



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4427 OF 2024

(Umesh Tulsiram Raut

Vs.

Zilla Parishad Akola, Thr. its Chief Executive Officer, Akola & Ors.)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. D.S. Kanwale, Advocate for the Petitioner.

Ms. H.N. Jaipurkar, Advocate for the Respondents.

**CORAM: AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.**

DATED : 25th MARCH, 2025

1. Heard Mr. Kanwale, learned Counsel for the Petitioner and Ms. Jaipurkar, learned Counsel for the Respondents.

2. The Petition challenges the order dated 10.01.2022 (page 60), by which an amount of Rs.2,89,596/-, has been directed to be recovered from the retiral benefits of the Petitioner on account of excess payment being made during his employment under the heads of salary and allowances. Insofar as the impugned order directs, deduction of an amount of Rs.2,58,375/-, from his post retiral benefits, for being paid to the Zilla Parishad Teachers Credit Society, there is no challenge to the Petition in respect of the same.

3. Insofar as the deduction of an amount of Rs.2,89,596/-, which has been directed to be recovered from

the retiral benefits of the Petitioner on account of excess payment being made during his employment under the heads of salary and allowances, we find, that the Petitioner though relies upon *State of Punjab and Ors etc. Vs. Rafiq Masih (White Washer), (2015) 4 SCC 334*, but has given an undertaking on 15.11.2021 to the employer, to the effect that in case it is found, that any amount is to be paid by the Petitioner on any count whatsoever, the same should be deducted from his post retiral benefits.

4. The undertaking, which has not been filed alongwith the Petition, has been tendered across the bar by Ms. Jaipurkar, learned Counsel for the Respondents, which is taken on record and marked as 'X', for the purpose of identification.

5. In view of the undertaking, we find, that the matter is covered by what has been stated in the *High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh, AIR 2016 SC 3523, para 10 & 11*, which are as under:

“10. In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc. (AIR 2015 SC 696), this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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."

(Emphasis supplied).

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."

6. It is thus apparent, that in view of the undertaking at 'X', the case of the Petitioner is covered by what has been held in **Jagdev Singh** (supra). We also find, that such directions, are in fact fomenting dishonesty in the citizens inasmuch as that even though it becomes an admitted position, that the employees are not entitled for the amounts which have been paid to them, on account of mistake in calculations by the Authorities or excess payment has been made for any reason whatsoever, to which they have no legal entitlement and inspite of the fact, that no challenge has been laid to it, if they are permitted to retain the same, that would amount to putting a seal on dishonesty of the employee to

retain an amount to which he has no legal right, which is a part of public funds, which can otherwise be utilized for some other general public purpose to benefit the public at large. We also find, that if we consider the litigation in this regard, throughout the Country it is leading to illegal retention of millions of rupees, perhaps every year, which also could be used for beneficial public use.

7. The Petition is therefore **dismissed**. No costs.

8. Pending application/s, if any, shall stand disposed of accordingly.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)