

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1408 OF 2024

Arun Valu Tambekar And Ors. ...Petitioners
Versus
The State of Maharashtra and Ors. ...Respondents

Mr. C.K. Bhanoji a/w E.S. Murge for the Petitioners.
Mr. V.G. Badgujar, AGP for Respondent Nos. 1 and 2/State.
Mr. Ashwin Kapadnis for Respondent Nos. 3, 4 and 5.

**CORAM : RAVINDRA V. GHUGE AND
M.M. SATHAYE, JJ.**

DATE : 16th OCTOBER, 2024

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.)

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1. Rule. Rule made returnable forthwith and heard finally, by the consent of the Parties. The learned advocates representing the Respondent Zilla Parishad, Nashik agrees that the Petitioners are identically placed.

2. The Petitioners are the original employees who were working with the Respondent Zilla Parishad and superannuated from employment. All of them were subjected to recovery of amounts, purportedly for the reason that excess amounts were paid to them, under wrongful revised pay scales/erroneous revised pay scales, on the basis of acquiring the certificate of MS-CIT etc. These pay scales were revised

more than a decade ago.

3. The grievance of these Petitioners is that recoveries have been initiated against them, from their retiral benefits/pensionary benefits. In some cases, amounts have already been recovered. A chart showing the details of the petitioners, their dates of superannuation, dates of impugned orders and amounts recovered from their retiral benefits/pensionary benefits, is as under:-

Sr. No	Name of the Petitioners	Date of retirement	Date of Impugned recovery order	Recovered amount
1	Arun Valu Tambekar	30.04.2022	13/09/2022	2,14,855
2	Ramdas Kacharu Dhatrik	31/10/2020	17/09/2020	1,60,791
3	Nirmala Karbhari Hire	31/05/2019	13/09/2019	73,908
4	Jayashri Dilip Pawar	31/05/2020	07/10/2020	1,66,595
5	Prakash Shriram Badgujar	31/12/2020	29/04/2022	1,20,792
6	Mangla Ganpat Deshmukh	30/04/2021	28/07/2021	1,22,294
7	Sharda Sarjerao Shingare	30/04/2021	20/03/2021	1,55,247
8	Bapu Nathu Gangurde	31/05/2020	26/11/2020	59,653
9	Mangal Yuvraj Suryawanshi	30/04/2019	05/10/2018	48,777
10	Meghavati Baburao Sonawane	28/02/2021	23/10/2021	72,853
11	Lata Nimba Adhav	28/02/2022	15/02/2022	2,90,727
12	Bhaulal Murlidhar Varpe	31/05/2020	03/08/2021	1,35,675
13	Bapu s/o Shivaba Deore	31/05/2021	21/09/2021	1,62,199
14	Alka Shridhar Jadhav	31/05/2021	13/12/2020	1,11,934
15	Pushpa Arvind Geet	30/06/2021	23/10/2021	3,73,539
16	Pratibha Vilas Kudake	31/01/2021	25/03/2021	1,11,154
17	Bebi Daga Pawar	30/06/2020	05/08/2020	80,238
18	Nandini Gangadhar Kajale	31/05/2021	09/07/2021	11,314
19	Dilip Jagannath Shinde	30/06/2020	26/11/2020	86,915
20	Meera Dinkar Khose	30/06/2021	03/08/2021	93,756
21	Mangala Arun Pawar	30/04/2020	05/08/2020	62,388

22	Bharati Popat Pawar	31/10/2019	31/01/2020	91,900
23	Tryambak Dhondu Pawar	31/05/2020	15/01/2021	1,19,277
24	Ganesh Shankar Pardeshi	30/04/2019	30/11/2018	47,671
25	Vijaykumar Jibhau More	31/05/2021	01/06/2021	1,02,585
26	Devram Pandu Shardul	31/05/2021	13/08/2021	55,464
27	Yogendra Pandharinath Page	31/03/2020	08/10/2020	97,805
28	Damu Devaram Dhumse	31/05/2019	08/07/2019	48,353
29	Sha Nisar Ahemad Ah. Lateef	31/05/2019	16/10/2019	76,546
30	Bhagwan Bhila Sonawane	31/05/2021	01/11/2021	1,64,501
31	Sonyabapu Devram Thorat	31/10/2023	28/10/2020	2,15,686
32	Kusum Mukund Jagtap	31/03/2020	18/06/2020	1,79,163
33	Arun Laxman Patil	31/03/2019	21/02/2019	46,628
34	Namdeo s/o Rambhau Pagar	31/05/2022	12/10/2022	3,80,263
35	Ravindra s/o Dattatray Lachake	28/02/2022	15/06/2022	2,36,181
36	Ramdas Mohan Desale	31/05/2020	05/08/2020	1,02,917
37	Vijaya Dattatraya Avhad	28/02/2022	28/02/2022	2,03,277
38	Hirabai Balu Khatele	31/05/2019	10/07/2019	78,515
39	Shobha Shankar Buwa	30/04/2019	10/09/2018	65,741
40	Shaila Pradeep Kulkarni	31/03/2021	13/02/2021	1,67,848
41	Bharati Rajaram Deshpande	31/10/2020	04/12/2021	1,67,325
42	Kisan s/o Prabhakar Hire	31/05/2022	23/11/2022	2,13,668
43	Suryamala Mukund Borase	29/02/2020	10/11/2020	53,696
44	Maya Pandharinath Shinde	31/03/2021	13/02/2021	2,44,396
45	Prabhakar Ukhaji Kasare	30/04/2020	27/01/2021	1,91,372
46	Ramesh s/o Vitthal Ahire	31/05/2020	27/03/2023	90,000
47	Pundalik Yashwant Jopale (Died) Through Its LRS Vimal Pundalik Jopale	30/06/2021	02/08/2021	1,52,510
48	Gangadhar Govind Jopale	30/06/2021	28/07/2021	3,05,345
49	Namdeo Ramchandra Gaikwad	30/06/2021	21/08/2021	1,29,484
50	Dhanraj Mahadu Ghuge	31/12/2021	10/02/2022	1,89,863
51	Sunanda Ishwarlal Chaudhari	31/05/2022	13/07/2022	1,49,317
52	Bhaskar Shravan Chavan	31/05/2022	29/07/2021	1,27,642
53	Prakash Shankar Khairnar	31/05/2022	02/11/2022	5,99,091
54	Sunanda Ananda Jadhav	31/08/2022	15/12/2022	2,51,481
55	Parshram Narayan Chavan	30/08/2022	16/06/2022	2,17,312
56	Popat Nimba Bhoje	31/05/2021	28/07/2021	1,39,896

57	Vijay Chiman Dusane (Died) Through Its LRS Surekha Vijay Dusane	25/03/2019	24/10/2019	2,39,698
58	Chandrakant Bhagavantrao Shinde	31/12/2021	22/04/2022	1,84,583
59	Dhanaji Rajaram Warungase	31/05/2020	17/12/2020	94,996
60	Sushila Bhausahab Gaikwad	30/06/2019	30/01/2020	4,57,110
61	Uttam Bhagwant Nirbhavane	31/03/2018	12/09/2018	2,80,799
62	Ramesh Shamrao Sonwane	30/06/2019	14/06/2019	1,18,152
63	Jyoti Pandharinath Nikumbh	31/01/2020	18/11/2020	2,11,339
64	Rajendra Karbhari Gangurde	30/11/2021	01/12/2021	60,917
65	Ashok Karbhari Gangurde	30/11/2019	30/01/2020	78,446
66	Nirmala Ukhaji Nikam	28/02/2021	28/02/2021	1,36,003
67	Dasharath Bhaurao Chitte	31/03/2021	19/07/2021	1,33,815
68	Balkrishana Shankar Pathade	31/07/2020	05/08/2020	1,12,058
69	Mangala Gopichand Ahirrao	31/03/2020	09/10/2020	1,42,799
70	Meena Sitaram Nikam	30/06/2020	26/09/2020	96,032
71	Kiran Damodhar Wagh	30/04/2018	13/11/2017	33,751
72	Mandakini Kiran Wagh	31/08/2020	02/11/2020	1,07,743
73	Vasant Maharaj Bachchav	31/05/2021	14/08/2021	88,805
74	Prakash Pandurang Talape	31/05/2021	19/07/2021	1,67,523
75	Subhash Sakharaj Jagtap	31/05/2022	18/05/2020	2,33,158
76	Asha Bhikaji Ahire	30/05/2021	07/07/2021	1,68,612
77	Shobha Murlidhar Suryawanshi	31/05/2022	17/03/2022	1,97,341
78	Rakhmabai Balkrushna Pawar	31/01/2022	10/08/2022	1,92,784
79	Rajendra Gangadhar Bankar	31/08/2022	15/04/2023	1,88,598
80	Hiralal Punjaram Shevale	31/05/2020	05/08/2020	91,381
81	Gorakhnath Pandharinath Pardeshi	31/05/2021	20/03/2021	2,05,663
82	Sunanda Navasa Ahire	31/05/2019	17/12/2019	53,290
83	Sunanda Ramchandra Nikam	30/06/2020	10/12/2020	87,680
84	Surekha Dattatray Pathak	31/05/2021	07/07/2021	1,46,038
85	Rajni Panditrao Ushir	31/10/2018	15/12/2018	34,911
86	Prakash Laxman Vaishnav	31/08/2022	20/07/2022	3,56,139
87	Pramila Ashok Mohite	30/09/2022	20/10/2022	2,59,789
88	Bhausahab Yashwant Kangane	31/05/2022	07/09/2022	2,70,635
89	Sharda Ashok Chaudhari	31/07/2022	28/09/2022	1,34,038
90	Gangadhar Baburao Dhatrak	31/05/2022	05/07/2022	1,39,293
91	Anita Rajendrakumar Nagarkar	30/09/2022	19/08/2022	2,28,740
92	Shashikant Gorakhanath Ahire	31/05/2022	21/11/2022	2,82,932
93	Vimal Bhagvant Shinde	31/05/2021	03/08/2021	1,54,344

4. We have considered the strenuous submissions of the learned Advocates. It is, however, undisputed that none of these Petitioners had played any fraud or were personally involved in the wrongful revision of their pay scales or orchestrating a wrongful revision by manipulating the record. There is no allegation of fraud or deceit against any of them. No undertaking was acquired from them, as and when the revised pay scale become payable. In some cases, at the stroke of retirement, a condition was imposed that they should execute an undertaking and in these coercive circumstances, that undertakings were extracted from some of them.

5. 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 Petitioners would be covered by 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*. Reliance is placed on the judgment delivered by this Court (Aurangabad Bench) 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)*. However, the record reveals that no undertaking was taken from these Petitioners when the pay scales were revised. The undertakings from some of them were taken at the stroke of their retirement.

7. An undertaking has to be taken from the candidate on the day

the revised pay scale is made applicable to him and the payment 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.

8. Taking into account that these Petitioners were not involved in any mischief, fraud or deceit in orchestrating their 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.

9. The **Writ Petition is partly allowed**. The impugned orders are quashed and set aside. The amounts due and payable to the Petitioners, as well as to the widows and other legal heirs, if that is the case, after the superannuation of the said employees/death of the employees, would be paid to these Petitioners or their widows or other legal heirs, if that is the case, within a period of 90 days.

10. The learned advocate for the Petitioners submits on instructions that the Petitioners would not claim any interest on the amount which has already been recovered from them, to the extent of its repayment. In view thereof, if the amounts are not paid within 90 days, interest at the rate of Rs.5% p.a. from the date of this order, will be paid.

11. Rule is made absolute accordingly.

(M.M. SATHAYE, J.)

(RAVINDRA V. GHUGE, J.)

This order is corrected as per speaking to minutes of order dated 22.10.2024.