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

991 WRIT PETITION NO. 414 OF 2024

SMT. KALPANA BHAURAO SISODE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

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Mr Y. B. Bolkar, Advocate for Petitioner;
Mr P. K. Lakhotiya, A.G.P. for Respondent No.1
Mr S. R. Dheple, Advocate for Respondent Nos.2 to 4

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

DATE : 10th January, 2024

PER COURT:

1. The Petitioner has superannuated on 28/02/2019. By the impugned order dated 26/04/2019, passed by Respondent No.4, recovery of an amount of Rs.1,25,552/- on account of wrong pay-fixation, is initiated after superannuation. The pay-fixation was done decades ago. The Petitioner was not involved in any manipulation and there is no allegation of fraud or deceit against her. No undertaking was obtained from the Petitioner when the pay-scale was revised and the payment commenced.

2. 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, 2016 AIR (SCW) 3523. 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 and the payment of such pay scale commences. At the stroke of superannuation of the said employee, asking 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 the candidate is apprehensive that his/her 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 present Petitioner, more so, since the recovery is initiated after her superannuation.

3. 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.

4. As such, **this Petition is allowed**. The impugned order dated 26/04/2019 is quashed and set aside. The amounts due and payable to the Petitioner after superannuation, would be paid to the Petitioner within a period of 90 days. Since the Petitioner has approached this Court with a delay of three years, the learned Advocate for the Petitioner submits on instructions that the Petitioner would not claim interest.

5. Needless to state, if the Petitioner has tendered an undertaking at the time of the pay-fixation making it obligatory on herself to refund the excess amount paid, this order would not be applicable, in the light of the law laid down in **High Court of Punjab and Haryana** (supra).

(Y. G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**

sjk