

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

56 WRIT PETITION NO.14020 OF 2023

Krishnakumar s/o Istari Zilpilwar,
Age-58 years, Occu-Pensioner,
R/o Near LIC Office, Nanded Road,
Bhokar, Tal.Bhokar, Dist.Nanded

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai -32,

2. The Chief Executive Officer,
Zilla Parishad, Nanded,

3. The Block Education Officer,
Panchayat Samiti, Bhokar,

4. The Deputy Engineer (Construction)
Zilla Parishad, Nanded,
Sub-Division Bhokar

-- RESPONDENTS

Mr.G.N.Kulkarni, Advocate for the Petitioner.
Mr.PS.Patil, AGP for Respondent No.1.
Mr.S.B.Pulkundwar, Advocate for Respondent Nos. 2 to 4.

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

DATE : NOVEMBER 6, 2023

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

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

the consent of the parties.

2. The Petitioner has put forth prayer clause "B" as under :-

"B. By issuing Writ of Mandamus and or appropriate order in the like nature respondents No.1 to 4 be directed to refund an amount of Rs.5,03,338/- (Five lac Three Thousand three Hundred thirty three only) alongwith interest from 24.08.2023 within stipulated time."

3. The learned Advocate representing the Zilla Parishad has strenuously opposed this Petition.

4. After considering the submissions of the learned Advocates for the respective sides and on the perusal of the Petition paper book with their assistance, it is obvious that the purported excess amounts have been paid to the Petitioner during his tenure from 12.05.1999 upto 31.03.2023, which is the day on which he is superannuated. The payment is towards the promotions that the Petitioner earned in service and the calculations of payments towards salary.

5. 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 Vs. 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 only at time of his retirement and not when the amounts were being paid to him.

6. 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 by the employer in releasing his retiral benefits. As such, this undertaking cannot have the force of an undertaking that is tendered by an employee on the date he is held eligible for pay fixation. The Law laid down by the Hon'ble Supreme Court in **Syed Abdul Qadir and others Vs.State of Bihar and others, 2009(3) SCC 475** and **State of Punjab and others Vs.Rafiq Masih (White Washer) etc., (2015) 4 SCC 334 = AIR 2015 SC 696**, would apply to this case.

7. In view of the above, **this Petition is partly allowed.** The impugned order dated 27.03.2023 issued by Respondent No.3 is

quashed and set aside.

8. On the issue of interest, we find that the Petitioner has rushed to this Court immediately after the recovery of the amount on 24.08.2023. There is no delay. Therefore, we grant prayer clause B. The learned Advocate for the Petitioner fairly submits that if the payment of the amounts is done on or before 31.12.2023, he may not insist on interest. However, if the amount is not paid within the said period, we quantify the interest @ 7% p.a. We order accordingly.

9. Rule is made partly absolute in the above terms.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)