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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION No. 642/2011

Balasaheb s/o Govindrao Sathe,
Age – 53 Years, Occu – Service,
R/o Kamanves, Tuljapur,
Tal – Tuljapur, District -
Osmanabad.

..Petitioner

- Versus-

- 1 The State of Maharashtra
through the Secretary, Urban
Development Department,
Mantrayalaya, Mumbai-32.
(Copy to be served on
Government Pleader Office,
High Court, Aurangabad.)
- 2 The Director of Municipal
Council Administration
Department, Warali, Mumbai.
- 3 The Divisional Commissioner,
Aurangabad Division Office,
Aurangabad.
- 4 The Chief Officer
Nagar Parishad, Tuljapur,
Dist : Osmanabad.
- 5 The Headmaster,
Nagar Parishad Primary School
1 & 2, Tuljapur, Dist.Osmanabad.
(R/5 deleted as per leave granted
on 10.07.2015 by this Court).

..Respondents

**WITH
WRIT PETITION NO.8248 OF 2010**

Sanjivani W/o Sridharrao Lande,
Age : 51 years, Occu : Primary Teacher,
Nagar Parishad, Primary School,
Tuljapur, R/o Mankawati Galli,
Tuljapur Tq. Tuljapur, Dist. Osmanabad.

..Petitioner

Versus

- 1 The State of Maharashtra
through the Secretary, Urban
Development Department,
Mantrayalaya, Mumbai-32.
(Copy to be served on
Government Pleader Office,
High Court, Aurangabad.)
- 2 The Director of Municipal
Council, Administration
Department, Warali, Mumbai.
- 3 The Divisional Commissioner,
Aurangabad Division Office,
Aurangabad.
- 4 The Chief Officer
Nagar Parishad, Tuljapur,
Dist : Osmanabad.
- 5 The Headmaster,
Nagar Parishad Primary School
1 & 2, Tuljapur, Dist.Osmanabad.
(R/5 deleted as per leave granted
on 10.07.2015 by this Court).

..Respondents

**WITH
WRIT PETITION No. 4789 OF 2011**

Shubhas s/o Laxmanrao Mogarkar,

Age – 57 years, Occu – Service,
R/o :- Shukrawar Peth, Tuljapur,
Tal – Tuljapur, District -
Osmanabad.

..Petitioner

Versus

1. The State of Maharashtra
through the Secretary, Urban
Development Department,
Mantrayalaya, Mumbai-32.
(Copy to be served on
Government Pleader Office,
High Court, Aurangabad.)
2. The Director of Municipal
Council, Administration
Department, Warali, Mumbai.
3. The Divisional Commissioner,
Aurangabad Division Office,
Aurangabad.
4. The Chief Officer
Nagar Parishad, Tuljapur,
Dist : Osmanabad.

..Respondents

**WITH
WRIT PETITION No. 855 OF 2011**

- 1 Sushila w/o Rangnathrao Pede
Age 55 years Occ : Service
working as Head Master in Nagar
Parishad Primary School, Tuljapur
Taluka Tuljapur, District – Osmanabad.
- 2 Prabha w/o Devidasrao Puranik
Age 58 years, occ : Service,
Working as a teacher in, nagar
Parishad, Primary School,

Tuljapur, Taluka Tuljapur
District : Osmanabad.

..Petitioners

Versus

- 1 The State of Maharashtra
through the Secretary, Urban
Development Department,
Mantrayalaya, Mumbai-32.
- 2 The Hon'ble State Minister
State of Maharashtra,
Urban Development Department,
Mantralaya, Mumbai – 32.
- 3 The Commissioner and Director,
Directorate of Municipal
Council, Administration,
Warali, Mumbai.
- 4 The Divisional Commissioner,
Aurangabad.
- 5 The Chief Officer,
Municipal Council, Tuljapur,
Taluka Tuljapur,
District : Osmanabad.

..Respondents

**WITH
WRIT PETITION NO.4750 OF 2011**

Ashok s/o Sidram Gaikawad,
Age-47 years, Occu – Service,
R/o Bhavani Road, Chambhar
Galli, Tuljapur, Tal – Tuljapur,
District – Osmanabad.

..Petitioner

-VERSUS-

- 1 The State of Maharashtra
through the Secretary, Urban

Development Department,
Mantrayalaya, Mumbai-32.
(Copy to be served on
Government Pleader Office,
High Court, Aurangabad.)

- 2 The Director of Municipal
Council, Administration
Department, Warali, Mumbai.
- 3 The Divisional Commissioner,
Aurangabad Division Office,
Aurangabad.
- 4 The Chief Officer
Nagar Parishad, Tuljapur,
Dist : Osmanabad.

..Respondents

**WITH
WRIT PETITION NO.733 OF 2012**

Balasaheb s/o Baburao Salunke,
Age – 58 years, Occu – Retired,
R/o :- Near State Bank of India,
Naldurg Road, Tuljapur,
Tal – Tuljapur, District -
Osmanabad.

..Petitioner

Versus

- 1 The State of Maharashtra
Through the Secretary, Urban
Development Department,
Mantrayalaya, Mumbai – 32
(Copy to be served on
Government Pleader Office,
High Court, Aurangabad.)
- 2 The Director of Municipal
Council, Administration
Department, Government

Transport Service Building,
3rd Floor, Sir Pochkhanwala
Road, Warli, Mumbai – 30.

3 The Divisional Commissioner,
Aurangabad Division Office,
Aurangabad.

4 The Chief Officer,
Nagar Parishad, Tuljapur,
Dist : Osmanabad.

..Respondents

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Mr.Prashant P. Kulkarni and Mr.D.R.Markad holding for Mr.N.K.Kakade,
Advocates for the Petitioners in respective petitions.

Mrs.Y.M.Kshirsagar, AGP, for Respondents/State.

Mr.K.K.Kulkarni, Advocate for Respondent No.4/ Municipal Council and
for Respondent No.5/Municipal Council in Writ Petition No.855/2011.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 10th July, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Primary Schools run by the Tuljapur Municipal Council
which have been impleaded in two petition Nos.642/2011 and
8248/2010, are being deleted at the request of the learned Advocate for
the Petitioners. Deletion be carried out forthwith.

3 Considering the identical grounds involved and an identical cause of action put forth by the Petitioners, I have heard all these petitions together finally.

4 It is contended that all the Petitioners are employees of the Municipal Council, Tuljapur. All of them are aggrieved by the order dated 02.11.2004 which is at page 47 of the first petition by which certain conditions have been imposed on the Petitioners. All of them have been appointed without following the due procedure prior to 30.06.1986. All of them have suffered the order of recovery dated 29.11.2010 at page 58 of the first petition paper book

5 The Petitioners have challenged the condition Nos.2, 3, 4, 5 and 6 imposed upon them by Respondent No.2- Commissioner/ Director, Municipal Council Administration, by the order dated 02.11.2004. The Petitioners are also aggrieved by the order passed by Respondent No.1/ Government of Maharashtra dated 09.06.2010 in Revision Applications preferred by them.

6 The crux of the Petitioners' case is that the above mentioned conditions in the order dated 02.11.2004 are discriminatory and create

hardships for the Petitioners. Nevertheless, the Petitioners have primarily equated themselves with similarly situated employees of the Municipal Councils at Ausa, District Latur and Naldurg, District Osmanabad. Their bone of contentions is that these Petitioners who are employees of the Municipal Council, Tuljapur have been differently treated and there is discrimination in between the Petitioners and similarly situated employees working at Ausa and Naldurg.

7 The Petitioners submit that the concerned employees of the Municipal Councils, Ausa and Naldurga, have been inducted in employment after 30.06.1986. My attention is, therefore, drawn to page 64H of the petition which is a communication by the Director of Municipal Council Administration dated 03.01.2004 addressed to the Divisional Commissioners and Regional Directors of Municipal Council Administration in the State of Maharashtra. Paragraph 1 of the said communication specifically states that those employees who have been working prior to 30.06.1986 need to be treated differently and no recovery of excess salary paid to them, should be carried out by way of an exception.

8 Shri Prashant Kulkarni, learned Advocate for the Petitioners, therefore, indicates that the impugned order dated 29.11.2010 by which

the Respondent Municipal Council desires to recover excess salary paid to the Petitioners, ought not to be sustained in the light of the direction given by Respondent No.1 Director of Municipal Council Administration. On this count alone, he submits that, the order dated 29.11.2010 deserves to be set aside.

9 He has then drawn my attention to the impugned judgment dated 09.06.2010 delivered by the Honourable Minister for State, Urban Development Department, State of Maharashtra, whereby the grievance of the Petitioners as regards discrimination against them vis-a-vis treatment given to the employees of Ausa and Naldurga Municipal Councils has been negated on the ground that the treatment meted out to the said employees of two Municipal Councils is by way of an exception and the State has taken steps to ensure that irregular and illegal recruitment is curbed. Shri Prashant Kulkarni, therefore, opposes the said conclusions on the ground that there should be some logic and reasons behind such a discrimination.

10 Shri K.K.Kulkarni, learned Advocate for Respondent Tuljapur Municipal Council in all these matters, submits that it is an instrumentality of the State Government. The Municipal Council has to follow the directives of the Director of Municipal Council Administration and the decisions taken by the concerned Department of the State Government.

11 The learned AGP appearing on behalf of Respondent Nos.1, 2 and 3 indicates that the affidavits in reply have been filed on 27.07.2011 and 09.07.2015. She vehemently denies of any discrimination as has been alleged by the Petitioners in these petitions. She indicates from the first affidavit in reply that the Government has decided to regularize the employees of the Municipal Councils by issuing necessary directions to the Director of Municipal Administration. A larger interest of the society was kept in view. All these employees like the Petitioners were working on daily-wages and because of lack of permanent vacant posts, they could not be regularized. In order to cater to their interest, it was decided to create posts and absorb the daily-wagers working in the Municipal Councils on humanitarian ground. Irregular appointments made prior to 30.06.1986 without following the due procedure of recruitment applicable in the matters of public employment, were sought to be absorbed by creating vacant posts.

12 The learned AGP specifically points out paragraphs 6 and 7 (which is wrongly typed as “6”) of the affidavit dated 27.07.2011 filed by Shri Uday Sadashivrao Kurwalkar, District Project Officer, Osmanabad, which read thus:-

“6 While absorbing daily wagers and to regularized

irregular appointments, it is seen that the employee who were appointed following the due process of selection, should not be affected. To have difference between regular employee and irregular employee who entered in the service by back door without following procedure of selection and regularizing services on humanity ground, while regularizing services, the irregular employee were deviated from certain benefits like for the first five years no increment, promotion, etc. So this policy decision also applied to the Petitioner.

- 6 *The Deponent further say and submit that the Respodnent No.2 has granted the approval to the absorption of Petitioner vide his order dated 02.11.2004 imposing certain conditions. One of the conditions was that the service of the Petitioner from their date of absorption would be considered only for the purpose of their pension. The five years tenure of services of the Petitioners from their date of absorption would not be considered for seniority, promotion, increment and other service benefits. The Petitioner has availed the service by accepting the conditions mentioned in the order dated 02.11.2004 and hence now the Petitioner cannot blame the Respondent stating that the said order is prejudicial to him. The order passed by the Hon'ble State Minister, Urban Development, M.S. in Revisions Application on 09.06.2010 is crystal clear and the same is referred in detail above.”*

- 13 The learned AGP stoutly countered the submissions of the Petitioners that there was indiscriminate discrimination between the Petitioners and the employees of the Municipal Councils of Ausa and Naldurg. For the said purpose, she relies upon the affidavit filed by Shri Venkati Baliram Nilawad, Assistant Director, Municipal Administration,

Aurangabad dated 09.07.2015. She has specifically indicted the following reasons in support of her contentions:-

“a) *Those employees who have been appointed without following due procedure or the daily wagers before dt. 30/06/1986 are appointed on the terms and conditions mentioned in the page No. 118 of Exhibit A-1 which are as follows :*

1 *If the appointment are prior to 30.06.1986 they should be regularized as an exceptional case on following terms and conditions :*

a) *Before regularizing the services of the employees a duly signed bond paper should be obtained from them stating that no suit will be filed in the court against following terms.*

b) *Post for the illegally appointed employee must be available on the establishment of the Municipal Council.*

c) *The date from which the concerned employees are regularized on the available vacant post will be considered for the pension benefit only. The service for the next five years will not be considered for seniority, promotion, increment and other service benefits. It should be noted in their service book in red ink.*

d) *The legal heirs of the concerned employees will not be entitled for compassionate ground appointments which should be recored in their service book with the red ink.*

e) *The services of the employees starting with a date from which the legally appointed employee is regularized by the Municipal Councils will not be considered for dearness allowance, grant reimbursement till the completion of 5 years. But the Municipal Council may reimburse for the same from their own funds. If the dearness*

- allowance, reimbursement grant is availed the Chief Officer must communicate to the District Collector for the deductions. The Chief Officer of the Municipal Council should ensure that the benefit for the same will not be eligible for the concerned employee till reimbursement of grant accepted by the Municipal Council is adjusted.
- f) Before regularizing the services of the employees the Character Certificate will have to be obtained from the local police authorities.
 - g) The Certificate from the Competent Medical Authorities will have to be obtained regarding the Physical Fitness of the employee.
- b) The daily wagers appointed before 10/03/1993 and those were appointed on sanctioned post before dtd. 06/05/2000 without prior permission of Directorate : The appointment given as a Special case on the terms and conditions mentioned in the page No. 118 of Exhibit A – 1 which are as follows :
- 2 The service of the employees who are working on daily wages prior to 10.03.1993 and regularized by Municipal Council after 30.06.1986 will be regularized on following terms and conditions after recovering the amount paid towards salary and allowances.
- a) Before regularizing the services of the employees a duly signed bond paper should be obtained from them stating that no suite will be filed in the court against following terms.
 - b) The orders by which the employees of the Municipal Councils were appointed on the vacant post will be cancelled.
 - c) The concerned employees will be treated as daily wages workers and the Regional Director will regularized their services from 06.05.2000

as per the Government Resolution.

- d) *The amount paid towards the difference between the salary and wages of the concerned employees from the date of appointment on vacant post and the date of regularization of their services i.e. 06.05.2000 will be recovered from the concerned responsible authorities.*
- e) *The services prior to 06.05.2000 will not be considered for any benefit. Similarly, it will not be considered for seniority, promotion, increment /pay fixation / superannuation benefits.*
- f) *The dearness allowance grant paid towards the salaries of the employees legally appointed by the Municipal Councils will be calculated and will be mentioned in the sanction order. Similarly, the same amount will be deducted from the dearness allowance grants payable to the Council and the District Collector will be informed accordingly.*
- g) *The legal heirs of the concerned employees will not be entitled for compassionate ground appointments which should be recorded in their service book with red ink.*
- h) *The terms and conditions mentioned in the order NAPRASAE-1020/CR-136/2001/7 Dated 20.4.2001 of this Directorate will be remain applicable.*
- c) *The employee's illegally appointed and in service on the vacant post between 01.06.1986 to 27.03.2000 will have the status-quo but action needs not be taken as per page No.119 of Exhibit A-1 in their respect. The conditions for these employees are as follows :*
- a) *The dearness allowance reimbursement grant will not be eligible to the Municipal Councils as per Government Resolution No. NAPPra/1099/CR-19/ 98/NAVI-16 dated 27.3.2000. The*

Chief Officer should ensure that the concerned District Collector is informed to deduct the amount paid towards dearness allowance reimbursement grant for the employees legally appointed from the date of appointment.

- b) *The concerned employees will not be entitled for promotions and a due note will be taken in their service books with red ink.*
- c) *The legal heirs of the concerned employees will not be entitled for compassionate ground appointments which should be recorded in their service book with red ink.”*

14 In the light of the above, she draws my attention to the specific explanation set out below paragraph 4 of the affidavit in reply dated 09.07.2015. It would be apposite to reproduce the said paragraph since it takes care of not only the contentions of the Petitioners, but also indicates that they are being given a preferential treatment in comparison to the employees of the Municipal Councils of AUSA and Naldurg who have been taken in employment after 30.06.1986. The said paragraph read thus:-

“4 I say and submit that the same kinds of conditions are imposed while regularizing 33 employees of Municipal Council Jalna. These were confirmed by then Chief Minister by stating that to have control over the irregular appointments these conditions cannot be removed.

I say and submit that the Cases of the employees of Municipal Council Naldurg and AUSA and that of Tuljapur are not similar. They differ in date of appointment. All 15 employees of the

Municipal Council Tuljapur are appointed without following due procedure on vacant posts before dt. 30/06/1986. Whereas all 11 employees of Municipal Council AUSA are also appointed without following due procedure after dt. 30/06/1986. Hereto annexed and marked as EXHIBIT B -1 is the copy of list of employees. The irregularly appointed employees of M.C. Naldurg & AUSA are regularized by the Directorate vide order dated 28/06/2002. By the letter dtd. 19/06/2006 Hereto annexed and marked as EXHIBIT D-1 is the copy of letter dated 19/06/2006. It is made clear that the appointments are made regular from the date of order i.e. 28/06/2002. The directorate by the order dtd. 02/11/2004 regularized the services of irregularly appointed employees of M.C. Tuljapur. The order states that the services are regularized from the date of their appointment on vacant post. As per the condition No. 2 the services of the employees are considered for commutation of pension. The first 5 years service from the appointment on the vacant post is not considered for deciding seniority, promotion, increment and other service benefits. The 15 employees of the M.C. Tuljapur are working since before 1986. They will get increment roughly in the year 1990-91. Whereas M.C. Naldurg and AUSA were regularized from the date of order i.e. 28/06/2002. These employees will get increment from the year 2002 onwards. Therefore it is wrong to say that the conditions imposed on employees of M.C. Tuljapur are harsh.”

15 The learned AGP has then relied upon Section 76(2) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (herein after referred to as the 1965 Act). Section 76(2) reads as under:-

“76. Appointment of other officers and servants:-

- (1) *A Council may, with the sanction of the Director, create such posts of officers and servants other than those specified in sub-sections (1) and (2) of Section 75 as it shall deem necessary for efficient execution of its duties under this Act.*
- (2) *Subject to the provisions of sub-section (3), the qualifications, pay, allowances and other conditions of service and the method of recruitment of any such officers and servants, excluding the posts equivalent to Class IV posts in the State Government, shall be determined by general or special order made by the Director in this behalf. In case of posts equivalent to Class IV posts in the services of the State Government, the qualifications, pay, allowances and other conditions of service and method of recruitment shall be determined by bye-laws made by the Council in this behalf.*
- (3) *Subject to any general or special orders, which may, from time to time, be made by the State Government in this behalf, appointments to the posts created under sub-section (1), shall be made by the Chief Officer from the list of the candidates selected by such selection authority or such other body, as the State Government may, by general or special order, specify.*
- (4) *No Council shall employ any person, who has not completed fifteen years, to serve as a member of its sanitary staff.”*

16 The learned AGP, therefore, submits that with an intention of doing justice to the Petitioners and similarly situated employees, a decision was taken to give them the service benefits from the very date they were appointed on the vacant posts. Consequentially, they have been regularized from their dates of appointments on the vacant posts. The first five years which they have already put in, were not to be considered for deciding the seniority, promotion, increment and other service benefits in

order to reduce the financial burden on the State Government. The employees like the Petitioners who are working from 1986, therefore, stood entitled to earn their increments from the years 1990-1991. Per contra, the employees of the Municipal Councils of Ausa and Naldurg were regularized from 28.06.2002.

17 She further submits that the intention of the State Government on the one hand was to ensure that the rights and services of the Petitioners are protected and on the other hand, the additional financial burden on the State Government was to be controlled. She, therefore, submits that there was neither any discrimination nor favouritism. Owing to their dates of joining in and around 1983-1984, the Petitioners have got better advantage in comparison to the employees of the Municipal Councils of Ausa and Naldurg.

18 In the light of the explanation put forth by the learned AGP, I do not find that the conditions imposed could be said to be unreasonable or arbitrary. The impugned order of the Honourable Minister dated 02.11.2004, therefore, calls for no interference.

19 Insofar as the order of recovery dated 29.11.2010 is concerned, it is not in dispute that the said recovery has been initiated on

account of excess salary paid to the concerned Petitioners. It is also not in dispute that the said amount has not been earned by the Petitioners either by playing a fraud on the Respondents or on account of any mischief or misrepresentation made by the Petitioners.

20 The Apex Court in the case of *Syed Abdul Qadir v/s State of Bihar* reported in **(2009) 3 SCC 475** has observed in paragraphs 57, 58, 59, 60 and 61 as under:-

- “57. *This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.*
58. *The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M.Bhaskar, [1996] 4 SCC 416; V.*

Ganga Ram vs. Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors. vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99.

59. *Undoubtedly, the excess amount that has been paid to the appellants -teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.*
60. *Learned counsel also submitted that prior to the interim order passed by this Court on 7.4.2003 in the special leave petitions, whereby the order of recovery passed by the Division Bench of the High Court was stayed, some instalments/amount had already been recovered from some of the teachers. Since we have directed that no recovery of the excess amount be made from the appellant-teachers and in order to maintain parity, it would be in the fitness of things*

that the amount that has been recovered from the teachers should be refunded to them.

61. *In the result, the appeals are allowed in part, the impugned judgment so far as it relates to the direction given for recovery of the amount that has been paid in excess to the appellants - teachers is set aside and that part of the impugned judgment whereby it has been held by the Division Bench that the amended provisions of FR.22-C would apply to the appellants-teachers is upheld. We direct that no recovery of the excess amount, that has been paid to the teachers of Secondary Schools, be made, irrespective of the fact whether they have moved this Court or not. We also direct that the amount that has been recovered from some of the teachers, after the impugned judgment was passed by the High Court, irrespective of the fact whether they have moved this Court or not, be refunded to them within three months from the date of receipt of copy of this judgment.”*

21 Similarly, in the case of *State of Punjab v/s Rafiq Masih (White Washer)* reported in **(2014) 8 SCC 883** decided by the Apex Court, the contingencies and circumstances in which the recovery can be permitted, have been set out in paragraphs 4 to 13, which are reproduced herein below:-

- “4. *In Shyam Babu Verma's case (1994) 2 SCC 521), this Court while observing that the petitioners-therein were not entitled to the higher pay scales, had come to the conclusion that since the amount has already been paid to the petitioner, for no fault of theirs, the said amount shall not be recovered by the respondent-Union of India. The observations made by this Court in the said case are as under:-*

"Although we have held that the petitioners

were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. (emphasis supplied)."

5. In *Sahib Ram Verma's case* (1995 Supp(1) SCC 18), this Court once again held that although the appellant-therein did not possess the required educational qualification, yet the Principal granting him the relaxation, had paid his salary on the revised pay scale. This Court further observed that this was not on account of mis-representation made by the appellant but by a mistake committed by the Principal. In a fact situation of that nature, the Court was pleased to observe that the amount already paid to the appellant need not be recovered. In the words of the Court:-

"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which appellant cannot be held to be fault. Under the circumstances the amount paid till date may not be recovered from the appellant."

6. In our considered view, the observations made by the Court not to recover the excess amount paid to the appellant-therein were in exercise of its extra-

ordinary powers under Article 142 of the Constitution of India which vest the power in this Court to pass equitable orders in the ends of justice.

7. In *Chandi Prasad Uniyal's case* (2012 (8) SCC 417), a specific issue was raised and canvassed. The issue was whether the appellant-therein can retain the amount received on the basis of irregular/wrong pay fixation in the absence of any misrepresentation or fraud on his part. The Court after taking into consideration the various decisions of this Court had come to the conclusion that even if by mistake of the employer the amount is paid to the employee and on a later date if the employer after proper determination of the same discovers that the excess payment is made by mistake or negligence, the excess payment so made could be recovered. While holding so this Court observed at paragraphs 14 and 16 as under:-

"14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reason like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such

situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

16. The appellant in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However we order that excess payment made be recovered from the appellants salary in 12 equal monthly instalments.”

- 8. In our view, the law laid down in Chandi Prasad Uniyal's case, no way conflicts with the observations made by this Court in the other two cases. In those decisions, directions were issued in exercise of the powers of this Court under Article 142 of the Constitution, but in the subsequent decision this Court under Article 136 of the Constitution, in laying down the law had dismissed the petition of the employee. This Court in a number of cases had battled with tracing the contours of the provision in Article 136 and 142 of the Constitution of India. Distinctively, although the words employed under the two aforesaid provision speak of the powers of this Court, the former vest a plenary jurisdiction in supreme court in the matter of entertaining and hearing of appeals by granting special leave against any judgment or order made by a Court or Tribunal in any cause or matter. The powers are plenary to the extent that they are paramount to the limitations under the specific provisions for appeal contained in the Constitution or other laws. Article 142 of the Constitution of India, on the other hand is a step ahead of the powers envisaged under Article 136 of the Constitution of India. It is the exercise of jurisdiction to pass such enforceable decree or order*

as is necessary for doing 'complete justice' in any cause or matter.

9. The word 'complete justice' was fraught with uncertainty until Article 142 of the Constitution received its first interpretation in *Prem Chand Garg v. Excise Commissioner, U.P.*, AIR (1963) SC 996 which added a rider to the exercise of wide extraordinary powers by laying down that though the powers are wide, the same is an ancillary power and can be used when not expressly in conflict with the substantive provisions of law. This view was endorsed by a Nine-Judges Bench in *Naresh Shridhar Mirajkar v. State of Maharashtra*, (1966) 3 SCR 744 reiterated by a Seven Judge Bench in *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602 and finally settled in the Supreme Court *Bar Association v. Union of India*, (1998) 4 SCC 409.

10. Article 136 of the Constitution of India, confers a wide discretionary power on the Supreme Court to interfere in suitable cases. Article 136 is a special jurisdiction and can be best described in the words of this Court in *Ramakant Rai v. Madab Rai*, (2003) 12 SCC 395:-
 "It is a residuary power, it is extraordinary in its amplitude, its limits when it chases injustice, is the sky itself".

11. Article 136 of the Constitution of India was legislatively intended to be exercised by the Highest Court of the Land, with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. Article 136 of the Constitution is a corrective jurisdiction that vest a discretion in the Supreme Court to settle the law clear and as forthrightly forwarded in the case of *Union of India v. Karnail Singh*, (1995) 2 SCC 728, it makes the law operational to make it a binding precedent for the future instead of keeping it vague. In short, it declares the law, as under Article

141 of the Constitution.

12. *Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice oriented approach as against the strict rigors of the law. The directions issued by the court can normally be categorized into one, in the nature of moulding of relief and the other, as the declaration of law. 'Declaration of Law' as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the Highest Court of the land. This Court in the case of Indian Bank v. ABS Marine Products (P) Ltd., 2006 5 SCC 72, Ram Pravesh Singh v. State of Bihar, (2006) 8 SCC 381 and in State of U.P. v. Neeraj Awasthi (2006) 1 SCC 667, has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court have compartmentalized and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a*

direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.

13. *Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments and the latter judgment.”*

22 The contention of the learned AGP is that the said amount happens to be a part of the excess salary which is paid to the Petitioners. This difference is noticed after the pay fixation of the Petitioners was carried out. This difference needs to be recovered because it is public money and which the Petitioners cannot retain even under a fortuitous circumstance. I am afraid that the contentions of the learned AGP are not sustainable in the light of the ratio laid down by the Apex Court in *Syed Abdul Qadir and the State of Punjab* (supra).

23 This Court has also considered a similar situation in Writ Petition No.1677/2014 between the *Executive Engineer, MSEDCL v/s Anjali Anil Tare* decided on 01.10.2014, reported in 2014(6) BCR 823.

24 In the light of the above, the impugned order dated 29.11.2010 is quashed and set aside. These petitions are being partly

allowed and I am not interfering in the impugned order passed by the Honourable Minister dated 02.11.2004.

25 Needless to state, in the event if any portion of money pursuant to the order dated 29.11.2010 is recovered from any of the Petitioners, the same shall be refunded to the Petitioners within a period of TWELVE WEEKS from today.

26 Rule is, therefore, made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)