

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

WRIT PETITION NO. 633 OF 2015

Dinkar S/o Bhagwan Thakur,
Age : 71 Years, Occu. : Pensioner,
R/o Green Groves, Calandula
Wing-II, Flat No. 401, Baif Road,
Wagholi, Tq. Haveli, Dist. Pune. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Agriculture and Animal Husbandry,
Dairy Development & Fisheries Dept.,
Mantralaya, Mumbai-32.
2. The Vice Chancellor,
Vasantrao Naik Marathwada
Krushi Vidyapeeth, Parbhani.
3. The Controller,
Vasantra Naik Marathwada
Krushi Vidyapeeth, Parbhani.
4. The Registrar,
Vasantra Naik Marathwada
Krushi Vidyapeeth, Parbhani.
5. The University Engineer,
Vasantra Naik Marathwada
Krushi Vidyapeeth, Parbhani.
6. The Pre-audit Pay & Accounts Officer,
Vasantra Naik Marathwada
Krushi Vidyapeeth, Parbhani. .. Respondents

Shri Kiran M. Nagarkar, Advocate for the Petitioner.
Shri D. B. Bhange, A. G. P. for the Respondent No. 1.
Shri Manish N. Navandar, Advocate for Respondent Nos. 2 to 6.

**CORAM : S. V. GANGAPURWALA AND
V. L. ACHLIYA, JJ.**

DATE : 19TH JANUARY, 2015.

ORAL JUDGMENT (PER S. V. GANGAPURWALA, J.) :-

. Issue notice to respondents. The learned Assistant Government Pleader waives notice for the respondent No. 1. Mr. Navandar, the learned counsel waives notice for respondent Nos. 2 to 6.

2. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

3. Mr. Navandar, the learned counsel submits that, the petitioner is assailing the said order after long slumber of nine years, as such, the writ petition itself need not be entertained.

4. Mr. Nagarkar, the learned counsel submits that, in similar matters this Court has passed the orders and due to various problems the petitioner could not approach this Court.

5. We have not considered the merits and de-merits of the contentions raised by the learned counsel for the respective parties.

6. It is not disputed that the order impugned in the present petition is passed without notice to the petitioner and without calling for any say of the petitioner. The petitioner has retired on attaining the age of superannuation in the year 2001. The impugned order is passed on 17.05.2005. It is trite that when any action adverse to the interest of the petitioner is taken, the petitioner ought to have been noticed and should have been heard. At least his say should have been called. That is the minimum requirement of principles of *audi alterem partem*. The Apex Court in the case of **Bhagwan Shukla Sarabjit Shukla Vs. Union of India** reported in **1994 AIR SC 2480** has observed that, if before reduction of pay the party is not put to notice the same is flagrant violation of principles of natural justice. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter.

7. In view of the order impugned in this petition is set aside. It is made clear that, as there is delay in filing the writ petition, though we are setting aside the order, the petitioner would not be entitled for refund of the amount which is already deducted till date the fresh orders are passed by respondents after issuance of show cause notice.

8. In case the respondents want to take any action with

regard to the recovery or otherwise, the respondents will first issue notice to the petitioner, call for the say and then only may proceed to decide the same. It is further made clear that, in case any recovery is already made by respondents in pursuance to impugned order, the petitioner shall not be entitled for the said amount which is already recovered till the fresh orders are passed by the respondents after issuing a show cause notice and hearing the petitioner.

Rule accordingly made absolute in above terms.

Sd/-

[V. L ACHLIYA, J.]

Sd/-

[S. V. GANGAPURWALA, J.]