2024:BHC-AUG:2384-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 WRIT PETITION NO. 1217 OF 2024

VIJAY NAMDEO CHAUDHARI
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

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Advocate for the Petitioner : Mr. Bolkar Yogesh B.
AGP for Respondent 1/State : Mr. P.K. Lakhotiya
Advocate for Respondents 2 to 4/ZP: Mr. S.R. Dheple

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CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.

DATE :- 31st January, 2024

Per Court :-

1. The Petitioner has superannuated from employment. He has been subjected to recovery of amounts, purportedly for the reason that the amounts that were paid to him towards his revised pay-scales, in view of acquiring certificate of MS-CIT or on account of the pay fixation, almost a decade ago, were wrongly paid to him.

2. It is undisputed that the Petitioner was not personally involved in the revision of his pay scale. He was also not involved in manipulating such revision. There is no allegation of fraud or deceit against him. No undertaking was obtained from

the Petitioner on the date when the pay scales were revised and the payment of revised pay scale commenced.

3. We have come across several cases wherein, at the stroke of retirement, a condition was imposed that such employees should execute an undertaking and it is in these circumstances that an undertaking has been extracted from several employees. The learned Advocate representing the Zilla Parishad as well as the learned AGP submit that, once an undertaking is executed, such cases 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 01.09.2021, ***in Writ Petition No. 13262 of 2018*** filed by ***Ananda Vikram Baviskar Vs. State of Maharashtra and others.***

4. The learned Advocate for the Respondent/ Zilla Parishad has vehemently opposed this petition on the ground of delay and laches. He submits that the Petitioner has approached this Court after six years. The Petitioner should not take advantage of his own wrong by seeking interest. If this Court is inclined to entertain this petition, interest may be denied.

5. The learned Advocate for the Petitioner submits, on instructions, that the Petitioner would claim interest only from the date of the filing of this petition, which is 24.01.2024. We accept this fair statement.

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 the Petitioner when the pay scales were revised. 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, asking the employees 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 such

employees, more so since the recovery is initiated after their superannuation. Further, in the instant case, the Petitioner has not executed any undertaking.

7. 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 the case.

8. In view of the above, **this Writ Petition is allowed**. The impugned order dated 16.06.2017 is quashed and set aside. The Respondent/ Employer shall return the amount of Rs.2,16,847/- to the Petitioner within a period of 90 days. If the amount is not paid within this period, interest at the rate of 6% per annum would be leviable from the date it was recovered from the Petitioner until it is paid to him.

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