



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1407 OF 2024

Smt. Shaheen Fatima Mohsin Ahmed
age 58 years, occ. Retired
R/o Plot No. 11, Basheer Colony,
Roshangate, Aurangabad 431001. .. Petitioner

versus

1. The State of Maharashtra
Through Secretary
Municipal Corporations,
Mantralaya,
Mumbai 400 032.
2. The Commissioner
Municipal Corporation,
Aurangabad.
3. The Education Officer,
Municipal Corporation,
Aurangabad. .. Respondents

Mrs. A. N. Ansari, Advocate for the Petitioner.
Mr. S. K. Tambe, AGP for the State.
Mr. S. P. Urgunde, Advocate for Respondent Nos. 2 and 3.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

DATE : 12th MARCH, 2024.

JUDGMENT : (Per : Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally
by the consent of the parties.

2. The Petitioner has put forth prayer clauses 'B', 'C' and 'D' as under :-

B) To quash and set aside the order letter No. MCA/Education/2023/450 dated 16.06.2023, issued by Commissioner, Municipal Corporation Aurangabad, by issuing any appropriate writ order or direction as the case may be.

C) It may be held that Petitioner is not liable for any recovery from her retirement benefits on the count of not passing MSCIT examination in time, by issuing any appropriate writ order or direction as the case may be.

D) During the pendency and final disposal of this Writ Petition stay to order letter No. MCA/Education/2023/450 dated 16.06.2023, issued by Commissioner, Municipal Corporation, Aurangabad, may kindly be granted.

3. The factual matrix of this case, that would be relevant for deciding as to whether the Petitioner can be subjected to recovery of the purported excess amounts paid while in service, is as under :-

A) The Petitioner came to be appointed as an Assistant Teacher on 1st January, 1986.

- B) The Petitioner superannuated on 31st January, 2024.
- C) The Petitioner was granted additional increment from 1st January, 2010.
- D) The Petitioner actually acquired the qualification of MS-CIT in October, 2021.
- E) On 23rd November, 2020, the Petitioner tendered an undertaking that if it is found that she has been paid in excess than what she was entitled to receive as per the pay scale available in the select pay scale category from 1st January, 2010, the Petitioner would be bound to suffer recovery.
- F) One more undertaking was taken from the Petitioner on 19th July, 2023.

4. The learned Advocate for the Municipal Corporation has vehemently opposed this Petition and submits that this Petition is not only frivolous, but, deserves to be dismissed with exemplary costs. He further submits that though the benefit was made available to the Petitioner on 1st January, 2010, the first undertaking was extracted on 23rd November, 2020 and the second undertaking was extracted on 19th July, 2023. He, therefore, submits that 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,
would be squarely applicable to the case of the Petitioner.

5. It would be apposite to reproduce the principles culled in the judgment of the Hon'ble Supreme Court in Jagdev Singh's case (supra), as under :-

"9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the State. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10. In State of Punjab & Ors. etc. v. Rafiq Masih (White Washer) etc. (AIR 2015 SC 696) this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law :

“(i) Recovery from employees belonging to Class-III and Class-IV Service (or Group ‘C’ and Group ‘D’ service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer’s right to recover.”

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished

an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable installments. We direct that the recovery be made in equated monthly installments spread over a period of two years.

6. This Court has followed the law laid down in Jagdev Singh's case (supra), in the judgment dated 23rd March, 2023 delivered at Aurangabad in Writ Petition No. 3320/2023 (Shaikh Amir Shaikh Kadar vs. The State of Maharashtra and others), while dealing with a case wherein undertakings were extracted from the employees when they were on the verge of their retirement.

7. It is well settled that while considering such cases, it also has to be verified as to whether the Petitioner was involved in orchestrating the wrongful pay-fixation by manipulating the records or was involved in a fraud or deceit to extract monetary benefits or that he was personally involved in the process of pay fixation. In the

case in hand, the Petitioner is not attributed with any of these oblique motives.

8. This Court has held in case of **Shaikh Amir Shaikh Kadar vs. The State of Maharashtra and others** (Writ Petition No. 3320/2023), in Paragraph Nos. 6 and 7 as under :-

*“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.

9. In view of the above, we find that the undertaking dated 23rd November, 2020 was taken from the Petitioner keeping in view that she was to retire on 31st January, 2024. So also, the second undertaking dated 19th July, 2023, which was in relation to the Government Circular dated 22nd November, 2021. We do not find that the said two undertakings extracted from the Petitioner on the verge of her retirement, could be a ground for sustaining the action of the employer in initiating recovery against the Petitioner on 16th March, 2023, just seven months away from retirement.

10. In view of the above, **this Writ Petition is allowed** in terms of prayer clause 'B' and 'C'. Since this Court had protected the

Petitioner before the recovery could commence, there would be no order for repayment of the recovery amount.

11. Rule is made absolute in the above terms.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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