



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

**WRIT PETITION NO. 6844 OF 2024**

Hanmant s/o Pundaji Makhanikar  
Age: 60 years, Occ: Retired,  
R/o: Ambedkar Nagar, Rampur Road,  
Tq. Degloor, Dist. Nanded

**... PETITIONER**

**VERSUS**

- 1] The State of Maharashtra  
Through its Secretary,  
General Administration Department,  
Mantralaya, Mumbai-32
- 2] The Chief Executive Officer  
Zilla Parishad, Nanded,  
Dist. Nanded
- 3] The Joint Accountant,  
Zilla Parishad, Nanded

**... RESPONDENTS**

....

Mr. V. R. Jain, Advocate for Petitioner  
Mr. M. M. Nerlikar, AGP for Respondent No.1  
Mr. R. K. Ingole, Advocate for Respondent Nos. 2 and 3

....

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

**RESERVED ON : 22.07.2024  
PRONOUNCED ON : 02.08.2024**

**JUDGMENT (Per – Y. G. Khobragade, J.) :-**

1. Rule. Rule made returnable forthwith. Heard finally  
with the consent of the parties.

2. By the present Petition under Article 226 of the Constitution of India, the Petitioner prays for issuance of Writ of Mandamus for quashment of order dated 21.03.2023, issued by Respondent No. 3, directing refund of amount of Rs. 1,30,144/- with interest, which was deducted from gratuity amount of the Petitioner.

3. We have, considered the strenuous submissions canvassed on behalf of the respective parties. Perused the Petition and Reply Affidavit filed on behalf of Respondent Nos. 2 and 3. The Petitioner was working as a Junior Assistant with Respondent No.2 / Zilla Parishad, Nanded and he superannuated on attaining the age of superannuation, on 30.09.2022. Respondent No. 3 sanctioned retiral benefits and gratuity vide order dated 21.03.2023 to the tune of Rs. 6,76,500/-. However, by impugned order dated 21.03.2023 issued by Respondent No. 3, the recovery of excess payment of salary on account of wrong pay fixation, has been directed.

4. The learned Counsel appearing for the Petitioner places reliance on the case of *State of Punjab and others Vs. Rafiq Masih (White Washer) and others, (2014) 8 SCC 883*, wherein recoveries against Class-III and Class-IV employees held impermissible. Further he relied on following judicial pronouncement :-

- i. Judgment Dt. 22.12.2017 passed in ***WP No.4616 of 2016 - Smt. Jayshree Trimbak Takalkar Vs. The Chief Executive Officer, Zilla Parishad, Aurangabad and another;***
- ii. Judgment Dt. 15.11.2021 passed in ***WP No.7379 of 2020 - Smt. Pramila Manohar Pawar Vs. The State of Maharashtra and others*** and
- iii. ***Ananda Vikram Baviskar Vs. State of Maharashtra and others – 2022(2) Mh.L.J. 698.***

5. Ms. Yogita Dayanand Chamle, Medical Officer, P.H.C., Markhel, Zilla Parishad, Nanded, has filed an Affidavit-in-Reply on behalf of Respondent Nos. 2 and 3 and strongly resisted the Petition on the ground that the Petitioner was appointed on the Post of Parichar on 18.10.1985 and subsequently he was promoted to the post of Junior Assistant. As per the recommendation of 7<sup>th</sup> pay commission, the pay scale of the Petitioner revised on 22.09.2014. Accordingly, the pay scale was revised and paid to the Petitioner. However, the Petitioner had already furnished undertaking at the time of pay fixation on 28.01.1999 stating that in case if excess payment being paid to him wrongly, in that event, he would return the said excess amount. According to the Respondents, in the month of September 2009, the Petitioner had furnished an undertaking about return of excess payment due to incorrect pay fixation, if any. Further, on 24.11.2022, the Petitioner had furnished an undertaking about refund of excess payment on account of wrong pay fixation.

6. The Respondents contended that due to wrong fixation, excess amount of Rs. 1,30,144/- have been paid to the petitioner, therefore, the recovery of said amount is directed. Further Respondents submitted that since the Petitioner executed promissory note by execution of undertaking and agreed for repayment of any excess payment due to wrong pay fixation, he is not entitled for any relief, and prayed for dismissal of the Petition. In support of these submissions, the learned Counsel appearing for Respondent Nos. 2 and 3 relied on the case of *High Court of Punjab and Haryana and others Vs. Jagdev Singh – 2016 A.I.R. (SCW) 3523*.

7. Needless to state that the grievance of the Petitioner is that he was receiving higher pay scale on the post of Junior Assistant under the recommendation of 7<sup>th</sup> pay commission. His pay was revised with effect from 22.09.2014. The Respondents have furnished details about excess payment of pay scale on account of wrong pay fixation in tabular form from the month of July 2007, whereby the Petitioner was paid excess amount of Rs. 1,30,144/- i.e. Rs. 92,249/- for the period July 2007 to May 2019 and Rs. 37895/- for the period of January 2019 to April 2021.

8. The Respondents have placed on record about entitlement of pay scale of the Petitioner under 7<sup>th</sup> pay commission and also pay fixation with effect from 1 July 2007. The Petitioner has not countered the said fact.

9. The Respondents have also produced the undertaking furnished by the Petitioner at the time of fixation of his pay scale. The Petitioner has not countered the undertaking/note executed by him about refund of any excess payment deducted in the light of discrepancies if noticed subsequently. In the case of **Rafiq Masih** (supra), the Hon'ble Apex Court has held that the benefit of non recovery cannot be extended to employees merely because, they are not responsible for mistake committed by the employer or they are not guilty of furnishing any incorrect information, fraud or misrepresentation. However, recoveries are held to be impermissible in the following circumstances:-

- “(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

- (iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) *In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

10. In ***High Court of Punjab and Haryana and others vs Jagdev Singh, (supra)***, the Hon'ble Supreme Court has observed in Para Nos. 8 and 9, as under:

*"8. The order of the High Court has been challenged in these proceedings. From the record of the proceedings, it is evident that when the Respondent opted for the revised pay scale, he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him. In the counter affidavit which has been filed by the Respondent in these proceedings, this position has been specifically admitted. Subsequently, when the rules were revised and notified on 7 May 2003 it was found that a payment in excess had been made to the Respondent. On 18 February, 2004, the excess payment was sought to be recovered in terms of the undertaking.*

*9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be*

*adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.*

11. In the case of **Ananda Vikram Baviskar** (*supra*), this Court has concluded in Para Nos. 7 to 10 as under:-

*“7. Our Courts are dealing with hundreds of such cases. On each day, we have at least one such case before us. Considering the law laid down in Rafiq Masih (Supra), our Courts have been quashing notices for recovery on the ground that such notices have been issued long after the retirement of an employee and especially in the cases of Class-IV employees, who would find it difficult to shell out large sums of money towards recovery/payment. Consequentially, we have pardoned several Class-IV employees and protected them as against recovery.*

*8. We are conscious of the fact that the Hon’ble Apex Court has delivered a judgment in Jagdev Singh (Supra) after noticing that an undertaking was issued by an officer vide which, he had agreed to refund/repay the excess amount.*

*9. This Court at the Nagpur Bench has dealt with Writ Petition No.4919 of 2018 filed by the State of Maharashtra and Others Vs. Sureshchandra S/o. Dharamchand Jain and Others for challenging the judgment of the learned Maharashtra Administrative Tribunal, Nagpur Bench dated 18.04.2017. In the said matter, the learned Tribunal had relied on Rafiq Masih (Supra) and had granted the relief to the appellant who was a Class-III employee. The learned Division Bench has observed in paragraph nos.4 to 7 as under:*

*4. The argument submitted in defence is fallacious. An undertaking has the effect of solemnity in law and if argument is to be accepted which has been*

*submitted on behalf of the respondents, the majesty of law would be lowered and there would be a travesty of justice. Besides, the undertaking is about wrong pay fixation and consequent excess payment. The undertaking is not about grant of higher pay on the basis of right pay fixation. Had it been an undertaking as regards the later dimension of the case, one could have perhaps said that the undertaking was only a formality. When the undertaking takes into account the contingency of the wrongful pay fixation, the undertaking has to be said to have been given intentionally and with a view to be acted upon, in case the contingency did really arrive.*

*5. So, what we have before us is an undertaking given consciously and intentionally by the respondents and the respondents would have to be held bound by this undertaking. That means in the present case, no equity whatsoever has been created in favour of the respondents while making the excess payment and as such there is no question of any hardship visiting the respondents.*

*6. The reason weighing with the Hon'ble Apex Court imposing prohibition against recovery of excess payment in Rafiq Masih (supra) was of hardship resulting from creation of awkward situation because of the mistake committed by the employer and there being no fault whatsoever on the part of the employee. In order to balance the equities created in such a situation, the Hon'ble Apex Court in Rafiq Masih, gave the direction that so far as Class-III and IV employees were concerned, and who were found to be not having very sound economic footing, would have to be exempted from the consequence of recovery of the excess payment, if considerable period of time has passed by in between. But, as stated earlier, even in*

case of such an employee, there would be no hardship for something which has been accepted by him consciously with an understanding that it could be taken away at any point of time, if mistake is detected. Clarifying the law on the subject, the Hon'ble Apex Court, in its recent judgment rendered in the case of High Court of Punjab and Haryana and others vs. Jagdev Singh reported in 2016 AIR (SCW) 3523, in paragraph 11 it observed thus :

“the principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

7. The fact situation of the present case is squarely covered by the above referred observations. These are the crucial aspects of the present case and the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur appears to have missed out on them and the result is of passing of an order which cannot be sustained in the eye of law.”

10. We have a similar case in hand. The petitioner has specifically given an undertaking prior to his retirement that if he has received any amount in excess to what he was legitimately entitled to, the said amount would be repaid or can be recovered. Such undertaking, if ignored, would be reduced to the value of a waste paper. An undertaking has it's own meaning and effect. If an undertaking is not to bind a person issuing it, there would be no sanctity to an undertaking. We cannot accept such an argument canvassed by an employee that

*an undertaking is a mere formality and should be ignored, lest, we ourselves would be party to neutralising the value of an undertaking.”*

[EMPHASIS SUPPLIED]

12. Similarly, in the case in hand, the Petitioner has specifically given an undertaking at the actual time of his pay fixation that if he has received any amount in excess to what he was legitimately entitled to, then said amount would be repaid by him or same can be recovered by the employer. Therefore, if such undertaking is ignored, it would be reduced to the value of a waste paper. An undertaking has its own meaning and effect. If an undertaking is not to bind a person issuing it, there would be no sanctity to an undertaking. We cannot accept such an argument canvassed by an employee that an undertaking is a mere formality and should be ignored.

13. Since, in the case in hand, it clearly appears that while granting higher pay scale to the Petitioner under the 7<sup>th</sup> pay commission, an excess amount of Rs. 1,30,144/- is being wrongly paid to the petitioner. Therefore, the recovery of excess payment against the Petitioner has been directed. Therefore, taking into consideration law laid down in the case of ***Jagdev Singh*** and ***Ananda***

***Vikram Baviskar***, (*supra*), the Petitioner is not entitled to any relief as claimed.

14. In view of the above discussions, the present **Writ Petition** is devoid of any merit. Hence, it is dismissed. Accordingly, Rule is discharged.

[ Y. G. KHOBRAGADE, J. ]

[ RAVINDRA V. GHUGE, J. ]

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