

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

WRIT PETITION NO. 7658 OF 2019

Laxman Kisan Dhakate a/a 71 years,
Occup. Pensioner r/o Shubham Nagar,
Bangaon, Amgaon, Tah.Amgaon,
Dist.Gondia.

Petitioner

-Vs.-

1. The State of Maharashtra through the Secretary, Department of Rural Development and Water Conservation, Mantralaya, Mumbai.
2. The Zilla Parishad, Gondia, Dist. Gondia, through it's Chief Executive Officer, Dist. Gondia.
3. The Panchayat Samiti, Amgaon,Tah. Amgaon, Dist.Gondia through the Block Development Officer.
4. The Dy.Chief Account and Finance Officer, Zilla-Parishad Gondia, Dist.Gondia

Respondents.

Mr.VR.Borkar, counsel for the petitioner
Mr. A.A.Madiwale, AGP for respondent No.1.
Mr.A.Y. Kapgate, counsel for respondent Nos.2 to 4.

**CORAM: A.S.CHANDURKAR AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 14th July, 2023

ORAL JUDGMENT (Per : A.S.Chandurkar, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The challenge raised in the present writ petition is to the order of recovery dated 03.07.2017 that has been issued by Zilla Parishad, Gondia seeking to recover the alleged excess payment made to the petitioner while he was in service on the post of Senior Clerk.

4. The petitioner superannuated from the post of the Senior Clerk on 28.02.2007. He thereafter started receiving pensionary benefits. On 03.07.2017, which is almost 10 years and 4 months after his superannuation, he was informed that there was an excess payment of an amount of Rs.73,861/- made to him on account of incorrect pay fixation. On that basis, the aforesaid amount came to be recovered from him.

5. The learned counsel appearing for the petitioner submits that the petitioner was serving on a Group-C post and hence, the law laid down by the Hon'ble Supreme Court in the

case of **State of Punjab Vs. Jagdeo Singh, 2016(14) SCC 267** was applicable. He submits that after expiry of almost 10 years and 4 months, such amount of over payment was not liable to be recovered. In support, he has referred to the decisions in the bunch of Writ Petitions in *Writ Petition No.1327 of 2017 (Jiyalal Budha Bansod Vs.. The State of Maharashtra)* dated 18.06.2019 and in the bunch of Writ Petitions in *Writ Petition No.2566 of 2022 (Pramila Purushottam Bopche Vs. State of Maharashtra)* dated 28.03.2023.

6. The learned counsel appearing for the Zilla Parishad on the other hand submits that during the course of service, the petitioner had submitted an undertaking stating therein that if on account of pay revision, pursuant to recommendations of the 6th Pay Commission, any excess payment was made, the same would be refunded. Relying upon the decision in *Writ Petition No.193 of 2022 (Usha Ramesh Bopche Vs.The State of Maharashtra and ors.) decided on 20.09.2022*, he submits that the petitioner having given an undertaking, it was not permissible for him to challenge the order of recovery.

7. Having heard the learned counsel for the parties and after perusing the documents on record, it is seen that the petitioner having superannuated on 28.02.2007, the Zilla Parishad has sought to recover the amount of excess payment pursuant to benefit under the One Step Promotion Scheme after almost 10 years and 4 months. It is true that the petitioner had submitted an undertaking while in service by which he was not to protest against any recovery on account of over payment. However, the Zilla Parishad has not explained why it took almost 10 years and 4 months to undertake recovery of the said excess amount. We find that this period of 10 years and 4 months is highly unreasonable for the Zilla Parishad to seek recovery. It is not the case of Zilla Parishad that on account of any misrepresentation, such over payment has been made. Being a Group 'C' employee, such recovery was therefore unwarranted as held in **State of Punjab Vs. Jagdeo Singh** (*supra*). In these facts, the ratio of the decision relied upon by the learned counsel appearing for the Zilla Parishad can not be applicable.

8. For aforesaid reasons, the order dated 03.07.2017 is set aside. The Zilla Parishad, is directed to refund the amount of Rs.73,861/- within a period of eight weeks of receiving copy of

the judgment. It is made clear that if the said amount is not refunded within a period of eight weeks, same would carry interest @ 4% till such payment.

9. Rule is made absolute in the afore-stated terms. No order as to costs.

(MRS.VRUSHALI V. JOSHI, J)

(A.S.CHANDURKAR,J)