



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

WRIT PETITION NO. 7937 OF 2024

Shri Yuvraj S/o Chaitram Baviskar

Age: 59 years, Occu: Retired,

R/o: Chopda, Tq. Chopda, District Jalgaon

... PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
School, Education and Sports Department,
Mantralaya, Mumbai – 32
2. The Secretary,
General Administration Department,
Mantralaya, Mumbai – 32
3. The Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32
4. The Divisional Commissioner,
Nashik Division, Nashik
5. The Chief Executive Officer,
Zilla Parishad, Jalgaon, Dist. Jalgaon
6. The Education Officer (Primary),
Zilla Parishad, Jalgaon, Dist. Jalgaon
7. The Chief Accountant and Finance Officer,
Zilla Parishad, jalgaon, Dist. Jalgaon

8. The Block Education Officer,
Panchayat Samiti, Chopda,
Tq. Chopda, Dist. Jalgaon

... **RESPONDENTS**

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Mr. Y. B. Bolkar, Advocate for the Petitioner

Mr. S. K. Tambe, AGP for Respondent – State

Mr. S. R. Dheple, Advocate for Respondent Nos. 5 to 8

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

DATE : 02.08.2024

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 superannuated from employment. He
has been subjected to recovery of amounts, purportedly for the reason
that the amounts that were paid to him towards his revised pay-
scales, on account of the pay fixation, almost a decade ago, were
wrongly paid.

3. It is undisputed that the Petitioner was not personally
involved in the revision of his pay scale. He was also not involved in
manipulating such revision. There is no allegation of fraud or deceit

against him. No undertaking was obtained from the Petitioner on the date when the pay scales were revised and the payment of revised pay scale commenced.

4. We have come across several cases wherein, at the stroke of retirement, a condition was imposed that such employees should execute an undertaking and it is in these circumstances that an undertaking has been extracted from several employees. The learned Advocate representing the Zilla Parishad as well as the learned AGP submit that, once an undertaking is executed, such cases would be covered by the law laid down by the Hon'ble Supreme Court in the case of *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)*. 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 when the revised pay scale is made applicable to him and the payment of such pay scale commences. At the stroke of superannuation, asking the employees 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 as that 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 such employees, more so since the recovery is initiated after their superannuation. Further, in the instant case, the Petitioner has not executed any undertaking.

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 the case.

7. In view of the above, **this Writ Petition is allowed.** The impugned order dated 26.03.2024 is quashed and set aside. Since no amount was recovered from the Petitioner, there is no question of directing repayment of the amount.

8. Since the Petitioner has superannuated on 31.05.2024 and by consent, we are not granting any interest on the retiral benefits including gratuity and pension, provided all such retiral benefits are paid to the Petitioner within 45 days from today. If the amount is not paid within 45 days, it shall carry interest at the rate of 6% p.a. from the date it became payable till the amount is actually paid.

9. Rule is made absolute in the above terms.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

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