

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7814 OF 2014

Vilas s/o Ganpatrao Mahajan,
Age : 56 years, Occ: Civil Engineer Asst.
Zilla Parishad Sub Diviaion Mukhed,
R/o: Nanded, District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.
2. Divisional Commissioner,
Commissioner Office, Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Nanded.
4. Executive Engineer (Construction)
South North Division,
Zilla Parishad, Nanded.
5. Deputy Engineer (Construction)
Sub Division Zilla Parishad, Mukhed.
6. The Chief Accounts Officer,
Zilla Parishad, Nanded.

... Respondents

.....
Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar
AGP for respondent nos. 1 and 2 : Mr. D. R. Korde
Advocate for respondent nos. 3 to 6 : Mr. N. S. Kadam.
.....

WITH
WRIT PETITION NO. 7851 OF 2014

Vaijanath s/o Laxman Galande,
Age : 57 years, Occ: Civil Engineer Asst.
Zilla Parishad Sub Diviaion Nanded,
R/o: Nanded, District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,

Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.

2. Divisional Commissioner,
Commissioner Office, Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Nanded.
4. Executive Engineer (Construction)
South North Division,
Zilla Parishad, Nanded.
5. Deputy Engineer (Construction)
Sub Division Zilla Parishad, Nanded.
6. The Chief Accounts Officer,
Zilla Parishad, Nanded.

... Respondents

.....

Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar
AGP for respondent nos. 1 and 2 : Mr. D. R. Korde
Advocate for respondent nos. 3 and 4 : Mr. N. S. Kadam.

.....

WITH
WRIT PETITION NO. 7882 OF 2014

Renukadas s/o Vasantrya pande,
Age : 59 years, Occ: Pensioner,
R/o: Kinwat, District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.
2. The Chief Executive Officer,
Zilla Parishad, Nanded.
3. The Chief Accounts Officer,
Zilla Parishad, Nanded.

... Respondents

.....

Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar
AGP for respondent no. 1 : Mr. D. R. Korde
Advocate for respondent nos. 2 and 3 : Mr. N. S. Kadam.

.....

WITH
WRIT PETITION NO. 7883 OF 2014

Shobha d/o Pandurang Kalaskar,
Age : 54 years, Occ: Civil Engineer Asst.
Panchayat Samiti, Nanded,
R/o: Nanded, District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.
2. Divisional Commissioner,
Commissioner Office, Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Nanded.
4. Executive Engineer (Construction)
South North Division,
Zilla Parishad, Nanded.
5. Block Development Officer Class-1,
Panchayat Samiti, Nanded.
6. The Chief Accounts Officer,
Zilla Parishad, Nanded.

... Respondents

.....
Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar
AGP for respondent nos. 1 and 2 : Mr. D. R. Korde
Advocate for respondent nos. 3 to 6 : Mr. N. S. Kadam.
.....

WITH
WRIT PETITION NO. 7884 OF 2014

Umesh s/o Digambarrao Joshi
Age : 56 years, Occ: Civil Engineer Asst.
Zilla Parishad Sub Division Kandhar,
R/o: Kandhar, District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.

2. Divisional Commissioner,
Commissioner Office, Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Nanded.
4. Executive Engineer (Construction)
South North Division,
Zilla Parishad, Nanded.
5. Deputy Engineer (Construction)
Sub Division Zilla Parishad, Kandhar,
District Nanded.
6. The Chief Accounts Officer,
Zilla Parishad, Nanded. ... Respondents

.....

Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar
 AGP for respondent nos. 1 and 2 : Mr. D. R. Korde
 Advocate for respondent nos. 3 to 6 : Mr. N. S. Kadam.

.....

WITH
 WRIT PETITION NO. 7885 OF 2014

Shaikh Md. Nawaj Md. Maulana,
 Age : 56 years, Occ: Civil Engineer Asst.
 Pandhayat Samiti Naigaon-Khairgaon,
 R/o: Junegaon, Naigaon Bazar,
 Taluka : Naigaon-Khairgaon,
 District Nanded. ... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.
2. Divisional Commissioner,
Commissioner Office, Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Nanded.
4. Executive Engineer (Construction)
South North Division,
Zilla Parishad, Nanded.
5. Block Development Officer Class-1,

Panchayat Samiti Naigaon (Khairgaon),
District Nanded.

6. The Chief Accounts Officer,
Zilla Parishad, Nanded. ... Respondents

.....

Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar
AGP for respondent nos. 1 and 2 : Mr. D. R. Korde
Advocate for respondent nos. 3 to 6 : Mr. N. S. Kadam.

.....

WITH
WRIT PETITION NO. 7886 OF 2014

Laxman s/o Apparao Kore,
Age : 57 years, Occ: Civil Engineer Asst.
Zilla Parishad Sub Division Biloli,
R/o: Gadga, Taluka : Naigaon,
District Nanded. ... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.
2. Divisional Commissioner,
Commissioner Office, Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Nanded.
4. Executive Engineer (Construction)
South North Division,
Zilla Parishad, Nanded.
5. Deputy Engineer (Works)
Zilla Parishad Sub Division, Biloli,
District Nanded.
6. The Chief Accounts Officer,
Zilla Parishad, Nanded. ... Respondents

.....

Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar
AGP for respondent nos. 1 and 2 : Mr. D. R. Korde
Advocate for respondent nos. 3 to 6 : Mr. N. S. Kadam.

.....

WITH
WRIT PETITION NO. 7887 OF 2014

Syed Kareem Sarvar,
Age : 53 years, Occ: Civil Engineer Asst.
Zilla Parishad Sub Diviaion Bhokar,
R/o: Nanded, District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.
2. Divisional Commissioner,
Commissioner Office, Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Nanded.
4. Executive Engineer (Construction)
South North Division,
Zilla Parishad, Nanded.
5. Deputy Engineer (Construction)
Zilla parishad Sub Division, Bhokar,
District Nanded.
6. The Chief Accounts Officer,
Zilla Parishad, Nanded.

... Respondents

.....
Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar
AGP for respondent nos. 1 and 2 : Mr. D. R. Korde
Advocate for respondent nos. 3 and 4 : Mr. N. S. Kadam.
.....

WITH
WRIT PETITION NO. 7888 OF 2014

Manik Deorao Tatewad,
Died through Lrs.
Yamunabai w/o Manik Tatewad,
Age : 55 years, Occ: H.H.
R/o: Kinwat, District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,

Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.

2. The Chief Executive Officer,
Zilla Parishad, Nanded.

3. The Chief Accounts Officer,
Zilla Parishad, Nanded.

... Respondents

.....

Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar

AGP for respondent no. 1 : Mr. D. R. Korde

Advocate for respondent nos. 2 and 3 : Mr. N. S. Kadam.

.....

WITH

WRIT PETITION NO. 7889 OF 2014

Gangadhar s/o Mariba Karandikar,
Age : 57 years, Occ: Civil Engineer Asst.
Zilla Parishad Sub Diviaion Hadgaon,
R/o: Bhokar, District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.

2. Divisional Commissioner,
Commissioner Office, Aurangabad.

3. The Chief Executive Officer,
Zilla Parishad, Nanded.

4. Executive Engineer (Construction)
South North Division,
Zilla Parishad, Nanded.

5. Deputy Engineer (Construction)
Sub Division Zilla Parishad, Hadgaon,
District Nanded.

6. The Chief Accounts Officer,
Zilla Parishad, Nanded.

... Respondents

.....

Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar

AGP for respondent nos. 1 and 2 : Mr. D. R. Korde

Advocate for respondent nos. 3 and 4 : Mr. N. S. Kadam.

.....

WITH
WRIT PETITION NO. 7890 OF 2014

Raju s/o Gajananrao Thorkar,
Age : 50 years, Occ: Civil Engineer Asst.
Panchatay Samiti Ardhapur,
R/o: Nanded, District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.
2. Divisional Commissioner,
Commissioner Office, Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Nanded.
4. Executive Engineer (Construction)
South North Division,
Zilla Parishad, Nanded.
5. Block Development Officer,
Panchayat Samiti, Mahur,
District Nanded.
6. The Chief Accounts Officer,
Zilla Parishad, Nanded.

... Respondents

.....
Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar
AGP for respondent nos. 1 and 2 : Mr. D. R. Korde
Advocate for respondent nos. 3 and 4 : Mr. N. S. Kadam.
.....

WITH
WRIT PETITION NO. 7891 OF 2014

Maroti s/o Virbhadrha Gagilge,
Age : 59 years, Occ: Pensioner,
R/o: Nanded, District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,

Mantralaya, Mumbai – 400 032.

2. Divisional Commissioner,
Commissioner Office, Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Nanded.
4. Executive Engineer (Construction)
South North Division,
Zilla Parishad, Nanded.
5. Deputy Engineer (Construction)
Sub Division Zilla Parishad, Biloli,
District Nanded.
6. The Chief Accounts Officer,
Zilla Parishad, Nanded.

... Respondents

.....

Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar
AGP for respondent nos. 1 and 2 : Mr. D. R. Korde
Advocate for respondent nos. 3 to 6 : Mr. N. S. Kadam.

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WITH

WRIT PETITION NO. 7892 OF 2014

Revan s/o Sidhappa Hegu,
Age : 57 years, Occ: Civil Engineer Asst.
Panchayat Samiti Ardhapur,
R/o: Nanded, District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.
2. Divisional Commissioner,
Commissioner Office, Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Nanded.
4. Executive Engineer (Construction)
South North Division,
Zilla Parishad, Nanded.
5. Block Development Officer,

Panchayat Samiti Ardhapur,
District Nanded.

6. The Chief Accounts Officer,
Zilla Parishad, Nanded. ... Respondents

.....

Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar
AGP for respondent nos. 1 and 2 : Mr. D. R. Korde
Advocate for respondent nos. 3 and 4 : Mr. N. S. Kadam.

.....

WITH
WRIT PETITION NO. 7893 OF 2014

Shankar s/o Ramlu Katkam,
Age : 56 years, Occ: Civil Engineer Asst.
Zilla Parishad Sub Division Bhokar,
R/o: Bhokar, District Nanded. ... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.
2. Divisional Commissioner,
Commissioner Office, Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Nanded.
4. Executive Engineer (Construction)
South North Division,
Zilla Parishad, Nanded.
5. Deputy Engineer (Construction)
Sub Division Zilla Parishad, Bhokar,
District Nanded.
6. The Chief Accounts Officer,
Zilla Parishad, Nanded. ... Respondents

.....

Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar
AGP for respondent nos. 1 and 2 : Mr. D. R. Korde
Advocate for respondent nos. 3 and 4 : Mr. N. S. Kadam.

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WITH
WRIT PETITION NO. 7894 OF 2014

Shridhar s/o Bhagwantrao Kulkarni,
Age : 53 years, Occ : Civil Engineer Asst.
Zilla Parishad Sub Diviaion Biloli,
R/o: Degloor, Taluka : Degloor,
District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.
2. Divisional Commissioner,
Commissioner Office, Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Nanded.
4. Executive Engineer (Construction)
South North Division,
Zilla Parishad, Nanded.
5. Deputy Engineer (Works)
Zilla Parishad Sub Division Biloli,
District Nanded.
6. The Chief Accounts Officer,
Zilla Parishad, Nanded.

... Respondents

.....
Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar
AGP for respondent nos. 1 and 2 : Mr. D. R. Korde
Advocate for respondent nos. 3 to 6 : Mr. N. S. Kadam.
.....

WITH
WRIT PETITION NO. 7895 OF 2014

Usman Akramkhan Pathan,
Age : 57 years, Occ: Civil Engineer Asst.
Panchayat Samiti Himayatnagar,
R/o: Nanded, District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,

Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.

2. Divisional Commissioner,
Commissioner Office, Aurangabad.

3. The Chief Executive Officer,
Zilla Parishad, Nanded.

4. Executive Engineer (Construction)
South North Division,
Zilla Parishad, Nanded.

5. Block Development Officer,
Panchayat Samiti Himayat Nagar,
District Nanded.

6. The Chief Accounts Officer,
Zilla Parishad, Nanded.

... Respondents

.....

Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar

AGP for respondent nos. 1 and 2 : Mr. D. R. Korde

Advocate for respondent nos. 3 and 4 : Mr. N. S. Kadam.

.....

WITH

WRIT PETITION NO. 8454 OF 2014

Sudhakar s/o Rambhat Joshi,
Age : 63 years, Occ: Pensioner,
R/o: Sagroli, Taluka Biloli,
District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.

2. The Chief Executive Officer,
Zilla Parishad, Nanded.

3. The Chief Accounts Officer,
Zilla Parishad, Nanded.

... Respondents

.....

Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar

AGP for respondent no. 1 : Mr. D. R. Korde

Advocate for respondent nos. 2 and 3 : Mr. N. S. Kadam.

.....

WITH
WRIT PETITION NO. 8462 OF 2014

Ibrahim Peer Ahmed,
Age : 60 years, Occ: Pensioner,
R/o: Nanded, Taluka Nanded,
District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Gram Vikas Jalsandharan Vibhag,
Mantralaya, Mumbai – 400 032.
2. The Chief Executive Officer,
Zilla Parishad, Nanded.
3. The Chief Accounts Officer,
Zilla Parishad, Nanded.

... Respondents

.....
Advocate for petitioner : Mr. A. V. Sakolkar h/f Mr. V. G. Sakolkar
AGP for respondent no. 1 : Mr. D. R. Korde
Advocate for respondent nos. 2 and 3 : Mr. N. S. Kadam.
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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 2nd JULY, 2015

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

1. Rule. Rule returnable forthwith. By consent of parties, taken up for final hearing at admission stage.
2. In all these matters, the petitioners assail the orders claiming recovery from them on account of wrong pay fixation.

3. Mr. Sakolkar, the learned counsel for petitioners, strenuously contends that recovery in all these matters is beyond five (05) years. Some of the petitioners have retired and some of the petitioners are on the verge of retirement. The learned counsel submits that in such cases, recovery cannot be claimed against the petitioners even assuming that the pay fixation was wrong. According to the learned counsel, the pay fixation was not on account of any misrepresentation on the part of the petitioners. In such cases, recovery cannot be claimed. The counsel for the petitioners placed reliance on the judgment of the Apex Court in a case of *State of Punjab and others v/s. Rafiq Masih (White Washer)* dated 18.12.2014.

4. The learned AGP and Mr. Kadam, learned counsel for Zilla Parishad submit that wrong pay fixation was done and wrongly excess payment has been paid to the petitioners. As such, respondents have every right to recover the same.

5. It is not disputed that in all these matters some of the petitioners have retired and some of the petitioners are on the verge of retirement. It is also not disputed that recovery claimed is beyond five (5) years. The Apex Court, in a case of *State of Punjab (supra)* in paragraph no. 12, has observed as under:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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.”*

6. The case of the present petitioners would be squarely covered by the judgment in the case of State of Punjab (*Supra*). Some of the petitioners have retired and some are on the verge of retirement. The recovery also is for a period beyond 5 years, as such the present case is covered by eventualities as laid down in paragraph nos. 12(ii) and (iii) of the judgment of Apex Court in the case of State of Punjab (referred *supra*).

7. In the light of the above, the writ petitions are allowed. The impugned orders claiming recovery against the petitioners are quashed and set aside. In case the respondents, pursuant to the said orders of recovery, have recovered some amount from the petitioners, then the respondents shall refund the said amount to the petitioners expeditiously and preferably within a period of six (06) months.

8. Rule is accordingly made absolute. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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