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

933 WRIT PETITION NO.14296 OF 2023

GAUTAM SAKHARAM MAIRALE
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
AND
WRIT PETITION NO.14358 OF 2023

YAKUB SUBHAN TADVI
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
AND
WRIT PETITION NO.14359 OF 2023

AYUB ITBAR TADVI
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
...
Advocate for Petitioners : Mr. Bolkar Yogesh B.
AGPs for Respondents State: Mr. S. K. Tambe and Mr. S.G. Karlekar
Advocate for Respondents 2 to 4 : Mr. S. R.Dheple

CORAM	:	RAVINDRA V. GHUGE & Y. G. KHOBRAGADE, JJ.
DATE	:	9th November, 2023

ORDER:

1. Writ Petition No.14358 /2023 and Writ Petition No.14359/2023 were not on board. Mentioned. Taken on the Production Board.

2. The learned Advocate for the Petitioners have placed a ready reference chart indicating the names of the Petitioners, Writ Petition numbers, recovery amounts and other details. The same is taken on record and marked as “X” for identification.

3. Both these Petitioners are identically placed. Both of them are the employees, who have superannuated from employment. They have been subjected to recovery of amounts, purportedly for the reason that the amounts that were paid to them towards their revised pay-scales almost a decade ago, in view of acquiring certificates of MS-CIT or on account of the pay fixation, were wrongly paid to them.

4. It is undisputed that these Petitioners were not personally involved in the revision of their pay scales. They were also not involved in manipulating such revision. There is no allegation of fraud or deceit against them. No undertaking was obtained from these Petitioners on the date when the pay scales were revised and the payment of revised pay scale commenced.

5. In some cases, at the stroke of retirement, a condition was imposed that they should execute an undertaking and it is in these circumstances that an undertaking has been extracted. The learned Advocate representing the Zilla Parishad as well as the learned A.G.Ps., submit that, once an undertaking is executed, the case of the Petitioners 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.***

6. 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 these Petitioners when the pay scales were revised. An undertaking from some of them was taken at the stroke of their retirement. An undertaking has to be taken from the candidate when 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 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 as that 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 these Petitioners, more so since the recovery is initiated after their superannuation.

7. Taking into account that these Petitioners were not involved in any mischief, fraud or deceit in orchestrating their 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 these cases.

8. As such, **both these Petitions are allowed.** The impugned orders are quashed and set aside. The amounts due and payable to the Petitioners after the superannuation of the said candidates, would be paid to these Petitioners within a period of 90 days alongwith admissible interest as per Rules.

9. Needless to state, if any candidate has tendered an undertaking at the time of the pay-fixation making it obligatory on himself to refund the excess amount paid, this order would not be applied to such a candidate, in the light of the law laid down in Jagdev Singh (supra), which would govern such cases.

(Y. G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**

JPChavan