



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4818 OF 2020

SHRIMATI MADHURI JAYCHAND BHAVSAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. S. R. Sapkal, Advocate for the Petitioner
Mr. V. M. Kagne, AGP for Respondent No.1/State
Mr. N. N. Desale, Advocate for Respondent No.2.

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

DATE : 10th MAY, 2024

ORAL 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 dated 24.9.2019 Exhibit E passed by District Health Officer and order dated 26.5.2020 Exhibit F passed by Block Development Officer Panchayat Samiti Dhule or recovery by issuing appropriate writ of mandamus, order or direction in the nature of writ or as the case may be.

C) To direct the respondents to revise the pension and benefits on the basis of last month drawn salary received by the petitioner by issuing appropriate writ of mandamus, order or direction in the nature of writ or as the case may be.

D) To direct the respondents to refund the recovered

amount and not to make any further recovery from the pension of the petitioner.”

3. We have considered the submissions of the learned Advocates for the respective sides.

4. The learned Advocate representing the Zilla Parishad submits that the Petitioner was a permanent employee. By letter dated 29th October, 2018, the Petitioner clarified that she has completed one year ANM training course, but did not qualify stamp lender examination. The Petitioner has given an undertaking before the Respondent Authority at the time of presenting the retirement papers on 27th March, 2019. Because of such undertaking, she was liable to repay the excess payment made to her on account of a wrong pay fixation.

5. The learned Advocate for the Petitioner has placed on record a compilation of 7 pages, which is marked as 'X-1' for identification. The learned Advocate for the Zilla Parishad has received the compilation and he contends that the pay scale was fixed on 1st January, 2006 and the recovery was initiated at the stroke of superannuation. An undertaking was taken at the time of presentation of the retirement papers on 27th March, 2019.

6. In view of the above, considering the settled position of law

in the light of the judicial pronouncements of the Hon'ble Supreme Court in cases of *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) AIR 2015 SC 696*, the Petitioner's case stands squarely covered. We have concluded in several orders that an undertaking extracted at the stroke of superannuation, shall have no impact considering the fact that the employee would have no ground to bargain and would be in a compelling situation wherein he is forced to execute such an undertaking.

7. As such, **this Petition is allowed** in terms of prayer clauses 'B', 'C' and 'D'.

8. Consequently, the Respondent would grant an opportunity of hearing to the Petitioner while revising the pension. On recalculations, the amount recovered shall be refunded to the Petitioner and appropriate pension shall be paid along with arrears.

9. **Rule is made absolute in the above terms.**

(R. M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)

ssp