2024:BHC-AUG:5237-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 WRIT PETITION NO. 2513 OF 2024

SHANKAR DHONDIBA GHODE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

AND
929 WRIT PETITION NO. 2540 OF 2024

MURLIDHAR MAHADU JOGDAND AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

...
Advocate for the Petitioner/s : Mr. Mathpati Shivkumar K.
AGP for Respondents/State : S/Shri P.K. Lakhotiya and S.K. Tambe
Advocate for R/3 to 5 in WP/2513/24 : Ms. Yogita Thorat
Advocate for Resp./Z.P. Latur : Mr. V.C. Patil h/f. U.B. Bondar
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CORAM : RAVINDRA V. GHUGE &
R.M. JOSHI, JJ.
DATE : 7th March, 2024

P.C. :-

1. The learned advocate for the Petitioners has placed a ready reference chart in the second petition at page 19. The first petition is filed by a sole Petitioner.

2. All these Petitioners are identically placed and all of them are employees who have superannuated from employment. All of them are aggrieved by the recovery of amount purportedly for the reason that were paid

to them in excess,due to wrong pay fixation or with reference to acquiring certificates of MS-CIT.

3. It is undisputed that these Petitioners were not personally involved in the revision of their pay scales. They were also not involved in manipulating such revision. There is no allegation of fraud or deceit against them. No undertaking was obtained from these Petitioners on the date when the pay scales were revised and the payment of revised pay scale commenced. In some cases, at the stroke of retirement, a condition was imposed that they should execute an undertaking and it is in these circumstances that an undertaking has been extracted from some of the employees.

4. The learned Advocates representing the Zilla Parishad as well as the learned A.G.Ps., submit that, once an undertaking is executed, the case of the Petitioners 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**.

5. 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 Petitioners when the pay scales were revised or the increments for MS-CIT were extended. An undertaking from some of them was taken at the stroke of their 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 they are apprehensive that their 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 these Petitioners, more so since the recovery is initiated after their superannuation.

6. Taking into account that these Petitioners were not involved in any mischief, fraud or deceit in orchestrating their wrongful pay revision or payment of increments, 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 these cases.

7. As such, **both these Writ Petitions are allowed**. The impugned orders are quashed and set aside. The amounts due and payable to the Petitioners after the superannuation of the said candidates, would be paid to these Petitioners within a period of 90 days alongwith admissible interest as per Rules. If any amounts are recovered from them, the employer shall pay back the said amounts within 90 days failing which the said amount shall carry an interest of 6% pa.

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

[R.M. JOSHI, J.] **[RAVINDRA V. GHUGE, J.]**

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