IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

137 **WRIT PETITION NO.11321 OF 2022**

KHANDU HEBATI KAMBLE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

...
Advocate for Petitioners : Mr. Patil Indrale Anand V.
AGP for Respondents/State : Mr. S.K. Tambe
Advocate for R/2 to 4 : Mr. Pulkundwar Santosh B.
...

CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.
DATE : 25th January, 2023

P.C. :-

1. On 25.11.2022, we had issued notice and passed the following order:

> "1. The petitioner has put forth prayer clause B as under:-
> *"B) By issuing writ of mandamus or any other appropriate writ, order or directions, the impugned action of respondents thereby, recovering an amount of Rs.2,32,816/- (Two Lakh Thirty Two Thousand Eight Hundred and Sixteen Rupees) from pensionary benefits of petitioner be quashed and set aside. Consequently, the respondents be directed to refund the amount of Rs.2,32,816/- along with interest at the rate of 12% of per annum and for that purpose necessary direction be issued."*
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> 2. It is submitted, on instructions, that the petitioner has neither indulged in any fraud nor was he instrumental in orchestrating a wrong pay fixation to derive undue benefits. There was no undertaking tendered by the petitioner to the employer that if he is inadvertently paid excess amount, he would return the said amount. Reliance is placed on the judgments delivered by the Honourable Supreme Court in Syed Abdul Qadir vs. State of Bihar, 2009 (3) SCC

> 475 and the State of Punjab and others vs. Rafiq Masih (White Washer) and others, 2015 (4) SCC 334.
> 3. Issue notice to the respondents, returnable on 23.01.2023. The learned AGP waives service of notice on behalf of respondent No.1. Shri Pulkundwar, the learned advocate, waives service of notice on behalf of respondent Nos.2, 3 and 4.
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> 4. Let the affidavit in reply be filed at least 15 days prior to the returnable date.
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> 5. It is contended that the amount of Rs.2,32,816/- has already been deducted from the pensionary benefits of the petitioner.
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> 6. The litigating parties are put to notice that if time permits, this matter would be heard finally on the returnable date.
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> 7. All office objections to be removed within five weeks."

2. The learned advocate representing respondents-Zilla Parishad submits on the basis of the record that the petitioner was never called upon to tender an undertaking that he would refund any excess amount, if inadvertently is paid to him. There is no allegation of fraud against the petitioner. There is also no allegation that he orchestrated a wrong pay fixation so as to derive excess payments. Laches or oblique motives are not attributed to him.

3. Considering the above and keeping in view the law laid down in **Syed Abdul Qadir and Rafiq Masif (supra)**, this petition is allowed. The impugned action of recovering the amount of Rs.2,32,816 from the pensionary benefits of the petitioner w.e.f. 31.12.2018, is quashed and set aside. Needless to state, the said amount along with the admissible interest @ 6% per annum, shall be paid to the petitioner on or before 31.03.2023.

[SANJAY A. DESHMUKH, J.] **[RAVINDRA V. GHUGE, J.]**

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