



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

WRIT PETITION NO. 6422 OF 2019

01. Meera Narayan Unawane
Age: 50 years, Occu: Service,
R/o. Zilla Parishad Health Department,
Aurangabad
02. Asha w/o Punaji Pimpale
Age: 55 years, Occu: Service,
R/o: Andhari, Tq: Sillod,
Dist: Aurangabad
03. Sarita w/o Shravan Sangole
Age: 54 years, Occu: Service,
R/o: Amthana, Tq: Sillod,
Dist: Aurangabad
04. Kusum w/o Bhunajrao Kundale
Age: 50 years, Occu: Service,
R/o: Lasur Station, Tq: Gangapur,
Dist: Aurangabad
05. Keval Arjunrao Kamble
Age: 50 years, Occu: Service,
R/o: Warud Kazi, Tq & Dist: Aurangabad
06. Shobha Laxman Molke
Age: 54 years, Occu: Service,
R/o: Dhakephal, Tq. Paithan,
Dist: Aurangabad
07. Nirmal Dashrath Khandare
Age: 53 years, Occu: Service,
R/o: Warud Kazi, Tq & Dist: Aurangabad
08. Meena w/o Sakhrum Gajbhare
Age: 50 years, Occu: Service,
R/o: Andhari, Tq: Sillod,
Dist: Aurangabad

09. Satyabhama w/o Ravindra Shinde
Age: 52 years, Occu: Service,
R/o: Daulatabad, Tq &
Dist: Aurangabad
10. Ranjana w/o Jagdish Rathod
Age: 52 years, Occu: Service,
R/o: Amthana, Tq: Sillod,
Dist: Aurangabad
11. Usha w/o Laxman Thakre
Age: 53 years, Occu: Service,
R/o: Banoti, Tq: Soyegaon,
Dist: Aurangabad
12. Yamuna Kunal Gavit
Age: 50 years, Occu: Service,
R/o: Bhendala, Tq: Gangapur,
Dist: Aurangabad

... PETITIONERS

VERSUS

01. The State of Maharashtra
Through its Secretary,
Health Department, Mantralaya, Mumbai
02. The Secretary,
Rural Development Department,
Mantralaya, Mumbai
03. The Zilla Parishad, Aurangabad
Through its Chief Executive Officer
04. The District Health Officer,
Zilla Parishad, Aurangabad

... RESPONDENTS

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Mr. V. C. Patil (Ashtekar), Advocate for Petitioners
Mr. S. B. Narwade, AGP for Respondent Nos. 1 and 2
Mr. S. R. Dheple, Advocate for Respondent Nos. 3 and 4

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

RESERVED ON : 24.01.2024

PRONOUNCED ON : 07.02.2024

JUDGMENT (Per : Y. G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. By the present Petition under Article 226 of the Constitution of India, the Petitioners have put forth prayer clauses “B” and “C” as under:-

“(B) By issuing appropriate writ, order or directions in the like nature, the impugned letters dated 27.09.2013, 09.01.2014, 09.04.2014 as well as letter dated 03.10.2015 issued by the Respondents no.3 and 4 may kindly be quashed and set aside.

(C) By issuing appropriate writ, order or directions, the Respondents no.3 and 4 may pleased be prohibited from recovery of excess salary amounts in view of the law declared by the Hon’ble Apex Court in case State of Punjab and others – Vs – Rafiq.”

3. By an order dated 06.06.2019, this Court issued notice to the Respondents and granted interim relief thereby restraining the Respondents from effecting recovery pursuant to the impugned communications dated 27.09.2013, 09.01.2014, 09.04.2014 and 03.10.2015, issued by Respondent Nos. 3 and 4.

4. We have considered the strenuous submissions of the learned Counsel for the respective sides. We have also gone through the Petition paper-book with the assistance of the learned Counsel.

5. The Petitioners are/were working as Auxiliary Nurse Midwife (ANM) and Lady Health Visitor (LHV) with Respondent Nos. 3 and 4 at the various Primary Health Centers established in Aurangabad District. Petitioner Nos. 1, 2, 3, 6 and 9 are superannuated and other Petitioner Nos. 4, 5, 7, 8, 10 to 12 are still in service. They are/were permanent Class-III employees. They contended that, the similarly situated employees i.e. Auxiliary Nurse Midwife (ANM) and Lady Health Visitors (LHV) were entitled to receive higher pay scale as per the Government Resolution dated 21.09.1993. Accordingly, the Petitioners were placed in the pay scale of Rs. 5000 - 8000 as per 5th pay commission and Rs.9300 - 34800 plus grade pay of Rs.4200 under the 6th pay commission. However, Respondent No. 3 Zilla Parishad contended that, the Petitioners were entitled for Rs.4500 - 7000 as per 5th pay commission and Rs.5200 – 20200 with grade pay of Rs.2800 as per 6th pay commission. Accordingly, the Petitioners have received their salaries. However, without making any inquiry and without providing any opportunity of hearing, the Respondent No. 4 issued communication dated 27.09.2013 and thereby directed the Taluka Health Officer for

re-fixation of pay scale of the Petitioners as well as effecting recovery against them for excess payment made to them.

6. Further it was canvassed on behalf of the Petitioners, that the Petitioner Nos. 1, 2, 3, 6 and 9 are superannuated on different dates and other Petitioner Nos. 4, 5, 7, 8, 10 to 12 are still in service. On 26.02.2019, the State Government issued a Government notification and resolved as under:-

“३. यासंदर्भात स्पष्ट करण्यात येते की, प्रस्तुत प्रकरणात मा. न्यायालयाने वसुलीबाबत प्रतिबंधात्मक आदेश दिले असले तरी, शासन परिपत्रक दि. २८ जुलै २०१४ नुसार, चुकीच्या वेतन निश्चितीमुळे जे अतिरिक्त रक्कमेचे प्रदान झालेले आहे, ती चुकीची वेतननिश्चिती दुरुस्त करण्याबाबत मा. न्यायालयाने प्रतिबंध केलेला नाही ही बाब विचारात घेता या प्रकरणात खालीलप्रमाणे आदेश देण्यात येत आहेत.

(१) अ) सेवानिवृत्त वर्ग ३ व ४ च्या कर्मचाऱ्यांना करण्यात आलेल्या अतिप्रदानाची वसूली करण्यात येवू नये.

आ) निवृत्तीच्या उंबरठ्यावर असणाऱ्या वर्ग-३ व वर्ग-४ च्या कर्मचाऱ्यांकडून अतिप्रदानाची वसूली करण्यात येवू नये.

इ) पाच वर्षांपेक्षा अधिक कालावधीसाठी अतिप्रदान करण्यात आले असल्यास वसूली करण्यात येवू नये.

ई) चुकीचे लाभ देण्यात आले असल्यास त्या चुकीची दुरुस्ती करण्यात यावी.

उ) दि. २८ जुलै २०१४ चे परिपत्रक हे त्या परिपत्रकात संदर्भ नमूद केलेल्या व परिपत्रकांपूर्वी निर्गमित केलेल्या शासन निर्णय/परिपत्रक/पत्रे या संदर्भात नेमकी काय कार्यवाही करावयाची आहे याबाबत मार्गदर्शन आहे.

(२) तसेच सेवानिवृत्त कर्मचाऱ्यांच्या संदर्भात चुकीच्या पद्धतीने वेतन निश्चिती केली असल्यास तात्काळ विहित पद्धतीने त्या वेतन निश्चितीमध्ये विहित कार्यपद्धतीनुसार सुधारणा करून नव्याने वेतन निश्चिती करण्यात यावी.

४. तसेच उपरोक्त 'अ ते इ' मध्ये न बसणाऱ्या कर्मचाऱ्यांना अतिरिक्त वेतन प्रदान झाले असल्यास त्याची वसूली पुढील १ वर्षात समप्रमाणात करण्यात यावी. तसेच ज्या अधिकारी/कर्मचाऱ्यांच्या चुकीच्या कार्यवाहीमुळे संबंधितांना अतिप्रदान झाले आहे त्या अधिकारी/कर्मचाऱ्यांवर शिस्तभंगाची कारवाई करण्यात यावी.”

7. However, the Respondents have directed recovery of excess payment on account of wrong fixation of pay scale against the Class-III employees after their retirement and though, other petitioners who are in service, are not responsible for wrong fixation of their pay scale. Therefore, recovery of excess payment is not permissible against the Class-III employees.

8. To buttress these submissions, the learned Counsel appearing for the Petitioners places reliance on the following :-

- i. ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others – (2015) 4 SCC 334;***
- ii. Judgment Dt. 22.12.2017 passed in ***WP No.4616 of 2016 - Smt. Jayshree Trimbak Takalkar Vs. The Chief Executive Officer, Zilla Parishad, Aurangabad and another;***
- iii. Judgment Dt. 15.11.2021 passed in ***WP No.7379 of 2020 - Smt. Pramila Manohar Pawar Vs. The State of Maharashtra and others*** and
- iv. ***Ananda Vikram Baviskar Vs. State of Maharashtra and others – 2022(2) Mh.L.J. 698.***

9. Dr. Gopal Madhavrao Kudlikar, the Assistant District Health Officer, Zilla Parishad, Aurangabad, has filed an affidavit-in-reply on behalf of Respondent Nos. 3 and 4 and admitted that, the Petitioners are/were their employees. According to the Respondents, while in

service, the Petitioners have furnished written undertaking while fixation of their salary that, *“in future, any excess payment is made to them and may be found to have been made, as a result of incorrect fixation of their pay scale or any excess payment detected in the light of discrepancies, notice subsequently would be refunded by them to the Government either by adjustment against future payment due to them or otherwise”*. Since, the Petitioners promised for repayment of any excess payment due to wrong pay fixation, therefore, the petitioner are not entitled for any relief.

10. The learned counsel for Respondent nos. 3 & 4 canvassed that, as per Rule 134 of the Maharashtra Civil Services (Pension) Rules, 1982, the employer has a right to recover and adjust excess amount paid to it's employees while in service. Since, some of the Petitioners are government servants who have retired and those who are in service are found to have been paid excess amount due to wrong pay fixation and the petitioners agreed for refund of excess payment, therefore, directing said recovery is legal.

11. To buttress the submissions, the learned Counsel for the Respondents relied on the case of ***High Court of Punjab and Haryana and others Vs. Jagdev Singh – 2016 A.I.R. (SCW) 3523***,

12. Needless to state, the grievance of the Petitioners are that, they were receiving higher pay scale on the post of “Arogya Sevika”, in pursuance to Government Resolution dated 21.09.1993 issued by the Public Health Department, Government of Maharashtra. Under the 5th pay commission, the petitioner were placed in the pay scale of Rs.5000 – 8000. Under the 6th pay commission, they were being paid the pay scale of Rs. 9300 – 34800 plus grade pay of Rs.4200.

13. According to the Respondents, while in service, each of the Petitioners have executed undertakings at the time of their fixation of pay scale. The undertaking reads as under:-

“Hereby undertaking that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payment due to me or otherwise.”

14. The Petitioners have not denied that, they have not furnished undertakings agreeing to refund the excess amount, if found to have been paid to them. It is not the case of petitioners that, the Respondents 3 & 4 obtained their undertaking forcibly or under influence or coercion.

15. Since, the Petitioners while furnishing undertakings, agreed that any excess payments that may be found to have been made due to

incorrect fixation of their pay or excess payments have been detected in the light of discrepancies, they would return the said amounts to the Government either by adjustment against the future payments due to them, or otherwise. Therefore, considering the principle of law of estoppel, the petitioners having no voice to resist the recovery of excess payments, which they have received due to wrong fixation of pay.

16. On perusal of the documents produced by the Respondents along with affidavit-in-reply, it appears that the Petitioners have furnished their undertaking as under:-

Sr. No.	Name of the Petitioner	Date of Undertaking
1.	Meera Narayan Unawane	11.02.1999
2.	Asha w/o Punaji Pimpale	15.05.1999
3.	Sarita w/o Shravan Sangole	10.02.1999
4.	Kusum w/o Bhunajgrao Kundale	02.05.1999
5.	Keval Arjunrao Kamble	15.04.2009
6.	Shobha Laxman Molke	08.03.2019
7.	Nirmal Dashrath Khandare	30.11.2013
8.	Meena w/o Sakhran Gajbhare	30.05.2009
9.	Satyabhama w/o Ravindra Shinde	03.02.2019
10.	Ranjana w/o Jagdish Rathod	2009
11.	Usha w/o Laxman Thakre	02.05.1999
12.	Yamuna w/o Kunal Gavit	05.02.1999

17. The undertakings tendered by the Petitioners are undisputedly at the time of the pay scale fixation and commencement of

the payments under the fifth pay commission. Therefore, it cannot be termed that the Petitioners' undertakings were obtained at the verge of the retirement of Petitioner Nos. 1, 2, 3, 6 and 9, who retired on 31.05.2023, 30.06.2022, 31.07.2023, 28.02.2022 and 30.09.2020, respectively.

18. Needless to say that, in case of **Rafiq Masih (*supra*)**, the Hon'ble Apex Court held that, the benefit of non-recovery cannot be extended to employees merely because they was not responsible for the mistake committed by employer, or were not guilty of furnishing any factually incorrect information, or fraud or misrepresentation. However, the recoveries are held to be impermissible in the following circumstances:-

- “(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."

19. In **High Court of Punjab and Haryana and others vs Jagdev Singh, (supra)**, the Hon'ble Supreme Court observed in Para Nos. 8 and 9, as under:

"8. The order of the High Court has been challenged in these proceedings. From the record of the proceedings, it is evident that when the Respondent opted for the revised pay scale, he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him. In the counter affidavit which has been filed by the Respondent in these proceedings, this position has been specifically admitted. Subsequently, when the rules were revised and notified on 7 May 2003 it was found that a payment in excess had been made to the Respondent. On 18 February, 2004, the excess payment was sought to be recovered in terms of the undertaking.

9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

20. In the case of **Ananda Vikram Baviskar, (supra)**, this Court concluded in Para Nos. 7 to 10 as under:-

"7. Our Courts are dealing with hundreds of such cases. On each day, we have at least one such case before us. Considering the law laid down in Rafiq Masih (Supra), our Courts

have been quashing notices for recovery on the ground that such notices have been issued long after the retirement of an employee and especially in the cases of Class-IV employees, who would find it difficult to shell out large sums of money towards recovery/payment. Consequentially, we have pardoned several Class-IV employees and protected them as against recovery.

8. *We are conscious of the fact that the Hon'ble Apex Court has delivered a judgment in Jagdev Singh (Supra) after noticing that an undertaking was issued by an officer vide which, he had agreed to refund/repay the excess amount.*

9. *This Court at the Nagpur Bench has dealt with Writ Petition No.4919 of 2018 filed by the State of Maharashtra and Others Vs. Sureshchandra S/o. Dharamchand Jain and Others for challenging the judgment of the learned Maharashtra Administrative Tribunal, Nagpur Bench dated 18.04.2017. In the said matter, the learned Tribunal had relied on Rafiq Masih (Supra) and had granted the relief to the appellant who was a Class-III employee. The learned Division Bench has observed in paragraph nos.4 to 7 as under:*

4. The argument submitted in defence is fallacious. An undertaking has the effect of solemnity in law and if argument is to be accepted which has been submitted on behalf of the respondents, the majesty of law would be lowered and there would be a travesty of justice. Besides, the undertaking is about wrong pay fixation and consequent excess payment. The undertaking is not about grant of higher pay on the basis of right pay fixation. Had it been an undertaking as regards the later dimension of the case, one could have perhaps said that the undertaking was only a formality. When the undertaking takes into account the contingency of the wrongful pay fixation, the undertaking has to be said to have been given intentionally and with a view to be acted upon, in case the contingency did really arrive.

5. So, what we have before us is an undertaking given consciously and intentionally by the respondents and the

respondents would have to be held bound by this undertaking. That means in the present case, no equity whatsoever has been created in favour of the respondents while making the excess payment and as such there is no question of any hardship visiting the respondents.

6. The reason weighing with the Hon'ble Apex Court imposing prohibition against recovery of excess payment in *Rafiq Masih (supra)* was of hardship resulting from creation of awkward situation because of the mistake committed by the employer and there being no fault whatsoever on the part of the employee. In order to balance the equities created in such a situation, the Hon'ble Apex Court in *Rafiq Masih*, gave the direction that so far as Class-III and IV employees were concerned, and who were found to be not having very sound economic footing, would have to be exempted from the consequence of recovery of the excess payment, if considerable period of time has passed by in between. But, as stated earlier, even in case of such an employee, there would be no hardship for something which has been accepted by him consciously with an understanding that it could be taken away at any point of time, if mistake is detected. Clarifying the law on the subject, the Hon'ble Apex Court, in its recent judgment rendered in the case of **High Court of Punjab and Haryana and others vs. Jagdev Singh** reported in **2016 AIR (SCW) 3523**, in paragraph 11 it observed thus :

“the principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the

revised pay scale. He is bound by the undertaking.”

7. The fact situation of the present case is squarely covered by the above referred observations. These are the crucial aspects of the present case and the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur appears to have missed out on them and the result is of passing of an order which cannot be sustained in the eye of law.”

10. We have a similar case in hand. The petitioner has specifically given an undertaking prior to his retirement that if he has received any amount in excess to what he was legitimately entitled to, the said amount would be repaid or can be recovered. Such undertaking, if ignored, would be reduced to the value of a waste paper. An undertaking has it's own meaning and effect. If an undertaking is not to bind a person issuing it, there would be no sanctity to an undertaking. We cannot accept such an argument canvassed by an employee that an undertaking is a mere formality and should be ignored, lest, we ourselves would be party to neutralising the value of an undertaking.

[EMPHASIS SUPPLIED]

21. In the case in hand, it clearly appears that, while granting time bound promotion, pay scale of the present Petitioners were wrongly fixed under the 5th pay commission in the pay scale of Rs.5200 – 20200 plus grade pay of Rs.2800, instead of Rs.4500-7000. As per the 6th pay commission, instead of Rs.5000 – 8000, the Petitioners were wrongly fixed in the pay of Rs.9300 – 34800 plus Grade pay of Rs.4200. The Respondents subsequently noticed the wrong pay fixation of the Petitioners. Therefore, recovery of excess payment against them was

directed. Prior to fixation of the pay scales, all the Petitioners had already furnished written undertakings with the Respondents and agreed for refund of any excess payment due to wrong pay fixation, either from their salary or from their retiral benefits.

22. Therefore, taking into consideration these clear facts of this case as well the law laid down in the cases of **Jagdev Singh (supra)**, **Ananda Vikram Baviskar (supra)** and **Writ Petition No. 4919 of 2018, (supra)**, these Petitioners are not entitled to any relief as claimed.

23. In view of the above discussion, **this Petition is devoid of any merit and is dismissed.** Rule is discharged.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]