

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

WRIT PETITION NO. 5106 OF 2000

1. The State of Maharashtra.
2. The Secretary,
Irrigation Department,
Mantralaya, Mumbai - 32.
3. The Superintending Engineer,
Majalgaon Project Circle,
Beed.
4. The Executive Engineer,
Majalgaon Canal Division No. 9,
Parali Vaijinath, Dist. Beed.

.. **Petitioners**

Versus

Shri. Ambadas Tatyasaheb Gaikwad,
age 58 yrs., Occu. Pensioner,
R/o Plot no. 26, Vivekanand Colony,
Beed Road, Majalgaon, Dist. Beed.

.. **Respondent**

Mr U. S. Mote, AGP for Petitioner-State
Mr D. R. Shelke, Advocate for petitioners No. 3 and 4
Mr A. S. Deshpande, Advocate for respondent

ALONG WITH

WRIT PETITION NO. 5108 OF 2000

1. The State of Maharashtra.
Through the Secretary,
Irrigation Department,
Mantralaya, Mumbai - 32.
2. The Executive Engineer,

Land Development (Civil),
Division No. 7, Parbhani.

.. **Petitioners**

Versus

Shri. T. C. Nathan,
Section Engineer,
Land Development (Civil),
Division No. 7, Parbhani.

.. **Respondent**

Mr U. S. Mote, AGP for Petitioner-State

**CORAM : A.V. NIRGUDE &
V. K. JADHAV, JJ.**

DATED : JANUARY 6TH, 2015

ORAL JUDGMENT :- [PER A. V. NIRGUDE, J.]

1. Both the writ petitions can be disposed of by this common judgment as the question involved is similar.

2. These petitions are filed by the State of Maharashtra challenging the judgment and order dated 1st August, 2000, passed by the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad in Original Application No. 71 of 1999. The facts leading to these cases are almost similar and can be exemplified by the case of respondent No. 1 in Writ Petition No. 5106 of 2000.

3. Respondent No. 1 in the petition No. 5106 of 2000 was appointed as Sub-overseer in Irrigation Department of the State of Maharashtra and, thereafter, he was absorbed as Surveyar. He was promoted to the post of Junior Engineer from 16th November, 1972 and thereafter Sectional Engineer by order dated 7th November, 1984. The respondent's pay scale was revised from time to time. The Government of Maharashtra, on 14th December, 1995, issued new Government Resolution (in short "GR") for revising pay scale. As per the provisions of said GR, the department of respondent No. 1 fixed his pay scale and date of increment on 8th March, 1996. This order was served on him but it was mentioned in the said order that the order would be subject to verification by a Special Unit constituted by the State of Maharashtra. Within few months thereafter, in October-1986, the Verification Unit found error in the calculation and interpretation of GR, and on 25th October, 1996, the order of recovery of excess payment was made against the respondent. The respondent in both the petitions received similar notices. They had challenged this action before the Maharashtra Administrative Tribunal. The effect of the order was stayed at interim stage and ultimately their applications were allowed. The orders for recovery of excess amount were set aside. In the meantime, respondents reached the age of superannuation and petitions remained pending since 2000.

3. The question is: whether the respondents can be asked to repay the amount which they received in excess? The answer appears to be in negative.

4. Learned Counsel appearing on behalf of the respondents relied on the judgment of Supreme Court in the case of **Syed Abdul Qadir and others Versus State of Bihar and others** reported in (2009) 3 SCC 475. In the said judgment it is held that, recovery of excess payment of emoluments/allowances not paid on account of any misrepresentation or fraud on the part of the employee or made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule or order, which is subsequently found to be erroneous; is not permissible. The facts of the reported case are almost similar to the facts of the cases in hand. In view of this, the petitions would not survive. Hence, stand dismissed. Rule discharged.

[V.K. JADHAV, J.]

[A.V. NIRGUDE,J.]