

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6371 OF 2023

Shri Ashok S/o Fakira Bhalerao
Age : 59 years, Occu : Retired
R/o : Ashokratna Niwas, Muktainagar,
Tal. Muktainagar, Dist. Jalgaon

.. Petitioner

Versus

1] The State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai

2] The Chief Executive Officer,
Zilla Parishad, Jalgaon

3] The Education Officer (Primary),
Zilla Parishad, Jalgaon

.. Respondents

...

Advocate for petitioner : Mr. L.H. Kawale
AGP for the respondent – State : Mr. A.S. Shinde
Advocate for respondents 2 and 3 : Mr. S.R. Dheple

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 12 JULY 2023

ORDER (MANGESH S. PATIL, J.) :

Heard learned advocate for the petitioner, learned AGP
and the learned advocate for respondents 2 and 3 Mr. Dheple.

2. The petitioner is challenging the order dated 02-06-2023
whereby the respondent no. 3 – Education Officer has directed certain
recoveries from the petitioner to be made from the pensionary benefits

receivable by him after he stood superannuated on 31-05-2023. Such recoveries are stated to be pursuant to his failure to acquire requisite qualification / knowledge of computer stated to be Rs.3,33,198/-, home loan of Rs.6,08,947/- and overpayment of Rs.99,414/-.

3. The learned advocate for the petitioner relies upon the the decision in the matter of the ***State of Punjab Vs. Rafiq Masih (White Washer); AIR 2015 SC 696*** and submits that no recoveries can be made post retirement.

4. The learned advocate for the respondent – Zilla Parishad would submit that the petitioner's case would be covered by the decision in the matter of ***High Court of Punjab and Haryana and others Vs. Jagdev Singh; 2016 AIR (SCW) 3523*** wherein, even post retirement recoveries have been held to be permissible if the employee has executed an undertaking to refund the excess to be received by him. He would submit that the petitioner had executed an undertaking to refund the excess payment which undertaking he furnished on 15-12-2022. He would place reliance on the decision of this Court in the matter of ***Ananda S/o Vikram Baviskar Vs. State of Maharashtra and others; 2022(2) Mh.L.J. 698*** wherein this Court pursuant to such undertaking has held the employee to be not entitled to refund, if he has executed such undertaking.

5. We have carefully considered the rival submissions and perused the papers.

6. So far as recoveries against home loan are concerned, obviously, the petitioner having derived the benefit and is under legal and contractual obligation to refund / repay the home loan, he cannot be protected. Even the learned advocate for the petitioner fairly concedes this fact.

7. So far as the recoveries against the computer qualification and the excess payment on account of incorrect pay fixation is concerned, true it is that ***High Court of Punjab and Haryana and others Vs. Jagdev Singh*** (supra) lays down that if the employee has furnished an undertaking to refund the excess amount, he is not entitled to the protection from its recovery. Even this Court in the matter of ***Ananda S/o Vikram Baviskar Vs. State of Maharashtra and others*** (supra) has taken the same view.

8. However, there is distinguishing factor in the matter before hand and in the matter of ***Ananda*** (supra). Admittedly, the petitioner was to be superannuated on 31-05-2023 and the undertaking was solicited from him on the verge of retirement, just about 5 months prior, on 15-12-2022. This undertaking is general in nature whereby he has been made to commit that for whatever reason if something was found

due from him including the over-payments, he would refund it. Conspicuously, this undertaking does not mention and even has not been executed when the actual pay fixation was being done. It is *ex post facto* undertaking obtained on the verge of retirement and not while the process of re-fixation was underway. If the employee is put to notice that the fixation would be done in a manner where if some excess payment is found out at some subsequent stage on account of incorrect pay fixation, he undertakes to refund it. Such is not the state-of-affairs in this matter.

9. Precisely such a fact situation has been contemplated by this Court in the matter of ***Shaikh Amir Shaikh Kadar Vs. The State of Maharashtra and others*** (writ petition no. 3320 of 2023) and connected matters decided by common judgment and order dated 23-03-2023 of this Court. Having considered the decision in the matter of ***Jagdev Singh*** (supra) and even by referring to ***Ananda*** (supra) it has been laid down that the undertaking contemplated in ***Jagdev Singh*** should be at the time when the pay fixation takes place and not the ones taken subsequently on the stroke of their retirement.

10. In view of the matter, respondents 2 and 3 cannot now insist for recoveries in respect of computer training and excess payment at the time of pay fixation in view of the decision in the matter of ***Rafiq Masih*** (supra).

11. The writ petition is partly allowed.

12. The impugned order is quashed and set aside to the extent it directs recovery under the head computer of Rs.3,33,198/- and excess payment of Rs.99,414/-. It is made clear that the petitioner would be liable to pay Rs. 6,08,947/- towards the home loan.

13. The petition is accordingly disposed of in above terms.

14. The pension papers of the petitioner shall be finalized and emoluments be released as expeditiously as possible and in any case within six weeks.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/