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

WRIT PETITION NO. 2815 OF 2018

Shivaji s/o.Vishvambar Birkale .. Petitioner
Age. 34 years, Occ. Service,
R/o. Z.P.P.S. Hingangaon,
Tq. Georai, Dist. Beed.

VERSUS

1. The State of Maharashtra .. Respondents
Through the Secretary
Rural Development & Water Conservation
Department, Maharashtra State,
Mumbai-32.
2. The Chief Executive Officer,
Beed Zilla Parishad, Beed.
3. The Chief Executive Officer,
Aurangabad Zilla Parishad,
Aurangabad.

Mr. V.P. Sawant, Advocate for the petitioner.
Mr. K.N. Lokhande, AGP for the respondent/State.
Mr. K.B. Jadhavar, Advocate for respondent No.2.
Mr. S.B. Ghute, Advocate for respondent No.3.

**CORAM : KISHORE C. SANT &
SUSHIL M. GHODESWAR, JJ.**
RESERVED ON : 11.03.2026
PRONOUNCED ON : 16.04.2026

**ORAL JUDGMENT [PER : KISHORE C. SANT, J.] :-**

01. Rule. Rule made returnable forthwith. By consent, heard finally.

02. The petitioner has approached this Court challenging action of respondent No. 2 – Chief Executive Officer, Zilla Parishad, Beed, in not relieving him from Zilla Parishad, Beed to join Zilla Parishad, Aurangabad, on inter-district transfer and further directing recovery of amount which is allegedly wrongly paid to the petitioner i.e. the amount of difference in the higher pay-scale and lower pay-scale.

03. Facts in short are that the petitioner came to be appointed as Shikshan Sevak in Zilla Parishad, Beed. On completion of three years of service, he came to be confirmed by order dated 16.01.2012. In 2015, he completed graduation also. The petitioner, in view of completion of graduation, was treated as a primary graduate teacher in higher pay-scale. The petitioner, because of domestic problems, requested for inter-district transfer to Zilla Parishad, Aurangabad. The petitioner also applied for transfer by online mode. On 13.06.2017, the petitioner's name appeared in the list of teachers to be transferred. As per the



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policy, he was to be transferred by demoting him to the lower pay-scale. Respondent No.2, however, orally directed the petitioner to deposit the amount as stated above towards salary, due to lower pay scale in the post. It is further directed that the petitioner shall not be relieved till he deposits the amount. He was asked to give indemnity affidavit. The petitioner even submitted such affidavit, however, still the petitioner was not relieved. It is in this background, the petitioner approached this Court. By way of interim order now the petitioner is already relieved and is allowed to join in Zilla Parishad, Aurangabad pursuant to order of this Court dated 28.06.2018. However, there is still a dispute about payment of Rs. 2,04,358/-. It is seen that recovery of amount is still shown to be made.

04. Learned Advocate for the petitioner vehemently submitted that though there is policy of giving transfer on request by demoting a person to the lower grade, such policy is only in respect of intra-district transfer and not inter-district transfer. His another submission is that in any case the amount cannot be recovered, which is already paid, while working on the higher pay-scale. He, therefore, made representation on 26.07.2017, requesting to relieve the petitioner without recovery. Said request was, however, still not considered. The petitioner submits that



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this is against the policy. He relied upon letter dated 07.07.2017 sent by the Secretary, State of Maharashtra, Rural Development and Water Conservation Department, addressed to all the Chief Executive Officers, directing them to relieve teachers, who are transferred on inter-district transfer and also stated the procedure.

05. Learned Advocate further relied upon communication dated 14.07.2017 by the Dy. Secretary, Government of Maharashtra, addressed to the Chief Executive Officers, Zilla Parishads, wherein it is communicated that the teachers, who have given option of inter-district transfer by demotion, should be transferred and the amount of difference is not to be recovered merely because they have accepted lower pay scale. It is only in cases where promotion or higher pay-scale is given wrongly, in such case, the amounts are to be recovered. The petitioner submits that the list of some teachers was prepared by the Zilla Parishad, Beed, to whom promotions were given wrongly and order was passed on 14.12.2017, wherein the teachers were demoted to lower pay-scale. In the said list, name of the petitioner does not appear. The petitioner submits that making recovery from the petitioner is illegal and prays for quashing the order of recovery.



06. Learned Advocate Mr. Ghute for the respondent-Zilla Parishad vehemently opposes this petition. He submits that in the present case the petitioner was wrongly given higher pay-scale and it is because of that the recovery was directed prior to his relieving from Zilla Parishad, Beed. He relies upon Government Resolution dated 24.04.2017. He submits that when the petitioner has accepted lower pay scale, it is necessary to recover the amount of difference of salary. He further relied upon undertaking given by the petitioner before his transfer to the effect that in-case there is recovery, he would repay the amount. He also relies upon communication of Asstt. Secretary, State of Maharashtra dated 19.01.2016, issued to the Dy. Director of Education (Primary) to that effect.

07. This Court heard the submissions of both the sides. It is seen that the action against the petitioner is taken as he opted for transfer on lower post. However, it cannot be said that thereby his earlier promotion and higher pay-scale was wrongly given. It is only for the purpose of convenience, teacher seeks transfer even at some financial loss by accepting lower grade or lower pay scale. Action of recovery from the persons who were wrongly promoted is different than the persons who were transferred on their request, who accepted lower pay-



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scale/post. Present case is not a case of wrong promotion. Name of the petitioner does not appear in the list of 172 persons, who were wrongly given higher pay-scale. Reliance of learned Advocate for the respondent on Government Resolution dated 24.04.2017 also found to be misplaced. Clause 3.3 of the said Government Resolution only states that the teachers who want inter-district transfer may be transferred by their consent to the post having lower pay scale. Learned Advocate for the respondent points out that if there are any complaints, such teacher has to raise grievance before the Committee. This Court finds that there is no grievance as such as regards transfer. Grievance is about recovery at the hands of the Chief Executive Officer under the pretext that the petitioner has accepted lower post and therefore difference of earlier salary paid at higher pay-scale needs to be recovered. Reliance of learned Advocate for the respondent on communication dated 19.01.2015 also finds to be misplaced.

08. Undertaking given by the petitioner was because he wanted transfer. Such undertaking was under-duress and cannot be said to be an undertaking given voluntarily. During the course of arguments, learned Advocate for the respondent relied upon judgment of this Court in the case of **Vd. Ganesh Sitaram Magar Vs. The State of**

**Maharashtra & Ors. (WP No. 6054 of 2021 – Aurangabad Bench).**

This Court finds that said judgment was in respect of Ayurvedic Doctros, wherein it was held that the undertaking given by the petitioner therein was binding upon him, as he does not belong to Class III or Class IV employee. Judgment in the case of **State of Punjab and Ors. Vs. Rafiq Masih (White Washer) etc. (2015) 4 SCC 334** was held to be not applicable, as in that case, the petitioner was not belonging to Class III or Class IV category. However, in the present case, facts are somewhat different. Secondly, the petitioner is class III employee and therefore judgment in the case of State of Punjab (supra) would be applicable.

09. Considering the above, this Court finds that the petition deserves to be allowed, as the petitioner already joined Zilla Parishad, Aurangabad, pursuant to interim order passed by this Court dated 28.06.2018. It is directed to the respondents not to recover amount of difference in the salary paid to the petitioner at higher pay scale and lower pay scale, which is now being paid, from the petitioner. If any amount is already recovered from the petitioner, same shall be refunded to him within a period of six months from today.



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10. This Writ Petition is allowed in above terms. Rule made absolute accordingly. No order as to costs.

[SUSHIL M. GHODESWAR, J.]

[KISHORE C. SANT, J.]