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

45 WRIT PETITION NO. 10643 OF 2024

VIJAYA DATTOPANT KULKARNI

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

....

Mr D. R. Irale Patil, Advocate for Petitioner

Mr S. R. Wakale, A.G.P. for Respondent No.1

Mr V. C. Patil, Advocate h/f Mr U. B. Bondar, Advocate for
Respondent nos.2 to 4

CORAM : RAVINDRA V. GHUGE

AND

Y. G. KHOBRAGADE, JJ.

DATE : 30th September, 2024

PER COURT:

1. The Petitioner has put forth prayer clauses (B) and
(B-1) as under:-

“(B) The Hon’ble Court may be pleased to pass necessary order and quash and set aside the revised pay fixation done by the Medical Officer, P.H.C. Golatgaon, under order dated 16.12.2023 and duly approved by the District Health Officer, Zilla Parishad Aurangabad under order dated 23.04.2024, reducing the basis pay and proposing recovery of Rs. 15,32,249/- under order dated 23.04.2024 after over 20 years of retirement from gratuity and pensionable pay and recovery started from pensionable pay does not sustain as held by the Hon’ble Supreme Court as well as by this Hon’ble Court, the order under challenge does not sustain

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and direct the respondents No. 2 and 3 to refund the said amount withhold with interest.

(B-1) Quashing and setting aside the revised pay fixation done by the respondent No.4 dated 16.12.2023 and duly approved by the District Health Officer, Zilla Parishad Aurangabad under order dated 23.04.2024 and propose recovery of Rs. 15,32,249/- from gratuity and pensionable pay, the respondent No. 2 to 4 may please be directed to refund the said withhold amount forthwith including the amount already recovered and grant interest as found just and proper by this Hon'ble Court."

2. The Petitioner was appointed as an 'Auxiliary Nurse and Midwife' (ANM) with the Zilla Parishad, Chhatrapati Sambhajinagar, on 24.10.1997. She completed her Lady Health Visitor (LHV) training in October 2016.

3. Subsequently, the new pay scale was withdrawn and this was a result of a common action, which was challenged before this Court at the Nagpur Bench in Writ Petition No.2258/1993 and a 'stay' was granted. By the judgment dated 28.07.2009, Writ Petition No.2258/1993 (***Maharashtra Zilla Parishad Nurses Sanghatana Vs. The State of Maharashtra and***

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another), was allowed and it was held that the LHV cannot be given the benefit of the ANM.

4. The present Petitioner is identically placed with the Petitioner Ulka Ratnakar Bansode in Writ Petition No.11395 of 2021. By an order dated 01.09.2023, we have concluded that the undertaking extracted from the retiring employee, at the stroke of retirement or after retirement, is not to be considered for the reason that the said undertaking, apparently is extracted when the employee is about to retire and has no bargaining power. We have, therefore, concluded in Ulka Ratnakar Bansode (supra), that the recovered amount should be returned to the Petitioner along with the interest at the rate of 6% p.a.

5. The Petitioner retired on 30.06.2023. An undertaking was extracted from her, on 26.03.2024, which is after almost six months of her superannuation. The Petitioner relies upon a judgment delivered by the Hon'ble Supreme Court in ***Bhagwan Shukla Vs. Union of India and others – AIR 1994 SCC 2480***, concluding that the pay scale cannot be reduced or altered to the prejudice of the employee, without affording an opportunity of

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hearing to him. Apparently, in the present case, an opportunity of hearing was not granted to the Petitioner.

6. In the light of the above, **this Petition is partly allowed**. The impugned orders dated 23.03.2024 and 23.04.2024 would stand quashed and set aside.

7. We permit the Respondent/Zilla Parishad to issue a notice to this Petitioner, giving her at least 15 days time to reply. The Petitioner shall tender her written explanation /submissions within the said period. Thereafter, the Zilla Parishad would pass a reasoned order by considering the entire record available. If an adverse order is passed in terms of revising the pay fixation, the Petitioner would be at liberty to assail the same by resorting to a remedy as is permissible in law. Needless to state, recovery of earlier paid amounts, shall be prohibited.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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