



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

971 WRIT PETITION NO. 225 OF 2024

KRANTI ANAND DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS

...

Advocate for the Petitioner : Mrs. Ansari Asfia Nuzhat
AGP for Respondents/State : Mr. R.S. Wani
Advocate for R/2 & 3 : Mr. S.P. Urgunde

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

DATE : 9th January, 2024

PC. :-

1. Heard by the consent of the learned advocates for the respective sides.
2. The grievance of the Petitioner is that recovery has been ordered by communication dated 25.04.2022 for recovering amounts that were paid towards increments, from 01.01.2008 onwards. The Petitioner superannuated on 30.09.2023. The Petitioner was an Assistant Teacher Primary.
3. The issue is as regards acquiring the qualification of MS-CIT. The Petitioner was granted the incremental benefits and it was later on revealed that she did not have the qualification. She subsequently acquired the

qualification in July 2021 and the certificate was issued on 30.08.2021. No undertaking was acquired from her when the payments were being made for more than a decade.

4. 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)**. However, the record reveals that no undertaking was taken from the Petitioner when the pay scale was revised. An undertaking has to be taken from the candidate on the day the revised pay scale is made applicable to her and the payment commences. At the stroke of superannuation of the said employee, asking her 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 she is apprehensive that her retiral benefits would not be released until such undertaking is executed. Such an undertaking will not have the same sanctity 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 her superannuation.

5. Taking into account that the Petitioner was not involved in any mischief, fraud or deceit in orchestrating her 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.

6. As such, **this petition is allowed**. The impugned order is quashed and set aside. The amount shall not be recovered from the Petitioner and the retiral benefits that have been withheld shall be released by following the due procedure laid down in law within a period of 60 days.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]