

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.18031 OF 2024**

Murlidhar Chandrakant Mahale and Ors.Petitioners

Versus

The State of Maharashtra and Ors.Respondents

Mr. Rahul A. Shinde for the Petitioners.

Mr. S.B. Kalel, AGP for Respondent Nos.1 and 2.

Mr. Ashwin R. Kapadnis for Respondent Nos.3 to 5.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.**

**DATE : 9th DECEMBER, 2024/
11th DECEMBER, 2024**

ORAL FINAL ORDER (Per Ravindra V. Ghuge, J.) :-

1. This matter was actually disposed off on 9th December, 2024, with an identical order at page 191 of the Petition Paper Book. However, as the learned Advocate for the Zilla Parishad, Nashik had not caused an appearance, this matter was listed today, i.e., 11th December, 2024. The learned Advocate has appeared on behalf of Zilla Parishad, Nashik.

2. All the Petitioners are identically placed. The learned Advocate representing the Respondent Zilla Parishad, Nashik agrees.

3. The Petitioners are employees who were working with the Respondent Zilla Parishad and have 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, calculated on the basis of acquiring the certificate of MS-CIT etc. These pay scales were revised more than a decade ago.

4. 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, are as under :

<i>Sr. No.</i>	<i>Name of petitioner</i>	<i>Date of retirement</i>	<i>Date of impugned recovery order</i>	<i>Amount Recovered</i>
01	Murlidhar Chandrakant Mahale	31/03/2021 (Prim. Teacher)	14/08/2021	1,37,266/-
02	Anusaya Dilip Patil	31/05/2022 (Prim. Teacher)	24/05/2022	2,38,485/-
03	Suresh Jayram Kamdi	30/06/2022 (Head Master)	04/10/2022	2,39,022/-

04	Purushottam Shankar Tarvare	30/11/2021 (Prim. Teacher)	22/10/2021	1,79,975/-
05	Dayaram Rama Raut	31/07/2021 (Prim. Teacher)	27/09/2021	1,56,841/-
06	Motiram Dhakalu Darode	30/09/2021 (Prim. Teacher)	18/10/2021	1,45,657/-
07	Manohar Devram Bhoye	30/06/2022 (Prim. Teacher)	02/06/2022	2,10,617/-
08	Mahadu Vitthal Mahale	30/06/2021 (Prim. Teacher)	09/08/2021	1,51,350/-
09	Vinayak Parashram Pawar	30/04/2022 (Prim. Teacher)	31/10/2022	2,50,671/-
10	Tulshidas Rajaram Waghare	28/02/2022 (Prim. Teacher)	02/06/2022	2,13,054/-
11	Ramchandra Dharma Shevare	31/08/2021 (Prim. Teacher)	27/09/2021	2,51,041/-
12	Pundlik Gangaram Khambait	31/10/2021 (Prim. Teacher)	08/02/2022	1,76,797/-
13	Krushna Kashiram Sapate	31/05/2020 (Prim. Teacher)	10/08/2022	57,001/-
14	Vaman Mahadu Bhusare	31/05/2021 (Head Master)	07/08/2021	1,54,177/-
15	Namdev Tulshiram Hadas	29/02/2020 (Prim. Teacher)	06/07/2020	1,56,886/-
16	Bhagvan Shivram Bamhane	30/06/2021 (Prim. Teacher)	29/09/2021	1,39,865/-
17	Bhaurav Tukaram Bhoye	30/06/2019 (Prim. Teacher)	05/12/2019	58,998/-
18	Manohar Keru Chaudhari	31/05/2021 (Prim. Teacher)	04/10/2021	1,48,119/-
19	Ramdas Govind Bhoye	31/12/2021 (Prim. Teacher)	26/07/2023	2,15,284/-
20	Haridas Devaram Waghare	30/06/2020 (Head Master)	15/04/2021	3,40,300/-
21	Mahadu Savliram	31/05/2018	22/04/2021	1,88,422/-

	Chaudhari	(Head Master)		
22	Rama Kalu Tungar	31/05/2021 (Head Master)	14/08/2021	1,55,969/-
23	Bhupendra Dattatray Satpute (Died) Through his Legal Heir / Widow Smt. Lata Bhupendra Satpute	(Died On) 09/11/2018 (Prim. Teacher)	18/11/2021	5,68,836/-

5. 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 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 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 undertaking were extracted from some of them.

6. The learned Advocate representing the Zilla Parishad as well as the learned AGP, 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 1st September, 2021, *in Writ Petition No. 13262 of 2018 filed by Ananda Vikram Baviskar Vs. State of Maharashtra and others*.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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 it's 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.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)