

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

WRIT PETITION NO. 4121 OF 2024

Pratibha Prabhakar Gholap ...Petitioner
Versus
The State Of Maharashtra
Thr. The Secretary General Administration
Department And Ors. ...Respondents

**WITH
WRIT PETITION No.4122 OF 2024**

Suresh Ramchandra Dhangar ...Petitioner
Versus
The State of Maharashtra
Through the Secretary and Ors. ...Respondents

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Mr. Balaji Shinde, Advocate for the Petitioner in both matters.

Mr. M. M. Pabale, AGP, for Respondent Nos.1 to 4 in
WP/4121/2024.

Mr. S.B. Kalel, AGP, for Respondent Nos.1 to 4 in
WP/4122/2024.

Mr. A.R. Kapadnis i/b. Mr. Vivek Rane, for Respondent No.6.

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

DATE :- 9th OCTOBER, 2024

Per Court :-

1. In both these matters, the Petitioners are identically placed. Both of them are Class-III employees working on the post of Arogya Sevak. Both of them were granted revision in pay scale in terms of the “one step pay scale” that is made available for working in the tribal/PESA areas. An undertaking was extracted from all of them at the stroke of their retirement.

2. Following is the chart indicating the Writ Petitions, the names of the Petitioners, the dates of superannuation, dates of recovery, total amount recovered and the reason for recovery:

Sr.	W.P.	Name	Date of Retirement	Date of Recovery	Amount recovered	Recovery Towards
1.	4121/2024	Pratibha Gholap	30/06/2020	July-2020	2,20,094/-	Wrong pay fixation of one step pay scale
2.	4122/2024	Suresh Dhangar	Died on 22/08/2018	Dec – 2018	4,61,261/-	Wrong pay Fixation of one step pay scale

3. The learned Advocate representing the Zilla Parishad has strenuously opposed these Petitions on the following grounds:-

(a) None of these Petitioners protested while executing the undertaking.

(b) The amounts which were found to have been paid in

excess, have already been recovered from the retiral dues of these Petitioners.

- (c) It will have to be verified as to whether these Petitioners were actually working in the tribal/PESA area.
- (d) The Petitioners could have raised a grievance with the Zilla Parishad instead of approaching this Court directly.
- (e) It would be appropriate to dispose off these Petitions and direct them to approach the Zilla Parishad.”

4. There are several judgments and orders passed by the Bombay High Court in such cases in the light of the judgments delivered by the Hon’ble Supreme Court in *Syed Abdul Qadir and others Vs. State of Bihar and others, (2009) 3 SCC 475* and *State of Punjab and others Vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334*. This Court has also considered the tendency of employers in extracting written undertakings from the employees at the stroke of their retirement, vide the judgment delivered on 14.03.2024 in Writ

Petition No.2810 of 2024 (Vijaya Khandu Tayade Vs. the State of Maharashtra and others) and Writ Petition No.2863 of 2024 (Asha Dhanraj Nimbalkar Vs. the State of Maharashtra and others). It would be apposite to reproduce paragraph Nos. 4 to 7 hereunder:-

- “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 a wrongful revision of their pay scales or orchestrating 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 scales become payable. In some cases, at the stroke of retirement, a condition was imposed that they should execute an undertaking and it is 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 on 01.09.2021, 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. 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 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.

7. *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 these cases."*

5. It is undisputed that no fraud or ulterior motives have been attributed to the conduct of the Petitioners. It is also

not the case of the Zilla Parishad that they were instrumental in manipulating their pay scales and allotting one extra increment in their favour. The learned Advocate for the Zilla Parishad has canvassed that the Zilla Parishad should be given an opportunity to verify as to whether any of these Petitioners were actually working in the tribal/PESA area.

6. The learned Advocate for the Petitioners counters the said submission on the basis of the pleadings on oath in the Petitions and submits that all these Petitioners were working in such tribal/PESA areas. They were paid the one step extra increment only because they were working in tribal/PESA areas.

7. In the light of the above, the law laid down in ***Syed Abdul Qadir*** (supra) and ***Rafiq Masih*** (supra), would be applicable to the case of the Petitioners. On the issue of the undertaking, this Court has already concluded that an undertaking extracted at the stroke of retirement, is taking advantage of the helplessness of such Petitioners. When they were at the verge of retirement and at the time of calculating their retiral benefits, an undertaking is extracted. There are other

instances when the Petitioners have approached this Court as the employers have not released the retiral benefits, since the Petitioners did not accede to the demand of an undertaking.

8. As such, **these Writ Petitions are partly allowed.** The impugned orders directing recoveries, are quashed and set aside. The recovered amounts shall be repaid to the Petitioners within 60 days from today and if such payment is paid within the timeline, to balance the equities, we would not impose interest. If the amounts are not paid within 60 days, the said amounts shall carry interest at the rate of 6% p.a. from the date of the recoveries and the interest component shall be recovered, not from the State exchequer, but from such officer of the Zilla Parishad on whose conduct, the delay in payment has occurred.

9. Considering that one of the Petitioners before us, Suresh Dhangar, has passed away, the amounts shall be paid to his widow.

(M.M. SATHAYE, J.) (RAVINDRA V. GHUGE, J.)