

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

WRIT PETITION NO. 3698 OF 2014

Ahmednagar Municipal Corporation,
Ahmednagar.
Through it's Commissioner.

...PETITIONER

-VERSUS-

- 1 Machindra s/o Baburao Darkunde,
Age : 58 years, Occupation : Service.
- 2 Patilba Ravji Khemnar,
Age : 47 years, Occupation : Service.
- 3 Sau.Vijaya Laxmikant Rasal,
Age : 64 years, Occupation : Service.
- 4 Ashok Baban Kotkar.
Deceased through L.Rs.
- 4A) Smt.Savita Ashok Kotkar,
Age : 42 years, Occupation : Nil.
- 5 Bajirao Yeshwant Yewale,
Age : 40 years, Occupation : Service.
- 6 Machindra Murlidhar Hulge,
Age : 50 years, Occupation : Service.
- 7 Ankush Rakhamaji Kotkar,
Age : 42 years, Occupation : Service.
- 8 Babu Kisan Rahinj,
Age : 40 years, Occupation : Service.
- 9 Santosh Nanasaheb Londhe,
Age : 42 years, Occupation : Service.

- 10 Rakhamaji Nanabhau Satpute,
Age : 34 years, Occupation : Service.
- 11 Sukhadev Sajan Pund,
Age : 35 years, Occupation : Service.
- 12 Raju Bhimaji Medhe,
Age : 47 years, Occupation : Service.
- 13 Bharat Arjun Kakde,
Age : 36 years, Occupation : Service.
- 14 Kachru Bahiru Kotkar,
Age : 40 years, Occupation : Service.
- 15 Ashok Paraji Karle,
Age : 45 years, Occupation : Service.
- 16 Abasaheb Sadashiv Holkar,
Age : 35 years, Occupation : Service.
- 17 Mohan Bhikaji Kale,
Age : 39 years, Occupation : Service.
- 18 Rajendra Suryabhan Pund,
Age : 30 years, Occupation : Service.
- 19 Babasaheb Trimbak Rashinkar,
Age : 37 years, Occupation : Service.
- 20 Prashant Raghunath Londhe,
Age : 35 years, Occupation : Service.
- 21 Sambhaji Dattatraya Karle,
Age : 30 years, Occupation : Service.
- 22 Bhimrao Shripati Kangude,
Age : 40 years, Occupation : Service.
- 23 Sunil Dadabhau Satpute,
Age : 40 years, Occupation : Service.

- 24 Gorakh Bajirao Gaikwad,
Age : 28 years, Occupation : Service.
- 25 Appasaheb Ashok Beldar,
Age : 36 years, Occupation : Service.
- 26 Rahul Baban Kotkar,
Age : 36 years, Occupation : Service.
- 27 Babasaheb Bhausaheb Haral,
Age : 36 years, Occupation : Service.
- 28 Prafullkumar Raghunath Londhe,
Age : 32 years, Occupation : Service.
- 29 Anil Raosaheb Zade,
Age : 40 years, Occupation : Service.
- 30 Nitin Ratan Wardal,
Age : 37 years, Occupation : Service.
- 31 Keshav Maruti Haral,
Age : 35 years, Occupation : Service.
- 32 Sudam Parvati Kasar,
Age : 45 years, Occupation : Service.
- 33 Vandana Maruti Bhonde,
Age : 32 years, Occupation : Service.
- 34 Nanda Shankar Kotkar,
Age : 35 years, Occupation : Service.
- 35 Suvarna Sahebrao Kale,
Age : 39 years, Occupation : Service.
- 36 Sindu Suresh Garudkar,
Age : 35 years, Occupation : Service.
- 37 Pramila Sukhadev Baraskar,
Age : 32 years, Occupation : Service.
- 38 Balasaheb Machindra Baraskar,

Age : 37 years, Occupation : Service.

39 Dilip Chaganrao Shejul,
Age : 55 years, Occupation : Service.

40 Balasaheb Laxman Karale,
Age : 37 years, Occupation : Service.

41 Manohar Prabhakar Deshpande,
Age : 52 years, Occupation : Service.

42 Radhabai Jeejaram Gagdale,
Age : 35 years, Occupation : Service.

43 Sangita Jagannath Gund,
Age : 32 years, Occupation : Service.

44 Sandya Ramchandra Shahapurkar,
Age : 49 years, Occupation : Service.

45 Rohini Suresh Chavan,
Age : 34 years, Occupation : Service.

46 Sharad Waman Lagad,
Age : 38 years, Occupation : Service.

47 Baban Shankar Satpute,
Age : 32 years, Occupation : Service.

48 Jyoti Balasaheb Gund,
Age : 37 years, Occupation : Service.

49 Asha Eknath Gavkhare,
Age : 36 years, Occupation : Service.

50 Sunita Tukaram Gawande,
Age : 35 years, Occupation : Service.

51 Manisha Lalji Thombre,
Age : 29 years, Occupation : Service.

52 Gorakh Dattatraya Kotkar,
Age : 45 years, Occupation : Service.

- 53 Sanjay Gangaram Londhe,
Age : 30 years, Occupation : Service.
- 54 Baban Nana Karande,
Age : 39 years, Occupation : Service.
- 55 Pustar Madhu Chavan,
Age : 39 years, Occupation : Service.
- 56 Manoj Kashinath Kamble,
Age : 45 years, Occupation : Service.
- 57 Sanjay Ambadas Rahinj,
Age : 29 years, Occupation : Service.
- 58 Mininath Jamdev Kotkar,
Age : 30 years, Occupation : Service.
- 59 Balu Laxman Shinde,
Age : 50 years, Occupation : Service.
- 60 Ramdas Laxman Ware,
Age : 62 years, Occupation : Service.
- 61 Dattatraya Rambhau Tambe,
deceased through L.Rs.
- 61-A) Smt.Tarabai Dattatraya Tambe,
Age : 50 years, Occupation : Nil.
- 62 Rajaram Bapu Barathe,
Age : 60 years, Occupation : Service.
- 63 Lahanu Munjabapu Kotkar,
Age : 42 years, Occupation : Service.
- 64 Vasant Kisan Dhotre,
Age : 43 years, Occupation : Service.
- 65 Gorakh Bhau Dalvi,
Age : 42 years, Occupation : Service.

- 66 Bapu Dagadu Matkar,
Age : 40 years, Occupation : Service.
- 67 Dnyandev Shripati Yewale,
Age : 47 years, Occupation : Service.
- 68 Bhimrao Asaram Kotkar,
Age : 42 years, Occupation : Service.
- 69 Popat Gangaram Hulge,
Age : 42 years, Occupation : Service.
- 70 Popat Keru Sarode,
Age : 40 years, Occupation : Service.
- 71 Babasaheb Gopinath Matkar,
Age : 40 years, Occupation : Service.
- 72 Thaksen Chabu Kotkar,
Age : 40 years, Occupation : Service.
- 73 Ramdas Vitthal Kotkar,
Age : 40 years, Occupation : Service.
- 74 Ashok Govind Lotke,
Age : 37 years, Occupation : Service.
- 75 Ramesh Nabaji Pawar,
deceased through L.Rs.
- 75-A) Smt.Anita Ramesh Pawar,
Age : 52 years, Occupation : Nil.
- 76 Bapu Bhau Dalvi,
Age : 42 years, Occupation : Service.
- 77 Raghunath Genu Thube,
Age : 41 years, Occupation : Service.
- 78 Ramesh Tukaram Rahinj,
Age : 39 years, Occupation : Service.
- 79 Vilas Mahadev Satpute,
deceased through L.Rs.

- 79-A) Smt.Shobha Vilas Satpute,
Age : 37 years, Occupation : Nil.
- 80 Babasaheb Arjun Arun,
Age : 39 years, Occupation : Service.
- 81 Santosh Chabu Kotkar,
Age : 36 years, Occupation : Service.
- 82 Pandurang Tatyaba Kakde,
Age : 52 years, Occupation : Service.
- 83 Ramesh Radhakisan Karale,
Age : 34 years, Occupation : Service.
- 84 Ananda Sakharam Phalke,
Age : 45 years, Occupation : Service.
- 85 Sitaram Bajirao Kotkar,
Age : 32 years, Occupation : Service.
- 86 Ravindra Tatyasaheb Kotkar,
Age : 32 years, Occupation : Service.
- 87 Ganesh Laxman Jadhav,
Age : 30 years, Occupation : Service.
- 88 Janardhan Rajaram Barathe,
Age : 45 years, Occupation : Service.
- 89 Chandrakant Namdev Dhotre,
Age : 37 years, Occupation : Service.
- 90 Dattatraya Mungaji Kotkar,
Age : 32 years, Occupation : Service.
- 91 Hiralal Pandurang Jadhav,
Age : 32 years, Occupation : Service.
- 92 Jagdish Bansi Khedkar,
deceased through L.Rs.
- 92-A) Smt.Mangal Gagdish Khedkar,
Age : 42 years, Occupation : Nil.

- 93 Vijay Eknath Karale,
Age : 30 years, Occupation : Service.
- 94 Vijay Bhausahab Satpute,
Age : 28 years, Occupation : Service.
- 95 Rajendra Ramesh Ingale,
Age : 27 years, Occupation : Service.
- 96 Gajanan Limbaji Kotkar,
Age : 40 years, Occupation : Service.
- 97 Dyaneshwar Limbhaji Kotkar,
Age : 30 years, Occupation : Service.
- 98 Santosh Suryabhan Jaikar,
Age : 30 years, Occupation : Service.
- 99 Raju @ Machindra Popat Kandekar,
Age : 44 years, Occupation : Service.
- 100 Santosh Chabu Kamble,
Age : 40 years, Occupation : Service.
- 101 Sukhadev Sahebrao Arun,
Age : 40 years, Occupation : Service.
- 102 Babasaheb Gangadhar Kotkar,
Age : 35 years, Occupation : Service.
- 103 Dharmnath Baburao Walke,
Age : 34 years, Occupation : Service.
- 104 Narendra Namdev Lagad,
Age : 32 years, Occupation : Service.
- 105 Dattatraya Bansi Akolkar,
Age : 32 years, Occupation : Service.
- 106 Raghunath Bhausahab Maharpude,
Age : 30 years, Occupation : Service.

- 107 Santosh Natha Londhe,
Age : 29 years, Occupation : Service.
- 108 Suresh Devram Dhamni,
Age : 28 years, Occupation : Service.
- 109 Dnyandev Haribhau Kakde,
Age : 42 years, Occupation : Service.
- 110 Machindra Pandurang Dhotre,
Age : 34 years, Occupation : Service.
- 111 Mahadev Anashabapu Kotkar,
Age : 42 years, Occupation : Service.
- 112 Ashok Mohan Karale,
Age : 47 years, Occupation : Service.
- 113 Devram Dattatraya Salve,
Age : 42 years, Occupation : Service.
- 114 Kailash Mahadev Satpute,
Age : 37 years, Occupation : Service.
- 115 Amol Dhondiram Kamble,
Age : 30 years, Occupation : Service.
- 116 Gorakh Vitthal Garudkar,
Age : 32 years, Occupation : Service.
- 117 Jaising Prataprao Sathe,
Age : 32 years, Occupation : Service.
- 118 Dhondiram Patilba Kute,
Age : 40 years, Occupation : Service.
- 119 Subhash Laxman Dhage,
Age : 32 years, Occupation : Service.
- 120 Babasaheb Vithal Gund,
Age : 34 years, Occupation : Service.
- 121 Dattatraya Pandurang Kharade,

Age : 38 years, Occupation : Service.

122 Bapusaheb Ramdas Sathe,
Age : 32 years, Occupation : Service.

123 Thabubai Mariba Pancharne,
deceased through L.Rs.

123-A Suman Ashok Pacharne
Age : 41 years, Occ : Nil.

124 Heerabai Ambadas Bulakhe,
Age : 55 years, Occupation : Service.

125 Chandrakant Ranu Borge
deceased through L.Rs.

125-A Surekha Jalindar Borge
Age : 37 years, Occ : Nil.

126 Gaubai Kundlik Borge,
Age : Major, Occupation : Service.

127 Jamunabai Mohan Narwal,
Age : 42 years, Occupation : Service.

128 Saraswati Ashruba Pandagale,
Age : 52 years, Occupation : Service.

129 Meera Sudam Sulakhe,
Age : 57 years, Occupation : Service.

130 Dilip Tukaram Shinde,
Age : 55 years, Occupation : Service.

131 Hanumanta Banaji Bulakhe,
Age : 53 years, Occupation : Service.

132 Kausabai Yeshwant Pacharne,
Age : Major, Occupation : Service.

133 Pandurang Kundlik Kotkar,
Age : 42 years, Occupation : Service.

- 134 Dasu Piraji Kamble,
deceased through L.Rs.
- 134-A Manda Dasu Kamble,
Age : 42 years, Occ : Nil.
- 135 Kanthabai Baburao Kamble,
Age : 62 years, Occupation : Service.
- 136 Bhau Pulaji Kamble,
Age : 48 years, Occupation : Service.
- 137 Bhagubai Balu Lokhande,
Age : 42 years, Occupation : Service.
- 138 Ashabai Dadu Shinde,
Age : 55 years, Occupation : Service.
- 139 Chayabai Radhu Shinde,
Age : 47 years, Occupation : Service.
- 140 Radhakisan Bansi Kotkar,
Age : 45 years, Occupation : Service.
- 141 Vasant Kashinath Kamble,
Age : 41 years, Occupation : Service.
- 142 Kamal Narayan Jadhav,
Age : 42 years, Occupation : Service.
- 143 Shantabai Raju Kamble,
Age : 42 years, Occupation : Service.
- 144 Harubai Shaurao Shinde,
Age : 43 years, Occupation : Service.
- 145 Malan Rohidas Shinde,
Age : 55 years, Occupation : Service.
- 146 Sudam Appa Satpute,
Age : 40 years, Occupation : Service.

- 147 Murlidhar Umaji Hulge,
Age : 55 years, Occupation : Service.
- 148 Janabai Sham Kamble,
Age : 49 years, Occupation : Service.
- 149 Ranjana Yeshwant Kamble,
Age : 47 years, Occupation : Service.
- 150 Manda Kachru Pancharne,
Age : 34 years, Occupation : Service.
- 151 Saraswati Pandurang Kamble,
Age : 57 years, Occupation : Service.
- 152 Rakhamabai Madhu Chavan,
Age : 52 years, Occupation : Service.
- 153 Jalindar Chandrakant Borge,
Age : 38 years, Occupation : Service.
- 154 Vithal Dadabhau Satpute,
deceased through L.Rs.
- 154-A Pusha Vithal Satpute,
Age : 43 years, Occ : Nil.
- 155 Balu Nana Borge,
Age : 36 years, Occupation : Service.
- 156 Sushila Sampat Dhiwar,
Age : 52 years, Occupation : Service.
- 157 Vithal Shripat Yewale,
Age : 58 years, Occupation : Service.
- 158 Gangubai Namdev Japkar,
Age : 47 years, Occupation : Service.
- 159 Sharda Nandu Lingade,
Age : 42 years, Occupation : Service.
- 160 Heerabai Vishnu Salve,

Age : 41 years, Occupation : Service.

- 161 Ashok Suryabhan Gund,
Age : 40 years, Occupation : Service.
- 162 Sukhadev Tillu Bhingardive,
Age : 41 years, Occupation : Service.
- 163 Babasaheb Pandurang Jadhav,
Age : 37 years, Occupation : Service.
- 164 Tukaram Abaji Kotkar,
Age : 38 years, Occupation : Service.
- 165 Sanjay Shridhar Mondhave,
Age : 36 years, Occupation : Service.
- 166 Ramesh Tatyasaheb Kotkar,
Age : 30 years, Occupation : Service.
- 167 Usha Ashok Pacharne,
Age : 42 years, Occupation : Service.
- 168 Chandrakala Balasaheb Rokhade,
Age : 43 years, Occupation : Service.
- 169 Suman Dattatraya Dhumal,
Age : 45 years, Occupation : Service.
- 170 Prakash Subhash Kamble,
Age : 41 years, Occupation : Service.
- 171 Manda Ramesh Wankhede,
Age : 43 years, Occupation : Service.
- 172 Upan Pustar Chavan,
Age : 33 years, Occupation : Service.
- 173 Vijay Trimbak Kotkar,
Age : 32 years, Occupation : Service.
- 174 Mangal Gochya Chavan,
Age : 43 years, Occupation : Service.

- 175 Sarjerao Shivaji Pawar,
Age : 31 years, Occupation : Service.
- 176 Vishwanat Yeshwant Dhiwar,
Age : 55 years, Occupation : Service.
- 177 Kausar Vikshan Sarsar,
Age : 35 years, Occupation : Service.
- 178 Arun Vithal Dhotre,
Age : 30 years, Occupation : Service.
- 179 Digambar Bhima Dhotre,
Age : 41 years, Occupation : Service.
- 180 Bharat Pandurang Kamble,
Age : 31 years, Occupation : Service.
- 181 Shankar Awaji Kotkar,
Age : Major, Occupation : Service.
- 182 Geeta Shivaji Kamble,
Age : 48 years, Occupation : Service.
- 183 Manda Vijay Kamble,
Age : 42 years, Occupation : Service.
- 184 Santosh Shankar Londhe,
Age : 42 years, Occupation : Service.
- 185 Balu Narayan Shinde,
Age : 39 years, Occupation : Service.
- 186 Anita Subhash Kotkar,
Age : 37 years, Occupation : Service.
- 187 Sanjay Pandharinath Shinde,
Age : 35 years, Occupation : Service.
- 188 Machindra Bhimrao Gaikwad,
Age : 33 years, Occupation : Service.

- 189 Tukaram Shripati Yewale,
Age : 57 years, Occupation : Service.
- 190 Eknath Bhausahab Rohokale,
deceased through L.Rs.
- 190-A Smt.Alka Eknath Rohokale,
Age : 53 years, Occupation : Household.
- 191 Manda Arun Bulakhe,
Age : 37 years, Occupation : Service.
- 192 Asha Santosh Londhe,
Age : 39 years, Occupation : Service.
- 193 Radhabai Anil Aher,
Age : 40 years, Occupation : Service.
- 194 Tarabai Arjun Shinde,
Age : 31 years, Occupation : Service.
- 195 Nanda Pandharinath Waghare,
Age : 48 years, Occupation : Service.
- 196 Bebi Karbhari Kalamkar,
Age : 52 years, Occupation : Service.
- 197 Muktabai Babasaheb Vidhate,
Age : 42 years, Occupation : Service.
- 198 Sunanda Raju Pardhe,
Age : 33 years, Occupation : Service.
- 199 Istaru Sunil Chavan,
Age : 38 years, Occupation : Service.
- 200 Prabhawai Dilip Raibhar,
Age : 36 years, Occupation : Service.
- 201 Lata Bhimaji Kedare,
Age : 32 years, Occupation : Service.
- 202 Sangita Bansi Khedkar,

Age : 39 years, Occupation : Service.

203 Madina Babu Shaikh,
Age : 49 years, Occupation : Service.

204 Vijaya Sambhaji Gaikwad,
Age : 42 years, Occupation : Service.

All R/o Kedgaon, Tq.Nagar,
District Ahmednagar.

205 The Director,
Municipal Administration,
State Road Transport Office,
3rd Floor, Sir Pochkhanwala Road,
Worli, Mumbai-400025.

...RESPONDENTS

...

Advocate for Petitioner : Shri Bedre Vinayak Sudhakar.

Advocate for Respondent Nos.1 to 204 : Shri N.V.Gaware.

AGP for Respondent 205 : Shri PN.Kutti.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 14th September, 2016

Oral Judgment :

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

2 The Petitioner / Municipal Corporation is aggrieved by the

judgment dated 11.03.2013 delivered by the Industrial Court, Ahmednagar by which Complaint (ULP) No.62/2005 has been partly allowed and the Petitioner as well as Respondent No.205 have been directed to extend monetary benefits of the fifth pay commission to Respondent Nos.1 to 204/ employees with effect from 29.06.1999, but by excluding those employees who had not completed 18 years of age.

3 Shri Bedre, learned Advocate for the Petitioner/ Municipal Corporation, has seriously criticized the impugned judgment. He submits that the reasons assigned by the Industrial Court in support of its conclusions are perverse and erroneous. The law applicable has not been considered in proper perspective. The Government Resolution dated 19.05.2003 has not been properly considered. Illegal appointments of many Respondents/ Employees have been overlooked by the Industrial Court. Some of the Respondents/ Employees claimed to be in employment prior to completing 18 years of age.

4 He further submits that considering the perversity in the impugned judgment, same deserves to be quashed and set aside. He further submits that the financial burden flowing from the fifth pay commission recommendations is not to be shouldered by the Petitioner/ Municipal Corporation. He, therefore, submits that this petition be

allowed.

5 The learned AGP on behalf of Respondent No.205 has supported the contentions of the Petitioner to the extent of purported illegal appointments made by the Petitioner. Insofar as shouldering the financial burden of making payments under the fifth pay commission recommendations is concerned, the learned AGP strenuously submits that it would be the lookout of the Petitioner/ Municipal Corporation.

6 Shri Gaware, learned Advocate appearing on behalf of Respondents Nos.1 to 204 / Employees, submits that the issue as to whether, appointments of the Respondents/ Employees are illegal or not, is not to be gone into by this Court considering the fact that Respondent No.205 had issued the Government Resolution dated 19.05.2003 by which services of the Employees working with various Gram Panchayats and Municipal Councils have been absorbed. He, therefore, submits that if any appointment of any of the Respondents/ Employees was illegal, the Director of Municipal Administration would not have passed the order dated 19.05.2003 by which their services were absorbed with the Petitioner. It presupposes that the legality of their appointments has been scrutinized by the concerned Municipal Administration and once their services have been absorbed, it is not open either for the Petitioner/

Municipal Corporation or Respondent No.205 to allege that their appointments were illegal.

7 Shri Gaware further submits that the order dated 19.05.2003 issued by Respondent No.205 specifically mandates in clause-7 that benefits of the fifth pay commission would be payable to these Respondents/ Employees from 29.06.1999. These Respondents/ Employees had filed the ULP complaint before the Industrial Court merely seeking implementation of the direction of Respondent No.205.

8 I have considered the submissions of the learned Advocates as have been recorded herein above.

9 There is no dispute that Respondent No.205 has issued the order dated 19.05.2003 which applies to Respondent Nos.1 to 204/ Employees. Neither the Petitioner nor Respondent No.205 have contradicted the applicability of the order dated 19.05.2003 to any of these Respondents/ Employees. It is also set out in clause 7 of the said order that those employees covered by the said order, would be entitled for monetary benefits of the fifth pay commission from 29.06.1999.

10 In my view, it was incumbent upon Respondent No.205 to

scrutinize each and every case of Respondent Nos.1 to 204 when it came to their absorption in service of the Petitioner Corporation. Having so done, it leads to a legal presumption that the Director of Municipal Administration has found no illegality in the appointments of Respondent Nos.1 to 204. The Industrial Court has arrived at this conclusion and has found the absorption to be appropriate only on the ground that neither the Petitioner nor Respondent No.205 indicated in any form whatsoever that the Respondents/ employees or any of them are not covered by the order dated 19.05.2003. Had this been pointed out, such cases could have been excluded.

11 It cannot be ignored that the Industrial Court itself has undertaken the exercise of scrutinizing the age of each of the original Complainants. It has concluded that some of the original Complainants had not completed 18 years of age when they were inducted in service of the Gram Panchayat/ Municipal Council, as the case may be, prior to their absorption with the Petitioner Municipal Corporation. In my view, the Industrial Court has rightly held in clause 3 of the operative part of the impugned order that those Complainants, who were not 18 years of age on the date of joining duties, would be excluded from being granted benefits of the fifth pay commission from 29.06.1999. None of such excluded original Complainants have challenged this conclusion of the

Industrial Court in this Court.

12 Considering the above, I do not find any perversity in the impugned judgment of the Industrial Court dated 11.03.2013. As such, this Writ Petition is dismissed. Rule is discharged.

13 Needless to state, it is in between the Petitioner/ Municipal Corporation and Respondent No.205 to implement the impugned judgment of the Industrial Court in accordance with the Rules and procedure applicable. Considering that this Court had not stayed the impugned judgment, it is expected that the Petitioner/ Municipal Corporation and Respondent No.205 shall do the needful for implementation of the impugned judgment as expeditiously as possible and preferably within a period of EIGHT WEEKS from today, if not already implemented.

kps

(RAVINDRA V. GHUGE, J.)