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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13317 OF 2023

Shaikh Ahmadulla Sadulla
Age – 61 years, Occ – Retired from Services
R/o Fafai Colony, Narangal Road,
Degloor, Taluka – Degloor, District-Nanded

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Rural Development & Water
Conservation Department
Mantralaya, Mumbai-32

RESPONDENTS

2. The Chief Executive Officer,
Zilla Parishad, Nanded
Taluka and District-Nanded

3. The Account Officer
Finance Department,
Zilla Parishad, Nanded

4. The Head Master,
Zilla Parishad High School Shahapur,
Taluka – Degloor, District – Nanded

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Ms. Megha Mali h/f Mr. S. K. Mathpati, Advocate for Petitioner
Mr. V. M. Kagne, AGP for Respondent No.1 - State
Mrs. Yogita Thorat, Advocate for Respondents No.2 and 3

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

DATE : OCTOBER 26, 2023

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.) :

1. Rule. Rule made returnable forthwith and heard finally by

consent of the parties.

2. The Petitioner is aggrieved by the order dated 10th February, 2020 by which an amount of Rs.2,05,198/- has been recovered from him, at the verge of his retirement, which took place on 31st January, 2021. Reliance is placed on the judgment delivered by the Hon'ble Supreme Court in the matter of **"Syed Abdul Qudir and Others V/s State of Bihar and Others"** (2009) 3 SCC 475 and **"State of Punjab and Others V/s Rafiq Masih (White Washer) and Others"** (2015) 4 SCC 334.

3. Inaccurate pay fixation was performed, when the petitioner was granted promotion on 10th October, 2006. The amount pertains to the Seventh Pay Commission recommendations, where calculations went wrong.

4. Learned advocate representing Zilla Parishad places reliance upon the judgment delivered by the Hon'ble Supreme Court in the matter of **"High Court of Punjab and Haryana and Others V/s Jagdev Singh"** 2016 (14) SCC 267 which pertains to an undertaking having been tendered by an employee. However, it is conceded that such an undertaking was taken from the Petitioner at time of his retirement and not when the amounts were being paid to him. It is thus obvious that when the

Petitioner was about to retire, he was compelled to execute an undertaking, which amounts to extracting the undertaking. He had no option but to agree to execute the undertaking, since his refusal would have led to the refusal of the employer in releasing retiral benefits. As such, this undertaking cannot have force of undertaking that is tendered by an employee on the date he is held eligible for pay fixation.

5. In view of the above, this Petition is partly allowed. The impugned order dated 10th February, 2020 issued by Respondent No.3 is quashed and set aside.

6. On the issue of interest, learned advocate for the Zilla Parishad rightly submits that the order dated 10th February, 2020 is challenged before this Court on 23rd August, 2023 i.e. after around 40 months. The Petitioner cannot take advantage of the delay caused by him in approaching this Court, by seeking interest. The learned advocate for the Petitioner submits that in these circumstances, on instructions, that the Petitioner would not claim interest for this period.

7. As such, let the amount of Rs.2,05,198/- deducted from the retiral benefits of the Petitioner be returned to him. 50% of the amount shall be paid on or before 10th November, 2023 and

remainder of the amount be paid on or before 15th December, 2023. Rule is made absolute in above terms.

[Y. G. KHOBRADE]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE

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