

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION 2566 OF 2022

with

WRIT PETITION 3632 OF 2022

with

WRIT PETITION 3631 OF 2022

with

WRIT PETITION 1093 OF 2022

WRIT PETITION 2566 OF 2022

Smt. Pramila wd/o. Purushottam
Bopche,
aged about 51 years, Occ. Service,
R/o. Shastri Ward, Gondia,
Tahsil & District Gondia

.....PETITIONER

..V E R S U S..

1. State of Maharashtra,
through its Secretary,
General Administrative
Department, Mantralaya, Mumbai 32

2. Zilla Parishad, Gondia
through its Chief Executive
Officer, Gondia,
Tahsil & District Gondia

3. Deputy Chief Accounts and Finance
Officer, Zilla Parishad, Gondia,
Tahsil and District Gondia

4. Block Development Officer,
Panchayat Samiti,
Panchayat Samiti Sadak Arjuni,
Tahsil Sadak Arjuni, District Gondia

..RESPONDENTS

WRIT PETITION 3632 OF 2022

Smt. Karvinda wd/o. Santoshkumar
Shahare
aged about 52 years,

Occ. Household work,
R/o. Shivaji Ward, Sharda Chowk,
Sakoli, Tahsil Sakoli
District Bhandara

.....PETITIONER

...V E R S U S...

1. State of Maharashtra,
through its Secretary,
General Administrative
Department, Mantralaya, Mumbai 32

2. Zilla Parishad, Gondia
through its Chief Executive
Officer, Gondia,
Tahsil District Gondia

3. Deputy Chief Accounts and Finance
Officer, Zilla Parishad, Gondia,
Tahsil and District Gondia

4. Block Development Officer,
Panchayat Samiti,
Panchayat Samiti Sadak Arjuni,
Tahsil & District Gondia

..RESPONDENTS

WRIT PETITION 3631 OF 2022

Smt. Pushpa wd/o. Nilkanth
Lanjewar,
aged about 46 years,
Occ. Household work,
R/o. Sadak Arjuni,
Tahsil Sadak Arjuni, Dist. Gondia

.....PETITIONER

...V E R S U S...

1. State of Maharashtra,
through its Secretary,
General Administrative
Department, Mantralaya, Mumbai 32

2. Zilla Parishad, Gondia
through its Chief Executive
Officer, Gondia,

Tahsil District Gondia

3. Deputy Chief Accounts and Finance
Officer, Zilla Parishad, Gondia,
Tahsil & District Gondia

4. Block Development Officer,
Panchayat Samiti,
Panchayat Samiti Sadak Arjuni,
Tahsil Sadak Arjuni,
District Gondia

..RESPONDENTS

WRIT PETITION 1093 OF 2022

Smt. Anju wd/o. Ishwardayal
Gautam,
aged about 36 years,
Occ. Housewife,
R/o. At & Post Dasgaon (KH),
Tahsil & District Gondia

.....PETITIONER

..V E R S U S..

1. State of Maharashtra,
through its Secretary,
General Administrative
Department, Mantralaya, Mumbai 32

2. Zilla Parishad, Gondia
through its Chief Executive
Officer, Gondia,
Tahsil District Gondia

3. Deputy Chief Accounts and Finance
Officer, Zilla Parishad, Gondia,
Tahsil & District Gondia

4. Block Development Officer,
Panchayat Samiti,
Panchayat Samiti Gondia,
Tahsil & District Gondia

..RESPONDENTS

Mr. I.N. Chaudhari, counsel for petitioners.
Mr. S.M. Ukey, Addl.GP for respondent 1/State.
Mr. A.M. Dixit, counsel for respondents 2 to 4.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 28.03.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

3. Common issues are involved in these petitions.

4. We may refer to the facts in Writ Petition 2566 of 2022 which are illustrative.

Petitioner's husband was appointed in primary school run by the then Zilla Parishad, Bhandara in 1991 and he superannuated as Assistant Teacher on the establishment of Zilla Parishad, Gondia on 30.6.2020. Petitioner's husband succumbed to Covid 19 on 21.5.2021.

In the interregnum, vide orders dated 4.12.2020 and 9.12.2020, pension and gratuity release orders were issued. The order dated 4.12.2020 directs that amount of Rs. 93,317/- (Rupees Ninety Three Thousand Three Hundred Seventeen) be withheld as computer recovery. In January 2022, the petitioner -

widow represented and sought release of the withheld amount. Since request has gone unheeded, she is before the Court.

5. We note from the affidavit in response filed on behalf of the Zilla Parishad, Gondia that the recovery of Rs. 93,317/- is directed purportedly on the premise that the employee did not submit the prescribed computer training certificate on or before 31.12.2007. Presumably, the stand of the Zilla Parishad is that in view of the failure to submit the certificate, it will have to be assumed that excess payment was made to the employee. The affidavit in response further refers to an undertaking given by the employee at the time of pay fixation in view of the extension of the benefits of the pay commission/revision of pay scales.

6. In our considered view, the orders of recovery in all the petitions shall have to be quashed. The recovery pertains to the year 2007. The employees have retired and have expired. The decision of the Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Masih, 2014(8) SCC 883*** is squarely applicable. While the respondents do rely on the decision of the Hon'ble Supreme Court in ***State of Punjab Vs. Jagdeo Singh, 2016(14) SCC 267*** to buttress the submission that the employee did furnish an undertaking, we have considered similar situation and have held that an

undertaking which is given for the purpose of pay fixation while availing the benefits of pay commission/recommendations etc. shall not preclude the employee from challenging recovery, particularly, if the amount recovered is not paid to employee pursuant to the recommendations/revision of pay scale etc. for the purpose of which the undertaking was obtained.

7. We, therefore, hold and declare that the petitioners are entitled to be paid amount of gratuity which is withheld on the ground that the deceased employee did not submit the computer training certificate on or before 31.12.2007.

8. The amount withheld shall be paid to the petitioners within eight weeks along with interest which may be determined in accordance with the provisions of Rule 129(B) of the Maharashtra Civil Services (Pension) Rules, 1982.

9. Petitions are allowed in the aforestated terms.

(Mrs. Vrushali V. Joshi, J.) **(Rohit B. Deo, J.)**
belkhede