

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

16 WRIT PETITION NO.14602 OF 2023

ABDUL SALAM ABDUL SUBHAN
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY RURAL
DEVELOPMENT AND WATER CONSERVATION DEPT AND OTHER

...

Advocate for Petitioner : Mr. Sontakke Sandeep B
AGP for Respondents State: Mr. P. S. Patil,
Advocate for Respondents 2 to 4 : Mr. S. B. Munde

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.
DATE : 4th December, 2023

ORDER:

1. The issue is as regards recovery of money on the ground that the Petitioner did not possess the Certificate of MS-CIT and yet increments were made available to him. The details of the Petitioner's service and the amount recovered are set out as under:

Name of the Petitioner	Date of Superannuation	Date of Impugned Order	Amount recovered from the Petitioner
Abdul Salam Abdul Subhan	31.06.2022	26.05.2023	Rs.2,14,258/-

2. While hearing this Petition, we noticed a peculiar aspect with regard to the Jalgaon Zilla Parishad that though the Zilla Parishad has a Panel of Advocates, not one amongst them has nominated as a Standing Counsel by the Chief Executive Officer, to cause appearance in the

Court or assist the Court. It is only after the matter is allotted to a particular lawyer that he appears in the case. There is no Standing Counsel for the Zilla Parishad, Jalgaon.

3. Since an issue, which is no longer *res integra* in the light of several orders passed by this Court, we requested the Panel Advocates to appear before the Court to assist the Court. S/Shri S. B. Munde, M. S. Sonawane, S.R. Dheple, and J. M. Wagh have appeared before the Court. Shri Munde, the learned Advocate submits that he has instructions to appear in the matter.

4. The learned Advocate for the Zilla Parishad points out a communication dated 07.11.2023 issued by the Chief Executive Officer, to all the Block Development Officers and Block Education Officers, Panchayat Samities to return the amounts that were recovered from the candidates in view of the several orders of the High Court.

5. We have considered the strenuous submissions of the learned advocates. It is, however, undisputed that the Petitioner had not played any fraud or was personally involved in a wrongful revision of his pay scale or orchestrating wrongful revision by manipulating the record. There is no allegation of fraud or deceit against any of him. No undertaking was acquired from him as and when the revised pay scale become payable. In several such cases, at the stroke of retirement, a

condition was imposed to execute an undertaking and it is in the coercive circumstances, that undertakings were extracted.

6. 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 *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*.

7. 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 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 commences. At the stroke of superannuation of the said employee, asking him to tender an undertaking, practically amounts to a coercive act on the part of the employer and a mode of compelling the candidates 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 the Petitioner, more so since the recovery is initiated after his superannuation.

8. 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.

9. In view of the above, **this Petition is allowed.**

10. The impugned order is quashed and set aside. The amount recovered from the Petitioner shall be repaid to him within a period of 60 days from today, failing which, the said amount would attract interest @ 5% per annum from the date of the recovery.

11. We request the learned Advocate appearing for the Zilla Parishad to convey to the Chief Executive Officer, Zilla Parishad, Jalgaon that it would be in the better interest of the Zilla Parishad to have a Standing Counsel for the High Court who would at least accept the notice in urgent matters and thereafter, the Zilla Parishad would be

at liberty to appoint an Advocate as per the procedure followed by the Zilla Parishad. The learned AGP submits that he has spoken to the CEO in the lunch hours and he has conveyed that a Standing Counsel would be appointed very soon for the Jalgaon Zilla Parishad in view of our observations.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan