

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

**908 CIVIL APPLICATION NO.13069 OF 2022
WITH
WP/7581/2022**

**SANDHYA UTTAMRAO SUPEKAR @ SANDHYA DILIPRAO JOSHI
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS**

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**Advocate for Applicants:
Mr. Bhosale Mahesh Kalidas
AGP for Respondent/State: Mr. A. R. Kale
Advocate for Respondent Nos.2 to 4:
Mr. S. R. Yadav Lonikar**

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**CORAM: RAVINDRA V. GHUGE
AND
ARUN R. PEDNEKER, JJ.**

DATE: 29th SEPTEMBER, 2022

PER COURT:

1. Leave to add the Education Officer (Secondary), Zilla Parishad, Parbhani as Respondent No.5. Addition be carried out forthwith. The learned AGP waives service of notice on behalf of the added Respondents.

2. On 03.08.2022, we had heard the learned Advocate for the Applicant / Petitioner and the learned AGP and had passed the following order:-

"1. The petitioner has put forth prayer clauses (B) and (C), which read as under :-

"B) By issuing appropriate writ, order or direction in the nature of writ this Hon'ble court may kindly be pleased to allow present writ petition thereby directing the Respondent No.3 to verify the service book of the petitioner within stipulated period.

C) Pending the admission, hearing and final disposal of this Writ petition the effect, operation and implementation of the impugned communication dated 15.02.2022 issued by Resp. No. 3 and recovery from the petitioner of said additional payment may kindly be stayed."

2. The learned Advocate for the petitioner submits that, an undertaking was taken from the petitioner that the excess amounts would be repaid.

3. Issue notice to the respondents, returnable on 15/09/2022. The learned A.G.P. waives service of notice on behalf of respondent No.1.

4. Let affidavits-in-reply be filed, at least 10 days prior to the returnable date in this matter.

5. All office objections shall be removed within a period of three weeks from today.

*6. Since an undertaking has been given by the petitioner, the petitioner is, prima facie, covered by the Judgment in **High Court of Punjab and Haryana and others Vs. Jagdev Singh, (2016) 14 SCC 267.**"*

3. By this Civil Application, the Applicant / Petitioner submits that she had never issued any undertaking to the employer, in as much as, the employer had never taken any undertaking from her with regard to the payment of the additional increments. It is, therefore, submitted that the law laid down in **Syed Abdul Qadir and others Vs. State of Bihar and others, (2009) 3 SCC 475,** and **State of Punjab and others Vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334,** would be applicable in order to protect the Applicant / Petitioner from recovery.

4. The learned Advocate representing the Zilla Parishad submits that an undertaking, if given, is always with the Education Officer (Secondary), and never delivered directly to the Chief Executive Officer, Zilla Parishad.

5. In the light of above, we deem it appropriate to add Paragraph No.7, to the order dated 03.08.2022, as under:-

7. In the event the Petitioner has not given any undertaking and the employer has not taken any undertaking from her, recovery shall not be effected in the light of the law laid down in Syed Abdul Qadir and others Vs. State of Bihar and others (*supra*) and State of Punjab and others Vs. Rafiq Masih (White Washer) and others (*supra*).

6. The corrected order be uploaded.

7. In view of the above, the Civil Application is disposed off.

8. The affidavits in reply be filed, on or before 21.10.2022.

9. List the Writ Petition, on 14.11.2022.

[ARUN R. PEDNEKER, J.]

[RAVINDRA V. GHUGE, J.]

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