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

906 WRIT PETITION NO. 9272 OF 2024

**RAMESH PUNDLIK HARNE, DIED, THROUGH LRS NUTAN
RAMESH HARNE AND OTHERS**

VERSUS

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

....

Mr R. R. Karpe, Advocate for Petitioners

Mr M. M. Nerlikar, Addl. G.P. for Respondent No.1

Mr S. P. Urgunde, Advocate for Respondent Nos.2 to 6

CORAM : RAVINDRA V. GHUGE

AND

Y. G. KHOBRAGADE, JJ.

DATE : 5th September, 2024

PER COURT:

1. In this Writ Petition, the order of recovery is impugned. The Petitioners are the legal heirs of the deceased employee, who has expired in 2020. Recovery is still not been made.

2. Shri. Urgunde, the learned Advocate appearing for Respondent/Corporation has vehemently opposed this Writ Petition on the basis of the affidavit-in-reply dated 05/09/2024,

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and prays that the Petition should be dismissed with exemplary costs.

3. There is no dispute that, this case is identical to **Writ Petition No.6763/2023 (Khan Almas Zohara V/s. State of Maharashtra & Ors.)**, decided vide judgment dated 09.02.2024.

4. An undertaking was not extracted from the deceased employee, by the Corporation. In catena of judgments, we have concluded that, extracting an undertaking after retirement, under a threat of holding back retirement dues, does not have any sanctity.

5. In view of the above and considering the judgment in **Khan Almas Zohara** (supra), for the same reasons, **this Writ Petition is allowed** in terms of prayer clauses (B), (C) and (D) put-forth by the Petitioner, which read as under:

“B) Issue writ of certiorari or any other writ or direction in the like nature thereby kindly quashed and set aside the impugned Letter / Order / Communication dated 07.04.2022 issued respondent No.4-Deputy Commissioner, Municipal Corporation Aurangabad, being arbitrary, illegal and contrary to the settled provisions of Law and consequently direct respondent authorities to

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release retirement benefits along with pension benefit with interest.

C) Issue writ of certiorari or any other writ or direction in the like nature thereby, it may be held that petitioner is not liable for any recovery on the count of non-completion of MS-CIT course.

D) Pending hearing and final disposal of this writ petition, kindly restrained the respondent authorities including the present respondent authorities or other agencies from making any recovery from the increments/salary on the basis of impugned orders of recovery dated 07.04.2022 issued by the present respondent No.4-Deputy Commissioner, Municipal Corporation, Aurangabad, being arbitrary, illegal and contrary to the settled provisions of Law and to that effect issue necessary orders.”

6. Since no recovery has been made in the case of the deceased employee or the legal heirs, no orders for repayment are required to be passed.

7. All the pending retiral benefits of the deceased employee shall be released, within a period of 60 days.

(Y. G. KHOBRAGADE, J.)

sjk

(RAVINDRA V. GHUGE, J.)