



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

975 WRIT PETITION NO. 15541 OF 2023

SANJAY RAMDAS NIKUMBH

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS

.....

AND

WRIT PETITION NO. 15542 OF 2023

VIMALBAI SHIVAJI MAHALE

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS

...

AND

WRIT PETITION NO.15656 OF 2023

(Not on the Board. Mentioned. Taken on the Production Board.)

FAKIRRAO HARALAL RATHOD

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

.....

Advocate for the Petitioners : Shri Sontakke Sandeep B.

AGP for Respondents/State : Shri P.S. Patil

Advocate for Respondents 2 to 4 in WP 15541 & 15656/2023:

Shri V.V. Gujar.

...

CORAM : RAVINDRA V. GHUGE

&

Y. G. KHOBRAGADE, JJ.

DATE :- 19th December, 2023

Per Court :-

1. In all these matters, the Petitioners claim to be identically placed. The learned Advocate representing the Zilla

Parishad, agrees.

2. All the original employees were working with the respective Zilla Parishads and superannuated from employment. All of them were subjected to recovery of amounts, purportedly for the reason that excess amounts were paid to them, under wrongful revised pay scales/erroneous revised pay scales on the basis of acquiring the certificate of MS-CIT etc. These pay scales were revised more than a decade ago.

3. The grievance of these Petitioners is that recoveries have been initiated against them, from their retiral benefits/pensionary benefits. In some cases, amounts have already been recovered. A chart showing the details of the Petitioners, their dates of superannuation, dates of impugned orders and amounts recovered from their retiral benefits/pensionary benefits, is as under:-

Sr. No.	WP Nos.	Name of Petitioner	Date of Superannuation	Date of impugned order	Amount recovered from the Petitioner
1	15541/2023	Sanjay R. Nikumbh	30.06.2023	17.11.2023	2,61,472/-
2	15542/2023	Vimalbai S. Mahale	(Died on 29.12.2022)	25.09.2023	4,73,379/-
3	15656/2023	Fakirrao H. Rathod	30.06.2020	29.06.2021	88,197/-

4. We have considered the strenuous submissions of the learned Advocates. It is, however, undisputed that none of these Petitioners had played any fraud or were personally involved in a wrongful revision of their pay scales or orchestrating wrongful revision by manipulating the record. There is no allegation of fraud or deceit against any of them. No undertaking was acquired from them as and when the revised pay scales become payable. In some cases, at the stroke of retirement, a condition was imposed that they should execute an undertaking and it is in these coercive circumstances, that undertakings were extracted from some of them.

5. 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 Petitioners 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 01.09.2021, 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)*. However, the record reveals that no undertaking was taken from these Petitioners when the pay scales were revised. The undertakings from some of them were taken at the stroke of their retirement. 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 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 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, **all these Writ Petitions are allowed.**

9. The impugned orders are quashed and set aside. The amounts due and payable to the Petitioners, as well as to the widow(s)/widower, after the superannuation of the said employees/ death of the employees, would be paid to these Petitioners/widow/ widower, within 60 days from today, failing which the amount would attract interest at the rate of Rs.5% p.a. from the date of this order.

10. The learned Advocate for the Petitioners submits that recoveries other than this issue, have not been assailed in these Petitions and the Management will be at liberty to initiate appropriate steps. As such, this order is restricted only to the extent of recoveries in relation to the wrongful pay fixation.