

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

920 WRIT PETITION NO.5750 OF 2023

AMBADAS BHIKA INGALE
VERSUS
THE CHIEF EXECUTIVE OFFICER AND OTHERS
AND
921 WRIT PETITION NO.6954 OF 2023

SANJAY SURSING DEORE
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
AND
922 WRIT PETITION NO.6956 OF 2023

1) LATABAI SUBHANSING PATIL
2) GOVINDA RAGHUNATH SHINDE
VERSUS
THE CHIEF EXECUTIVE OFFICER AND OTHERS
AND
923 WRIT PETITION NO.7010 OF 2023

VANDANA JITENDRA PATIL
VERSUS
THE CHIEF EXECUTIVE OFFICER AND OTHERS

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Mr. P. B. Patil, Advocate for the Petitioners

Mr. P. K. Lakhotiya, AGP for Respondent No.1 in Writ Petition
No.6954/2023

Mr. V. V. Gujar Advocate for Respondent Nos. 1 to 5 and Respondents 2
to 5 in Writ Petition No.6954/2023.

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.

DATE : 27th September, 2023

ORDER:

1. In all these matters, the Petitioners claim to be identically
placed. The learned advocates representing the Zilla Parishads, agree.

2. Amongst these Petitioners, there is one widower and one widow who have filed the Petitions. All the original employees were working with the respective Zilla Parishads and superannuated from employment. All of them were subjected to recovery of amounts, purportedly for the reason that excess amounts were paid to them, under wrongful revised pay scales/erroneous revised pay scales on the basis of acquiring the certificate of MS-CIT etc. These pay scales were revised more than a decade ago.

3. The grievance of these Petitioners is that recoveries have been initiated against them, from their retiral benefits/pensionary benefits. In some cases, amounts have already been recovered. A chart showing the details of the petitioners, their dates of superannuation, dates of impugned orders and amounts recovered from their retiral benefits/pensionary benefits, is as under:-

Sr. No.	WP Nos.	Name of the Petitioners	Date of superannuation/VRS	Date of Impugned Order	Amount Recovered from the petitioners
1	5750//2023	Ambadas Bhika Ingale	30.04.2018	24.08.2018	3,22,200/-
2	6954/2023	Ushabai Bhimsing Patil (Deceased) Her LRs. Sanjay Sursing Deore	01.05.2016	07.07.2017	1,89,385/-
3	6956/2023	Latabai Subhansing Patil	31.03.1010	16.02.2022	1,28,303/-

3-A	6956/2023	Govinda Raghunath Shinde	30.04.2021	15.06.2020	1,38,625/-
4	7010/2023	Jitendra Rangrao Patil (Deceased) Through his LRs. Vandana w/o Jitendra Patil	17.03.2021	11.11.2021	7,60,238/-

4. We have considered the strenuous submissions of the learned advocates. It is, however, undisputed that none of these Petitioners/deceased Petitioners had played any fraud or were personally involved in wrongful revision of their pay scales or orchestrating wrongful revision by manipulating the record. There is no allegation of fraud or deceit against any of them. No undertaking was acquired from them as and when the revised pay scale become payable. In some cases, at the stroke of retirement, a condition was imposed that they should execute an undertaking and it in these coercive circumstances, that undertaking were extracted from some of them.

5. The learned Advocate representing the Zilla Parishad as well as the learned A.G.P., 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 ***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***.

6. 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)***. However, the record reveals that no undertaking was taken from these Petitioners when the pay scales were revised. The undertakings from some of them were 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 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 apprehensive 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 had 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.

7. 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.

8. In view of the above, all these Petitions are allowed. The impugned orders are quashed and set aside.

9. The impugned orders by which recoveries have been effected against these Petitioners, stand quashed and set aside. The recovered amounts shall be repaid to the Petitioners/widower/widow within a period of 60 days from today, failing which, interest @ 5% per annum from the date of the recovery shall be payable to the Petitioners.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan