

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3801 OF 2024

Sangli Miraj and Kupwad Cities
Municipal Corporation Sangli
District Sangli
through its Commissioner
having its office at Rajwada Chowk,
Sangli - 416 416.

....Petitioner

V/S

Sanjay Sadashiv Pendse
Age 57 years, Occ. Service
Residing at Khadilkar Sankul,
Flat No.402, Khadilkar Galli,
Gaonbhag, Sangli

....Respondent

**WITH
WRIT PETITION NO.16209 OF 2023**

Sangli Miraj and Kupwad Cities
Municipal Corporation Sangli
District Sangli
through its Commissioner
having its office at Rajwada Chowk,
Sangli - 416 416.

....Petitioner

V/S

Krishna Mahadeo Aiwale
Age 59 years, Occ. Service
Residing at Siddhi Plaza,
Opp. Yashwant Nagar Bus Stop,
Yashwant Nagar, District Sangli

....Respondent

Mr. Vikram N. Walawalkar with Mr. Amey C. Sawant *for the
Petitioner-Municipal Corporation.*

Mr. Kuldeep U. Nikam with Mr. Prasad Avhad *for Respondent.*

**CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 14 NOVEMBER 2024.
PRONOUNCED ON : 21 NOVEMBER 2024.**

J U D G M E N T:

1. These Petitions are filed by the Petitioner-Municipal Corporation challenging the orders dated 8 March 2022 passed by Industrial Court, Sangli, allowing Complaint (ULP) Nos.41 of 2019 and 42 of 2019 and restraining the Petitioner-Municipal Corporation from recovering the excess amounts paid to the Respondents under order dated 28 December 2018. The Industrial Court has further directed the Petitioner-Municipal Corporation to refund the amounts already recovered.

2. Briefly stated, facts of the case are that Respondents were the employees of the erstwhile Sangli Municipal Council, which later merged into Sangli, Miraj and Kupwad City Municipal Corporation. The Petitioner-Municipal Corporation adopted decision of the State Government for grant of financial upgradations under the Assured Career Progression Scheme (**ACP Scheme**) on completion of 12 and 24 years of service. Accordingly, order dated 19 March 2013 was issued granting financial up-gradations to various employees under the ACP Scheme. So far as Respondents are concerned, they completed 24 years of service on 5 December 2010 (Sanjay Sadashiv Pendse) and 1 December 2010 (Krishna Mahadeo Aiwale). Therefore, by order dated 19 March 2013, they were granted financial upgradations from the pay band of Rs.5200-20200 + grade pay of Rs.2,800/- to the pay band of Rs.9300-34800 + grade pay of Rs.4,200/- with effect from the dates of completion of 24 years of service. At the time of grant of such financial up-gradations, both the Respondents executed consent Affidavits in which they undertook to be abide by the Recruitment Rules approved by the State Government, for payment of arrears of pay fixation in a phase wise manner as per

financial condition of the Petitioner-Municipal Corporation and for withdrawal of the financial up-gradations if it was noticed in the future that they were not eligible to receive the same. Accordingly, the Respondents were granted pay fixation in the pay band of Rs. 9300-34800 + grade pay of 4200 from the year 2010.

3. It appears that the Petitioner-Municipal Corporation later realized that the pay band and grade pay granted to Respondents of Rs. 9300-34800 and 4,200/- was erroneous and that in fact they were entitled to grant of pay band of 5200-20200 grade pay of 2,800/-. Accordingly, order dated 28 December 2018 was issued revising the earlier order dated 19 March 2013 and refixing the pay of various employees including the Respondents by bringing down their pay band and grade pay from 9300-34800+4200/- to 5200-20200+2800/-. In pursuance of order dated 28 December 2018, Petitioner-Municipal Corporation started recovery from Respondents from the month of January 2019. In the above background, Respondents approached Industrial Court, Sangli by filing Complaint (ULP) Nos. 41 of 2019 (Krishna Mahadeo Aiwale and 42 of 2019 (Sanjay Sadashiv Pendse) on 26 March 2019 challenging the recoveries ordered by the Petitioner-Municipal Corporation. It appears that the Industrial Court granted interim order in favour of Respondents restraining the Petitioner-Municipal Corporation from effecting any further recoveries. The Complaints were opposed by the Respondents by filing Written Statements contending that the Respondents were erroneously granted payband and grade pay of 9300-34800+4200 instead of granting the correct payband and grade pay of 5200-20200+2800 and justified the action of recovery. Petitioner-Municipal Corporation placed reliance on the undertakings given by the Respondents-employees in support of its action of recovery.

4. The Industrial Court proceeded to allow both the Complaints by its judgments and orders dated 8 March 2022. The Industrial Court has permanently restrained the Petitioner from making any recoveries on the basis of order dated 28 December 2018 with further direction to refund the already recovered amounts. Respondents were directed to make representations against the order of re-fixation dated 28 December 2018 with further direction to the Petitioner-Municipal Corporation to decide the same. However, the Industrial Court directed that even if any amount is found to be paid in excess to the Respondents, the Petitioner-Municipal Corporation shall not recover the same. Aggrieved by the orders passed by the Industrial Court, Petitioner-Municipal Corporation has filed the present Petition.

5. Mr. Walawalkar, the learned counsel appearing for the Petitioner-Municipal Corporation would submit that the Industrial Court has erred in restraining the Petitioner-Municipal Corporation from recovering the excess amounts paid to the Respondents. He would submit that though Respondents are entitled in law to be granted financial up-gradation in pay band of Rs. 5200-20200 and grade pay of 2800, they were inadvertently granted pay band of 9300-34800 and grade pay of 4,200. That immediately after discovery of reinstatement, Petitioner-Municipal Corporation took corrective steps and issued order dated 28 December 2018 re-fixing the pay of the Respondents. He would submit that since Respondents have been erroneously paid excess salaries, the Petitioner-Municipal Corporation is entitled to recover the same. He would submit that the Industrial Court has erred in relying on judgment of the Apex Court in ***State of Punjab and others vs. Rafiq Masih (White Washer)***¹ when in fact the cases of Respondents do not fit in any of the eventualities

1 2014 (8) SCC 883

prescribed by the Apex Court. He would submit that the Industrial Court has erred in holding that the Respondents were attaining the age of retirements in near future, ignoring the fact that paragraph 12(ii) applied to cases where recovery is made one year prior to retirement of the employees. That both the employees had sufficient service left for their retirement. That the recovery is effected within five years of passing of the order dated 19 March 2013. Mr. Walawalkar would rely upon undertakings given by Respondents in support of his contention that the principles enunciated in Apex Court judgment in ***Rafiq Masih (White Washer)*** are not attracted when undertakings are secured from employees as held by the Apex Court in its judgment in ***High Court of Punjab & Haryana and others vs. Jagdev Singh***². He would also rely upon Division Bench judgment of this Court in ***Ananda Vikram Baviskar vs. State of Maharashtra and others***³. Mr. Walawalkar would submit that in pursuance of directions in paragraph 5 of the operative part of the orders, Respondents made representations on 16 March 2022, which have been rejected by the Petitioner-Municipal Corporation on 9 December 2022. He would pray for setting aside the orders passed by the Industrial Court.

6. The Petitions are opposed by Mr. Nikam, the learned counsel appearing for Respondents-employees. He would submit that the Industrial Court has rightly restrained Petitioner-Municipal Corporation from effecting recoveries considering the facts and circumstances of the present case. He would submit that there is no misrepresentation on the part of the Respondents in grant of Grade Pay Rs. 4200/-, which was granted by the Petitioner-Municipal

² (2016) 14 SCC 267

³ 2022 (2) Mh.L.J. 698

Corporation on its own accord. That the said financial up-gradation was granted to the Respondents from the year 2010 and the action of effecting recoveries in January 2019 is clearly after expiry of period of five years and hence barred as per law laid down by Apex Court in ***Rafiq Masih (White Washer)*** (supra). Additionally, Respondents-employees belongs to Class-III service and that therefore the recovery undertaken is impermissible. That both the Respondents-employees were on the verge of their retirements and on that count also no recovery was impermissible. So far as the undertakings given by the Respondents-employees are concerned, he would submit that the said undertakings are not in respect of any overpayments, but were given only to take care of a situation where ACP Scheme benefit itself was found to be ineligible in future. That therefore the said undertakings cannot be relied upon for the purpose of applying the law laid down by the Apex Court in ***Jagdev Singh*** (supra). That in any case the judgment in ***Jagdev Singh*** (supra) is rendered in case of a judicial officer in respect of whom, undertaking executed by him is relied upon by the Apex Court for permitting recovery after his retirement. That the Respondents are Class-III employees of Petitioner-Municipal Corporation, who have not given any such undertakings and therefore are not liable to refund any amount towards overpayments. He would submit that the entire action of recovery is in gross violation of principles of natural justice as Petitioner-Municipal Corporation did not issue any show-cause notices to Respondents-employees before effecting their recoveries. He would also rely upon direction No.(v) of the judgment in ***Rafiq Masih (White Washer)*** (supra) to submit that recovery against Respondents would cause undue hardship for them. He would submit that both Respondents-employees have retired from service and it is now to meaningless to effect any recoveries from them. He would pray for dismissal of the Petitions.

7. Rival contentions of the parties now fall for my consideration.

8. The short issue that arises for consideration in the present Petitions is whether the Petitioner-Municipal Corporation is justified in making recoveries arising out of re-fixation of pay of Respondents-employees after withdrawal of pay band of 9300-34800 and grade pay of 4200 and its substitution by pay band of 5200-20200 and grade pay of 2800. As observed above, the occasion for recovery has occurred on account of mistake on the part of the Petitioner-Municipal Corporation in placing Respondents-employees in pay band of 9300-34800 + GP 4200 while granting them the benefit of second financial up-gradation under the Assured Career Progression Scheme on completion of 24 years of service, where in fact the correct pay payable to them was in band of 5200-20200+GP2800. There is no dispute to the position that re-fixation of pay to the Respondents-employees has already been effected in accordance with the order dated 28 December 2018. Respondent-employees do not dispute such re-fixation of pay, meaning thereby that they have no qualms about reduction of their pay from 9300-34800+GP4200 to 5200-20200+GP2800. All that they contend is that since they are not responsible for over payments on account of award of erroneous pay band and grade pay, no recovery can be made towards any excess payments from them.

9. The law relating to recovery of excess payment made to Government employees is by now well settled by decision of the Apex Court in ***Rafiq Masih (White Washer)*** (supra). After analyzing the entire case laws on the subject, the Apex Court has summarized five situations in which recoveries by employers would be impermissible in law. In paragraph 12 of the judgment, the Apex Court has held as under:

“12 It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

10. Thus as per the law laid down by the Apex Court in ***Rafiq Masih (White Washer)*** recovery from employees belonging to Class III or Class IV service, who are either retired or due for retirement within one year or where the excess payment has been made for a period in excess of five years etc. is held to be impermissible in law.

11. The issue of recovery of excess payment once again arose for consideration of the Apex Court in ***Jagdev Singh*** (supra), in which the Apex Court has dealt with case of a judicial officer, who had furnished an undertaking at the time of revision of his pay scale for refund of any excess payment if detected in future. The Respondent therein was suspended and compulsorily retired later. Further revision of his pay scale was carried out consequent to acceptance of recommendations of Shetty Commission and recovery of excess

payment of Rs.1,22,003/- was assessed. When the Respondent therein challenged the action for recovery, the High Court relied upon the judgment in **Rafiq Masih (White Washer)** and held that it was impermissible to effect recovery from Respondent therein. The Apex Court however held that the proposition No. (ii) of impermissibility to effect recovery from retired employees or those who were due to retire within one year would not apply to a situation where the employee has given an undertaking and who is bound by such undertaking. The Apex Court held in paragraph 11 of the judgment as under:

“11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

12. The law enunciated by the Apex Court in **Jagdev Singh** has been followed by Division Bench of this Court in **Ananda Vikram Baviskar** (supra) in which this Court followed decision of Division Bench at Nagpur Bench in **State of Maharashtra and others vs. Sureshchandra Dharamchand Jain and others**⁴ and held in paragraphs 9 and 10 as under:

9. This Court at the Nagpur Bench has dealt with Writ Petition No.4919 of 2018 filed by the **State of Maharashtra and others vs. Sureshchandra s/o Dharamchand Jain and others** [2019 MhLJ Online 135] for challenging the judgment of the learned Maharashtra Administrative Tribunal, Nagpur Bench dated 18-4-2017. In the said matter, the learned Tribunal had relied on Rafiq Masih (supra) and had granted the relief to the appellant who was a Class-III employee. The learned Division Bench has observed in paragraph Nos. 4 to 7 as under:

4. The argument submitted in defence is fallacious. An undertaking has the effect of solemnity in law and if argument is to be accepted which has been submitted on behalf of the respondents, the majesty of law would be lowered and there would be a travesty of justice. Besides, the undertaking is about wrong pay fixation and

4 2019 MhLJ Online 135

consequent excess payment. The undertaking is not about grant of higher pay on the basis of right pay fixation. Had it been an undertaking as regards the later dimension of the case, one could have perhaps said that the undertaking was only a formality. When the undertaking takes into account the contingency of the wrongful pay fixation, the undertaking has to be said to have been given intentionally and with a view to be acted upon, in case the contingency did really arrive.

5. So, what we have before us is an undertaking given consciously and intentionally by the respondents and the respondents would have to be held bound by this undertaking. That means in the present case, no equity whatsoever has been created in favour of the respondents while making the excess payment and as such there is no question of any hardship visiting the respondents.

6. The reason weighing with the Hon'ble Apex Court imposing prohibition against recovery of excess payment in Rafiq Masih (supra) was of hardship resulting from creation of awkward situation because of the mistake committed by the employer and there being no fault whatsoever on the part of the employee. In order to balance the equities created in such a situation, the Hon'ble Apex Court in Rafiq Masih, gave the direction that so far as Class-III and IV employees were concerned, and who were found to be not having very sound economic footing, would have to be exempted from the consequence of recovery of the excess payment, if considerable period of time has passed by in between. But, as stated earlier, even in case of such an employee, there would be no hardship for something which has been accepted by him consciously with an understanding that it could be taken away at any point of time, if mistake is detected. Clarifying the law on the subject, the Hon'ble Apex Court, in its recent judgment rendered in the case of High Court of Punjab and Haryana and others vs. Jagdev Singh, reported in 2016 MhLJ Online (S.C.) 62 = 2016 AIR (SCW) 3523, in paragraph 11 it observed thus:

"the principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

7. The fact situation of the present case is squarely covered by the above referred observations. These are the crucial aspects of the present case and the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur appears to have missed out on them and the result is of passing of an order which cannot be sustained in the eye of law."

10. We have a similar case in hand. The petitioner has specifically given an undertaking prior to his retirement that if he has received any amount in excess to what he was legitimately entitled to, the said amount would be repaid or can be recovered. Such undertaking, if ignored, would be reduced to the value of a waste paper. An undertaking has its own meaning and effect. If an undertaking is not to bind a person issuing it, there would be no sanctity to an undertaking. We cannot accept such an argument canvassed by an employee that an undertaking is a mere formality and should be ignored, lest, we ourselves would be party to neutralising the value of an undertaking.

13. Thus, the law appears to be fairly well settled that in case where an employee has given an undertaking for refund of the excess payment, the principles enunciated by the Apex Court in ***Rafiq Masih (White Washer)*** would ordinarily not apply.

14. Having discussed the law on the subject of recovery, I now proceed to examine whether recovery of excess payment would be permissible in the present case.

15. The Respondents became entitled for grant of second financial up-gradation on completion of 24 years of service on 1 December 2010 (Krishna Mahadeo Aiwale) and 5 December 2010 (Sanjay Sadashiv Pendse). By order dated 19 March 2013, they were placed in the pay scale of 9300-34800 plus grade pay of 4200 with effect from 1 December 2010 and 5 December 2010 respectively. By order dated 28 December 2018, the Petitioner-Municipal Corporation revised the order dated 19 March 2013 on the ground that the Administration had committed few errors while granting pay bands and grade pays. Accordingly, the pay band and grade pay granted to the Respondent-employees towards second financial up-gradation with effect from 1 December 2010 and 5 December 2010 was replaced by 5200-20200 plus grade pay Rs. 2800. This is how the pay band of the Respondents upon grant of second financial up-gradation was brought down from

9300-34800+ Grade Pay 4200 to 5200–20200 + grade pay 2800. Such reduction was effected from the date of the grant of second financial up-gradation i.e. w.e.f. 1st and 5th December 2010. The Petitioner-Municipal Corporation acted arbitrarily in not issuing any show-cause notices to the concerned employees and by not passing any orders directing recoveries from their salaries. The order dated 28 December 2018 merely directed changes in the orders dated 19 March 2013, 3 March 2015 and 27 April 2017. The order dated 28 December 2018 thus envisaged reduction of pay band and grade pay on account of grant of second financial up-gradation to the Respondent. The order dated 28 December 2018 did not direct effecting of any recoveries. It appears that on account of passing of order dated 28 December 2018 there was substantial reduction in the salaries of the Respondents-employees. In December 2018, Respondent-Sanjay Sadashiv Pendse was drawing basic pay of Rs. 15,510/- which was brought down to Rs. 14,640/-. The Grade Pay was brought down from Rs. 4200 to Rs. 2800. There was corresponding reduction in the amounts of Dearness Allowance and House Rent Allowances. Accordingly, his gross pay was brought down from Rs. 51,640/- to Rs. 45,693/-. However, there is no specific order passed by the Petitioner-Municipal Corporation directing any recovery of excess payments from salaries of Respondents. Since Petitioner-Municipal Corporation did not pass any order of recovery, there was no question of grant of any opportunity to Respondents by issuance of show-cause notices. It appears that without passing any order and without grant of any opportunity to the Respondents, the Petitioner-Municipal Corporation straightway started recovery from their salaries in January 2019. Such an action on the part of Petitioner-Municipal Corporation is unfair and arbitrary, to say the least.

16. In my view, the cases of Respondent are clearly covered by atleast two parameters laid down by the Apex Court in its judgment in ***Rafiq Masih (White Washer)***. Firstly, Respondents belong to Class III service. Secondly, the excess payment has been made for a period in excess of five years before effecting recoveries. The recoveries are effected in January 2019 and the fixation has been done from December 2010. Even if the date of order of 19 March 2013 is taken into consideration for grant of retrospective benefit of financial up-gradation, still period of five years had expired by the time recoveries commenced in January 2019. Therefore, the case of the Respondents-employees is covered by proposition Nos. (i) and (iii) of the judgment in ***Rafiq Masih (White Washer)***. Additionally, the recoveries were sought to be effected when Respondents were on the verge of their retirement. Respondent-Krishna Mahadeo Aiwale was due for retirement on 31 May 2020 and recovery was commenced in January 2019. Similarly in the case of Respondent-Sanjay Sadashiv Pendse, he was due to retire on 31 December 2021 and recovery from him was commenced in January 2019. Though the recoveries are not effected within a period of one year prior to retirement, the same are undoubtedly effected at the time when both the employees were on the verge of their retirement.

17. Ordinarily therefore the case of Respondents-employees would be covered squarely by the principles enunciated by the Apex Court in judgment in ***Rafiq Masih (White Washer)***. However, Mr. Walawalkar has strenuously relied upon undertakings given by the Respondents at the time of conferment of financial up-gradations in the year 2013. It would be apposite to reproduce the said undertaking given by Respondent-Sanjay Sadashiv Pendse, which reads thus:

"संमतीपत्र

मी, निम्न स्वाक्षरीकार संजय सदाशिव पेंडसे हुद्दा - फिल्टर ऑप्रेटर विभाग पाणी पुरवठा, सांगली मिरज आणि कुपवाड शहर महानगरपालिका, याद्वारे संमतीपत्र लिहून देतो की, महापालिकेच्या आस्थापनेवर माझी दिनांक ५/१२/१९८६ रोजी फिल्टर ऑप्रेटर या पदावर कायम सेवक म्हणून नियुक्ती झालेली आहे. शासनाच्या वित्त विभाग शासन निर्णय क्र. वेतन /१९०९/प्र.क्र./४४/सेवा-३ दिनांक ०१/०४/२०१० अन्वये शासकीय व इतर कर्मचा-यांना सैवातर्गत आश्वासित प्रगती योजना लागू केलेली आहे. या योजनेअंतर्गत २४ वर्षे सलग सेवा झालेल्या विद्यमान वेतनश्रेणीच्या, वरिष्ठ वेतनश्रेणी २४ वर्षे पूर्ण झालेल्या दिनांकापासून लागू केली जाते.

महानगरपालिकेच्या आस्थापनेवरील माझी फिल्टर ऑप्रेटर या पदावरील दिनांक ५/१२/१९८६ पासून दिनांक ५/१२/२०१० अखेर २४ वर्षांची सलग सेवा पूर्ण झालेली आहे त्यानुसार प्रशासनकडून खुलासा. आयुक्ती आदेश क्र.९०१/२०१२-१३ दिनांक १९/०३/२०१३ अन्वये उपरोक्त योजनेअंतर्गत व्दितीय लाभ खालील अटी आणि शर्तीच्या अधिन राहून मंजूर केलेला आहे.

अटी व शर्ती :-

१) महानगरपालिकेचे प्रारूप सेवा प्रवेश नियम मा. शासनाच्या मान्यतेस्वतः सादर केलेले आहेत. सदर सेवा प्रवेश नियमांच्या मंजूरीच्या अधिन राहून तात्पुरत्या स्वरूपात हा लाभ मला देण्यात येत आहे. सेवा प्रवेश नियम मंजूर करताना शासनाने जे आदेश निर्गमित करेल, ते माझ्यावर बंधनकारक राहतील याबाबत मी, कोणतीही तक्रार करणार नाही.

२) या योजनेअंतर्गत वरिष्ठ वेतनश्रेणी अनुज्ञेय झालेल्या दिनांकापासूनच्या मला देय होणा-या फरकाची रक्कम ही अंदाजपत्रकीय तरतुदीनुसार व महानगरपालिकेच्या आर्थिक परिस्थितीनुसार प्रशासनाने ठरवून दिलेल्या मुदतीत टप्पाटप्प्याने मला देय राहिल. याबाबत मी तक्रार या वा तगादा लावणार नाही. अथवा कोणत्याही न्यायालयात दाद मागणार नाही.

३) वित्त विभाग शासन निर्णय क्र. १९०९/प्र.क्र./४४/सेवा-३ दिनांक ०१/०४/२०१० मध्ये नमूद अहर्तेनुसार मी ह्या योजनेचा लाभ घेण्यास अनर्ह असल्याचे नंतर आढळून आलेस प्रस्तुतचा लाभ विनानोटीस काढून घेण्यात येतील व याबाबत मी कोणतीही तक्रार करणार नाही.

वरीलप्रमाणे सर्व अटी व शर्ती मला मान्य आहेत. त्यानुसार मला सेवाअंतर्गत आश्वासित प्रगती योजनेअंतर्गत प्रथम लाभ मिळण्यास मी, याद्वारे संमतीपत्र दिले असे.

स्वाक्षरीत/-

कर्मचा-यांचे नांव :- संजय सदाशिव पेंडसे

हुद्दा :- फिल्टर ऑप्रेटर विभाग : पाणी पुरवठा, सांगली

18. Perusal of the undertaking would indicate that the same was issued essentially for three purposes of (i) binding nature of orders issued by the State Government while sanctioning the Recruitment Rules, (ii) payment of arrears of pay in a staggered or phasewise manner depending on financial condition of the Petitioner-Municipal

Corporation and non-filing of any litigation in that regard, and (iii) withdrawal of financial up-gradation in the event of Respondent being found ineligible for the same as per the Government Resolution dated 1 April 2010. Condition No.3 of the Undertaking is strenuously relied upon by Mr. Walawalkar, which can be translated as under:

“3) In case it is found that I am ineligible to secure benefits of the scheme as per eligibility conditions prescribed in Government Resolution dated 1 April 2010 of Finance Department, the said benefit can be withdrawn without notice and I shall not raise any complaint in that regard.”

19. Thus, the undertaking given by Respondents was only with regard to withdrawal of the benefit of financial up-gradation in entirety in the event of they being found ineligible as per Government Resolution dated 1 April 2010. The undertaking did not envisage recovery of any excess payment arising out of grant of financial up-gradation. In the present case, it is not the case of Petitioner-Municipal Corporation that Respondent-employees are not eligible to be granted financial up-gradation or the date from which they are granted such up-gradation is different than the one on which they became due for such benefit. The dispute here is about grant of erroneous pay band and grade pay to the them while granting second financial up-gradation on completion of 24 years of service. The undertaking did not state that if any erroneous pay band or grade pay is granted, excess payment arising therefrom could be recovered. In that view of the matter, I am unable to read the undertaking relied upon by Mr. Walawalkar to mean a license for the Petitioner-Municipal Corporation to effect recoveries in violation of principles enunciated by the Apex Court in ***Rafiq Masih (White Washer)*** (supra).

20. The conspectus of the above discussion is that Petitioner-Municipal Corporation has acted unfairly and arbitrarily in the present case without bothering to even pass an order for effecting recoveries or issuing any show cause notices. Recoveries are sought to be made in respect of period in excess of five years. The recoveries are also effected against Class III employees, who were on the verge of their retirements. Petitioner-Municipal Corporation has already taken corrective steps in reducing the pay band and grade pay of Respondent-employees and in re-fixing their salaries and allowances. The mistake committed by the Petitioner-Municipal Corporation is thus not perpetuated since Respondents have started receiving reduced pay after passing of order dated 28 December 2018. Their pension is also reduced on account of reduction of pay band and grade pay. The only issue is about excess payments made to them during 2010 to 2018. Considering the peculiar facts and circumstances of the present case, I am of the view that recovery of such excess payment made during 2010 to 2018 cannot be made from the Respondents. Such recovery would subject them to undue hardship. The Petitioner-Municipal Corporation ought to have been careful enough in securing proper undertakings from its employees before grant of financial up-gradations. The undertakings ought to have covered the eventuality of any overpayments being made while implementing the ACP Scheme. In ***Jagdev Singh*** the Respondent therein had given a clear undertaking at the time of grant of selection grade to him to refund any excess payment, which would be detected or demanded subsequently. In the present case, Respondent-employees did not undertake to refund any excess payment arising out of erroneous pay fixation. They only undertook about withdrawal of financial up-gradation granted to them in the event of they being found ineligible for award of the same. Eligibility of Respondents to earn financial up-

gradations under the ACP Scheme is not disputed and therefore the undertakings procured from them have become in-operative and cannot be extended to cover the eventuality of excess payment being made on account of awarding erroneous pay band and grade pay to them. The officials of the Petitioner-Municipal Corporation ought to have been careful in deciding the pay band and grade pay payable to the employees as a result of grant of financial up-gradation. It would be too iniquitous to expect employees on the verge of the retirement to refund huge amounts of Rs. 4 to 5 lakhs, which they drew over period of nine long years.

21. I therefore do not find any valid reason to interfere in the impugned orders passed by the Industrial Court. Writ Petitions are devoid of merits and are accordingly **dismissed** without any orders as to costs.

(SANDEEP V. MARNE, J.)

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signed by
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