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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**913 WRIT PETITION NO. 3817 OF 2024**

**VANDANA PRAKASH MORE**

**VERSUS**

**THE STATE OF MAHARASHTRA THROUGH ITS  
SECRETARY AND OTHERS**

....

Mr S. B. Sontakke, Advocate for Petitioner;

Mr D. R. Korade, A.G.P. for Respondent No.1

Mr V. V. Gujar, Advocate for Respondent Nos.2 to 4

**CORAM : RAVINDRA V. GHUGE**

**AND**

**R. M. JOSHI, JJ.**

**DATE : 16<sup>th</sup> April, 2024**

**PER COURT:**

1. The Petitioner before us is a widow, who is about 46 years of age. Her husband was the 'Assistant Teacher' in the Zilla Parishad, Jalgaon. He has superannuated on 31/05/2019. He died on 04/11/2020. A chart placed on record, which neither has a date, nor is it signed by the Block Development Officer, Panchayat Samiti, Bhadgaon, suggests that the recovery as against the deceased for inadvertent excess payment for the period from 01/01/2008 to 30/05/2011, is effected in 2018, which is one year

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prior to the superannuation of the deceased. By the impugned communication dated 18/05/2020, which is passed five months prior to the demise of the employee, indicates that a total recovery of Rs.69,211/- was effected from the retiral benefits of the deceased employee.

2. The learned Advocate representing the Respondent/ Zilla Parishad, Jalgaon, strenuously opposed the Petition and submitted that this Writ Petition has been filed belatedly. The deceased could have approach this Court immediately after receiving the order dated 18/05/2020. He, therefore, submits that this Writ Petition be dismissed with costs.

3. It is contended by the Respondent/Zilla Parishad that the excess payment was made to the Petitioner under a wrong impression that, he has acquired the MS-CIT qualification with regard to which, he received an exemption at the age of 50 years for having not cleared the said Course.

4. We have considered the strenuous submissions of the learned Advocates for the respective sides. It is, however,

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undisputed that the Petitioner had not played any fraud or was not personally involved in a wrongful revision of his pay scales or orchestrating wrongful revision by manipulating the record. There is no allegation of fraud or deceit against him. No undertaking was acquired from him as and when the revised pay scales become payable.

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 Petitioner 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 the Petitioner when the pay scales were revised. An undertaking has to be taken from the candidate

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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 he is apprehensive that his 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 the Petitioner, more so, since the recovery is initiated after his superannuation.

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 this case.

8. In view of the above, **this Writ Petition is partly allowed.** The impugned order of recovery is quashed and set aside. The amount of Rs.69,211/- shall be returned to the Petitioner by the Respondent/Zilla Parishad, Jalgaon within a period of 60 days from today, without interest, since the Petitioner has belatedly approached this Court. If the amount is not paid within 60 days, interest @ 6% p.a. from the date of recovery, would be admissible.

**(R. M. JOSHI, J.)**

**(RAVINDRA V. GHUGE, J.)**

sjk