



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4459 OF 2024

RAHUL BAPURAO KAYTE

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

Mr. L. H. Kawale, Advocate for the Petitioner

Ms. Neha Kamble, AGP for Respondent No.1/State

Ms. Yogita Thorat, Advocate for Respondent Nos. 2 to 5

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

DATE : 29th April, 2024

ORAL JUDGMENT :-

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

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

"B. By issuing appropriate writ, order or directions in the like nature, may kindly be quash and set aside the impugned order of recovery issued by respondent No.5 dated 05.12.2023 and for that purpose issue necessary orders.

C. By issuing writ of mandamus the respondent No.2 to 5 may kindly be directed to repay/refund an amount of Rs.6,55,436/- to the Petitioner within stipulated time."

3. There is no dispute that the amount set out in prayer clause 'C' has been deducted from the pensionary benefits of the Petitioner who

has superannuated on 30th September, 2023.

4. In identical cases, *Writ Petition No. 3320 of 2023 filed by Shaikh Amir Shaikh Kadar Versus The State of Maharashtra Through its Secretary and Others, decided on 23rd March, 2023*, this Court has observed in paragraph Nos. 5 to 12 as under:-

"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 Petitioners 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 1.9.2021, 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 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.

8. As such, all these Petitions are allowed.

9. The impugned orders are quashed and set aside. The amounts due and payable to the Petitioners, as well as to the widows, after the superannuation of the said employees/death of the employees, would be paid to these Petitioners/widow, within a period of 90 days alongwith admissible interest as per Rules, to be paid together.

10. In Writ Petition No. 3364 of 2023, filed on 20.3.2023, Arabkha Amirkha Tadavi (alias Arabkhan Amirkhan Tadavi), is before this court for assailing the order dated 21.7.2017, though he has approached this court belatedly.

11. The learned advocate for the Petitioner submits on instructions and in the light of the averments, set out in paragraph 10, the Petitioner would not claim any interest on the amount which has already been recovered from him, to the extent of it's repayment.

12. As such, this petition is partly allowed. The impugned order dated 21.7.2017 is quashed and set aside to the extent of recovery of amount of Rs.3,30,448/-. The said amount of Rs.3,30,448/- recovered from the Petitioner, shall be repaid to him within 60 days from today, failing which the amount would attract interest at the rate of Rs.5% p.a. from the date of this order."

5. Since the Petition in hands, is almost identical to the Petitions decided by the order dated 23rd March, 2023 in ***Shaikh Amir Shaikh***

Kadar (supra), we do not have any reason to take a different view in the matter.

6. **This Writ Petition is partly allowed.** The action of the Zilla Parishad in recovering the amount is quashed and set aside. Prayer clause 'C' shall be effected by the Zilla Parishad within 60 days. If the said amount is not paid, interest at the rate of 6% per annum from the date the amount was payable, till the actually paid, will be payable.

7. **Rule is made partly absolute in the above terms.**

(R. M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)

ssp