



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

28 WRIT PETITION NO. 2306 OF 2025

GANGADHAR AMBADAS NIMASE
VERSUS
THE STATE OF MAHARASHTRA THROUGH
ITS SECRETARY AND OTHERS

...
Advocate for the petitioner : Mr. Ketan Patil h/f. Mr. A.G. Ambetkar
AGP for the respondent – State : Mr. S.V. Hange
Advocate for respondents no. 2 to 5 : Ms. Manjushri V. Narwade
...

**CORAM : MANGESH S. PATIL &
Y. G. KHOBRADE, JJ.**

DATE : 24 MARCH 2025

ORAL ORDER (MANGESH S. PATIL, J.) :

Heard.

2. The petitioner, who voluntarily retired from service on 30.04.2024, is questioning the recovery ordered subsequently by way of impugned order dated 23.10.2024, whereby over-payment made to him pursuant to a wrong pay fixation has been recovered from the pensionary benefits.

3. The issue is no longer *res integra*. Since the petitioner was serving on a Class-III post, nothing would be recoverable from him on account of the over-payment made because of wrong pay fixation with which he cannot have any nexus or role, as laid down in the

matter of ***State of Punjab and others etc. V. Rafiq Masih (White Washer) etc.; 2015 (4) SCC 334.***

4. Perhaps in contemplation of invoking the decision in the matter of ***High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh; (2016) 14 SCC 267***, an attempt has been made in the affidavit in reply filed on behalf of respondents no. 2 to 5, to demonstrate that statement in the petition about there being no undertaking ever furnished by him, is false, as undertaking purportedly signed by him has been placed on record with the affidavit in reply. This undertaking is dated 28.05.2024 after he retired on 30.04.2024.

5. Even this issue of obtaining undertaking on the verge of retirement, was a subject matter for the scrutiny of this Court in the matter of ***Yuvraj Vs. State of Maharashtra and others; 2024 DGLS (Bom.) 3099*** (writ petition no. 7937 of 2024 decided on 02.08.2024), to which one of us (Y.G. Khobragade, J.) was a member. Paragraph no. 5 in the matter of ***Yuvraj*** (supra) reads as under :-

*"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 the Petitioner when the pay scales were revised. 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, asking the employees 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 such employees, more so since the recovery is initiated after their superannuation. Further, in the instant case, the Petitioner has not executed any undertaking."*

6. In the light of above, admittedly, there being no undertaking received from the petitioner when the pay fixation was being done binding himself to refund the excess in future, the impugned recovery cannot be permitted.

7. The writ petition is allowed.

8. The orders dated 18.10.2024 and 23.10.2024 are quashed and set aside.

9. The excess amount recovered from the petitioner shall be refunded to him within eight (8) weeks, failing which the amount shall carry simple interest @ 6% per annum till realization of the entire amount.

[Y. G. KHOBRADE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/