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(1)

I & II

WP 9054.2010+1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 9054 OF 2010

I

Association of College and  
University Superannuated  
Teachers (Maharashtra)

PETITIONER

VERSUS

The State of Maharashtra  
through its Secretary,  
Higher and Technical Education  
Department, Mantralaya,  
Mumbai and ors.

RESPONDENTS

AND

WRIT PETITION NO. 2868 OF 2011

II

Association of College and  
University Superannuated  
Teachers (Maharashtra)

PETITIONER

VERSUS

The State of Maharashtra  
through its Secretary,  
Higher and Technical Education  
Department, Mantralaya,  
Mumbai and ors.

RESPONDENTS

.....

Mr. S.V. Adwant, Advocate for the Petitioner.

Mr. K.S. Patil, A.G.P. for the Respondent-State.

Mr. Alok Sharma, Assistant Solicitor General for the  
respondent no.3-UGC.

.....

CORAM : B.R. GAVAI AND  
M.T. JOSHI, JJ.  
DATED : 22<sup>ND</sup> AUGUST, 2011

ORAL ORDER:

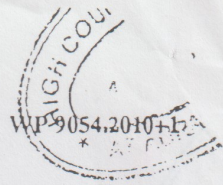
1. Rule. Rule made returnable forthwith.

Heard by consent.



(7)

(2)



2. By way of the present Petitions, the petitioners impugn the communication addressed by the respondent Government dated 10.3.2008 and 18.3.2010, thereby seeking to recover the amount of stagnation increment from the pension account of the members of the petitioner-association, whose names are given in the Exhibit "F".

3. The members of the petitioner-association were employees of colleges and universities. The respondent-State had given the benefits on account of stagnation of the services to the members of the petitioner-association vide Government resolution dated 25.1.1999. However, it appears that subsequently, it was realised by the State Government that the members of the petitioner-association were not entitled to stagnation allowance and as such the impugned communications were issued, thereby seeking to recover the amount from the pension account of the members of petitioner-association.

4. By now, it is a settled position of law that recovery from the salary/pension of an employee



cannot be made, if the amount in excess was paid to such an employee for the reasons not attributed to such an employee. It is not the case of the respondents that the stagnation amount was paid to the members of the petitioner-association on account of any mis-representation made by such members.

5. In that view of the matter, in view of the law laid down by the Apex Court in *Syed Abdul Qadir and ors. Vs. State of Bihar and ors.* 2009 reported in (2009) 3 Supreme Court Cases 475, both the Petitions deserve to be allowed.

6. The impugned communication dated 10.3.2008 and 18.3.2010 are therefore quashed and set aside. It is held that the respondents are not entitled to recover the amount from the pension of the petitioners. Insofar as the amount which is already recovered from the pension of the members of the petitioner-association, it is directed that such amount shall be returned to the employees from whom it is deducted within a period of three (3) months from today alongwith the interest at the rate of 12% per annum.



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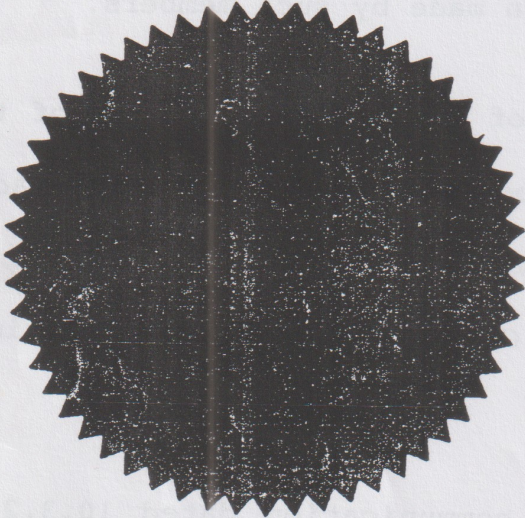
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7. Rule is made absolute in the aforesaid terms, however, with no order as to costs.

SD -

for Dy. Jg



True Copy

10/11/11

Assistant Registrar  
High Court of Judicature at Bombay  
Bench at Aurangabad

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