



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6713 OF 2024

SADHANA BANSILAL JAIN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Sagar A. Raut h/for Mr. N. L. Chaudhari, Advocate for the
Petitioner

Mr. S. B. Pulkundwar, AGP for the Respondent State

Mr. B. S. Shinde, Advocate for Respondent Nos. 2 and 3

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.

DATE : 20th July, 2024

ORDER:

1. The Petitioner has put forth prayer clause (B) as under:

"(B) By issuing a writ of mandamus or any other appropriate writ, order or directions, the respondents be directed to refund the amount of Rs.1,47,551/- deducted from the pensionary benefits of Petitioner for not completing MS-CIT course in view of the Government Resolution dated 27th November, 2020 and for that purpose, necessary directions be issued."

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

almost a decade ago, in view of acquiring certificates of MS-CIT or on account of the pay fixation, were wrongly paid to them.

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 scale was revised and the payment of revised pay scale commenced.

5. In some cases, at the stroke of retirement, a condition was imposed that he should execute an undertaking and it is in these circumstances that an undertaking has been extracted. The learned Advocate representing the Zilla Parishad as well as the learned A.G.P. submit that, once an undertaking is executed, the case of the Petitioner 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 1.9.2021, *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)*. The record reveals that no undertaking was taken

from these Petitioner when the pay scale was revised. An undertaking was taken at the stroke of his retirement. 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 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 candidate to execute an undertaking since he is apprehensive that his 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 the Petitioner, more so since the recovery is initiated after his superannuation.

7. 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 this case.

8. As such, **the Writ Petition is allowed.** The impugned order is quashed and set aside. The amounts due and payable to the Petitioner after his superannuation, would be paid to the Petitioner within a period of 90 days along with admissible interest as per Rules.

9. Needless to state, if any candidate has tendered an undertaking at the time of the pay-fixation making it obligatory for him to refund the excess amount paid, this order would not be applied to such a candidate, in the light of the law laid down in **Jagdev Singh (supra)**, which would govern such cases.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan