

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

913 WRIT PETITION NO.2605 OF 2023

SURESH RUPCHAND SONAWANE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...

AND

914 WRIT PETITION NO.2606 OF 2023

SANJAY SADASHIV DAHAKE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...

AND

915 WRIT PETITION NO.2610 OF 2023

APPA FAKIRA BHALERAU
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...

AND

916 WRIT PETITION NO.2615 OF 2023

YASHWANT TAPIRAM TAYADE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...

AND

917 WRIT PETITION NO.2616 OF 2023

RAJANI DIGAMBAR MAHAJAN
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

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AND
918 WRIT PETITION NO.2625 OF 2023

LEENA ASHOK KHARE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...

AND
919 WRIT PETITION NO.2626 OF 2023

KADU JAGANNATH TARU
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...

AND
989 WRIT PETITION NO.2498 OF 2023

RAMDAS RAGHUNATH CHAUDHARI
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...

AND
990 WRIT PETITION NO.2503 OF 2023

SHRADA ANIL NEHETE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...

AND
991 WRIT PETITION NO.2504 OF 2023

CHANDRAKANT DIGAMBAR THAKUR
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...

AND
992 WRIT PETITION NO.2505 OF 2023

HEMCHANDRA RAMA NEHETE

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VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...

AND
993 WRIT PETITION NO.2506 OF 2023

MAHAMMAD HUSEN TADAVI
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...

AND
WRIT PETITION (ST.) NO. 7137 OF 2023

RAJENDRA MADHAV KEDAE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

.....

Advocate for Petitioner : Mr. Bolkar Yogesh B.
AGPs for Respondent No.1-State: Mr. P.S. Patil, Mr. S.K. Tambe,
Mr. S.G. Sangle, Mr V.M. Kagne and Mr. S.G. Karlekar
Advocate for Respondent Nos. 2 to 4 : Mr. S.R. Dheple

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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 3rd MARCH, 2023.**

PER COURT :-

1. The Writ Petition (St.) No. 7137 of 2023 is not on board. Taken on Board by the consent of the parties as it is an identical matter. The learned advocate for the Petitioners has placed a ready reference chart indicating names of the Petitioners/widow, writ petition numbers and other details. The same is taken on record and marked as "X" for identification.

2. All these Petitioners are identically placed. All the original employees, who are Petitioners (barring writ petition No. 2503 of 2023 wherein the widow of deceased employee is the Petitioner), have superannuated from employment. All have been subjected to recovery of amounts, purportedly for the reason that the amounts that were paid to them towards their revised pay scales in view of acquiring certificate of the MS-CIT almost a decade ago, were wrongly paid to them.

3. It is undisputed that these Petitioners were not personally involved in the revision of their pay scales. They were also not involved in manipulating such revision. There is no allegation of fraud or deceit against them. No undertaking was obtained from these Petitioners on the date when pay scale was revised and the payment of revised pay scale commenced. In some cases, at the stroke of retirement, a condition was imposed that they should execute an undertaking and it is in these circumstances that an undertaking has been extracted.

4. The learned advocate representing the Zilla Parishad as well as the learned A.G.Ps. submit that once an undertaking is executed, the case of the Petitioners would be covered by the law laid down by the Hon'ble Supreme Court in the case of ***High Court of Punjab and Haryana and others vs. Jagdev Singh, 2016 AIR (SCW) 3523***. Reliance is placed on the judgment delivered by this

Court on 1.9.2021, *in writ petition No. 13262 of 2018 filed by Ananda Vikram Baviskar Vs. State of Maharashtra and others.*

5. We have referred to the law laid down by the Hon'ble Supreme Court in *High Court of Punjab and Haryana and others vs. Jagdev Singh (supra)*. The record reveals that no undertaking was taken from these Petitioners when the pay scales were revised. An undertaking from some of them was taken at the stroke of their retirement. An undertaking has to be taken from the candidate on the day the revised pay scale is made applicable to him and the payment of such pay scale commences. At the stroke of superannuation of the said employee, asking him to tender an undertaking, practically amounts to an afterthought on the part of the employer and a mode of compelling the candidate to execute an undertaking since they are worried that their retiral benefits would not be released until such undertaking is executed. Such an undertaking will not have the same sanctity of an undertaking executed when the payment of revised pay scale commenced. We, therefore, respectfully conclude that the view taken in *High Court of Punjab and Haryana and others vs. Jagdev Singh (supra)* would not be applicable to the case of these Petitioners, more so since the recovery is initiated after their superannuation.

6. Taking into account that these Petitioners were not involved in any mischief, fraud or deceit in orchestrating their

wrongful pay revision, the law laid down by the Hon'ble Supreme court in ***Syed Abdul Qadir vs. State of Bihar and others, 2009 (3) SCC 475*** and ***State of Punjab and other vs. Rafiq Masih (White Washer) etc. (2015) 4 SCC 334 = AIR 2015 SC 696***, would apply to these cases.

7. As such, all these petitions are allowed. The impugned orders are quashed and set aside. The amounts due and payable to the Petitioners, as well as to the widow, after the superannuation of the said candidates/death of the candidate, would be paid to these Petitioners/widow within a period of 90 days alongwith admissible interest as per Rules, to be paid together.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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