021 passed by the Principal of Shree R. J. H. High School, Dhasa, Dist.

Bhavnagar seeking to recover an amount of Rs.11,60,124/- is quashed and set aside and the respondents are restrained from recovering any amount

from the petitioner which was paid to the petitioner towards excess payment while fixing wrong pay scale to the petitioner. Further, the the order

dated 27.9.2021 passed by the District Education Officer, Botad - respondent No.3 herein reducing the petitioner's pay scale is not interfered with and

the petitioner shall continue to get the said pay scale and corresponding pay scale thereto.

At this stage, learned advocate Mr. Deshmukh submitted that in the year 2023, the petitioner has resigned from the respondent No.4 School and has

joined other School as Head Master. However, as this petition is confined only to the above referred two impugned orders, the Court cannot say

anything beyond the prayers prayed in this petition and, therefore, the resignation of the petitioner would not affect the merits of the present petition.

Rule is made absolute to the above extent. There shall be no order as to costs.