



(1)

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

WRIT PETITION NO. 6435 OF 2024

**SHIVHAR MADHAVRAO YEJGE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS**

**WITH
WRIT PETITION NO. 6436 OF 2024**

**DHANRAJ BHIVRAO CHAVAN
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS**

**WITH
WRIT PETITION NO. 6437 OF 2024**

**RAJENDRA PUNDLIK PATIL
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS**

....

Mr S. B. Sontakke, Advocate for Petitioners in all Petitions;
Ms Neha Kamble, A.G.P. for Respondent No.1 in all Petitions
Mr S. B. Pulkundwar, Advocate for Respondent Nos.2 to 4 in Writ
Petition No.6435/2024
Mr U. B. Bondar, Advocate for Respondent Nos.2 to 4 in Writ
Petition Nos.6436/2024 and 6437/2024

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATE : 2nd July, 2024

PER COURT:

1. In the first Petition i.e. Writ Petition No.6435/2024, the Petitioner/Shivhar Madhavrao Yejge, is a widower. His deceased wife was an employee and was identically placed with the other Petitioners. This aspect is undisputed.

2. Both the Petitioners in Writ Petition Nos.6436/2024 and 6437/2024, as well as the deceased employee, were working with the respective Respondents/Zilla Parishads. The deceased suffered a heart attack while in employment and passed away on 19/04/2023. The other two Petitioners have retired from service. The deceased employee was allegedly made excess payment on account of wrong pay fixation and the other Petitioners were allegedly made erroneous payment on the basis of the MS-CIT certificate. Such pay scales were granted almost 16 to 18 years ago.

3. The grievance of these Petitioners is that, recoveries have been initiated against them, from their retiral benefits/pensionary benefits. In some cases, amounts have already been

(3)

recovered. A chart showing the details of the Petitioners, their dates of superannuation, dates of impugned orders and amounts recovered from their retiral benefits/pensionary benefits, is as under:-

Sr. No.	W.P. Nos.	Name of the Petitioner	Date of superannuation	Date of impugned order	Amount recovered from the Petitioner
1.	6435/2024	Shivhar Mahdhavrao Yejge	Wife of Petitioner died on 19.04.2023	04.03.2024	1,64,625/-
2.	6436/2024	Dhanraj Bhivrao Chavan	31.05.2023	05.09.2023	32,309/-
3.	6437/2024	Rejendra Pundlik Patil	31.05.2022	20.09.2021	32,573/-

4. We have considered the strenuous submissions of the learned Advocates for the respective sides. It is, however, undisputed that, none of these Petitioners had played any fraud or were personally involved in a wrongful revision of their pay scales or orchestrating wrongful revision by manipulating the record. There is no allegation of fraud or deceit against any of them. No undertaking was acquired from them as and when the revised pay scales become payable. In some cases, at the stroke of retirement, a condition was imposed that they should execute

(4)

an undertaking and it is in these coercive circumstances, that undertakings were extracted from some of them.

5. The learned Advocates representing the Zilla Parishads, 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 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 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

(5)

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 candidates 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 others vs. Rafiq Masih (White Washer) etc. (2015) 4 SCC 334 = AIR 2015 SC 696**, would apply to these cases.

8. As such, **all these Writ Petitions are partly allowed.**

9. All the impugned orders in these respective Writ Petitions are quashed and set aside. The amounts due and payable to the Petitioners, as well as to the widower, after the superannuation of the said employees/ death of the employee, would be paid to these Petitioners/widower, within 60 days from today, failing which, the amount would attract interest @ Rs.5% p.a. from the date of this order.

10. The learned Advocate for the Petitioners submits that, recoveries other than this issue, have not been assailed in these Petitions and the Management will be at liberty to initiate appropriate steps. As such, this order is restricted only to the extent of the recoveries in relation to the wrongful pay fixation/MS-CIT..

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

sjk