

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

34 WRIT PETITION NO.12456 OF 2023

**RAVINDRA SITARAM SAPKALE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS**

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Mr D. A. Madake, Advocate for Petitioner;
Mr A. V. Deshmukh, A.G.P. for Respondent No.1
Mr S. B. Munde, Advocate for Respondent Nos.2 to 5

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

DATE : 9th October, 2023

PER COURT:

1. The Petitioner was an 'Assistant Teacher' in Zilla Parishad School, Jalgaon and superannuated on 31/05/2020 from employment. He is aggrieved by the impugned order dated 14/08/2020, passed by Respondent No.4/Education Officer (Primary), Zilla Parishad, Jalgaon, thereby directing recovery of amount of Rs.1,60,673/- against him on the ground of wrong pay fixation.

2. The Petitioner was subjected to recovery of amount, purportedly for the reason that the amounts that were paid to him

(2)

were towards the wrongful revised pay scales/erroneous revised pay scales for acquiring the certificate of MS-CIT. These pay scales were revised in the year 1986. The grievance of the Petitioner is that recovery has been initiated against him from his retiral benefits/pensionary benefits.

3. We have considered the strenuous submissions of the learned Advocates representing the Respondents. It is, however, undisputed that the Petitioner has not played any fraud and there was no personal involvement in the wrongful revision of his pay scales or orchestrating wrongful revision by manipulating the record. There is no allegation of fraud or deceit against him. No undertaking was acquired from him as and when the revised pay scale become payable.

4. 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 Petitioner 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 the Petitioner when the pay scales were revised. 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 he is apprehensive that his 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 the Petitioner, more so, since the recovery is initiated after his superannuation.

(4)

6. Taking into account that the Petitioner was not involved in any mischief, fraud or deceit in orchestrating his 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 this case.

7. As such, **this Writ Petition is allowed.** The impugned order dated 14/08/2020 is quashed and set aside. The amounts due and payable to the Petitioner, after his superannuation, would be paid to him, within a period of 90 days alongwith admissible interest as per Rules, to be paid together.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

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