



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

12 WRIT PETITION NO. 6832 OF 2024

SAMBHAJI BALIRAM KOLI

VERSUS

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

...

Shri Sontakke Sandeep B., Advocate for the Petitioner.

Shri B.M. Dhanure, AGP for Respondent No.1/State.

Shri V.C. Patil, Advocate i/by Shri U.B. Bondar, Advocate for
Respondent Nos.2 to 4.

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CORAM : RAVINDRA V. GHUGE

&

Y. G. KHOBRAGADE, JJ.

DATE :- 08th July, 2024

Per Court :-

1. The Petitioner was working with the Respondent/
Zilla Parishad and superannuated from employment on
31.05.2023. He is subjected to recovery of amounts, purportedly
for the reason that excess amounts were paid to him under
wrongful revised pay scales/erroneous revised pay scales on the
basis of acquiring the certificate of MS-CIT. His pay scale was
revised more than a decade ago.

2. The grievance of the Petitioner is that the recovery
has been initiated against him, from his retiral benefits/

pensionary benefits and the amount of Rs.32,276/- has already been recovered vide the impugned order dated 07.09.2023.

3. We have considered the strenuous submissions of the learned Advocates. It is, however, undisputed that the Petitioner had not played any fraud or was not personally involved in a wrongful revision of his pay scales or orchestrated a wrongful revision by manipulating the record. There is no allegation of fraud or deceit against the Petitioner. No undertaking was acquired from him as and when the revised pay scales become payable. In several matters, we find that at the stroke of retirement, a condition was imposed that the employees should execute the undertakings and it is in these coercive circumstances, that the undertakings were extracted from such employees.

4. 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.***

5. 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 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 the Petitioner, more so since the recovery is initiated after his superannuation.

6. 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.

7. As such, **this Writ Petition is allowed.**

8. The impugned order is quashed and set aside. The amounts due and payable to the Petitioner would be paid 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.