

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

WRIT PETITION NO.12037 OF 2015

1. Prakash s/o. Laxmanrao Sonawane,
Age : 45 years, Occ. Service,
2. Umar Hasan Pathan,
Age : 48 years, Occ. Service,
3. Shaikh Faiyyaz Shaikh Ameer,
Age 48 yars, Occ. Service,
4. Kalyan s/o. Gulabrao Pawar,
Age : 38 years, Occ. Service,
5. Narendra s/o. Vijayrao Deshmukh,
Age : 37 years, Occ. Service,
6. Pravin s/o. Muralidhar Yeole,
Age : 39 years, Occ. Service,
7. Jagdish s/o. Raghunath Patil,
Age : 40 years, Occ. Service,
8. Ajij Shaha Nawab Shaha,
Age : 38 years, Occ. Service,
9. Rajendra s/o. Dhanraj Mali,
Age : 39 years, Occ. Service,
10. Rambhau s/o. Bhausing Gudhekar,
Age : 44 years, Occ. Service,
11. Dilip s/o. Bhimrao Mahajan,
Age : 42 years, Occ. Service,
12. Tukaram s/o. Walmikrao Harde,
Age : 45 years, Occ. Service,

13. Hemant s/o. Raghunath Patil,
Age : 38 years, Occ. Service,
14. Ravindra s/o. Aasaram Shirase,
Age : 41 years, Occ. Service,
15. Pushpa Devchand Patil,
Age : 47 years, Occ. Service,
16. Seema Tukaram Jadhav,
Age : 42 years, Occ. Service,
17. Raju s/o. Kalanu Awachar,
Age : 42 years, Occ. Service,
18. Lalita Vishvas Pawar,
Age : 38 years, Occ. Service,
19. Avinash s/o. Sadashiv Patil,
Age : 42 years, Occ. Service,
20. Prakash s/o. Kashinath Ahire,
Age : 42 years, Occ. Service,
21. Vinayak s/o. Maroti Anwade,
Age : 42 years, Occ. Service,
22. Dinesh s/o. Yashwant Patil,
Age : 39 years, Occ. Service,
23. Pundlik s/o. Vishnu Sonawane,
Age : 58 years, Occ. Service,
24. Sanjay s/o. Uttamsingh Bagul,
Age : 42 years, Occ. Service,
25. Subhash s/o. Rambhau Narale,
Age : 51 years, Occ. Service,

26. Narayan s/o. Trayambak Wagh,
Age : 44 years, Occ. Service,
 27. Jyoti Sambhaji Kale,
Age : 38 years, Occ. Service,
 28. Bharati Wamanrao Salunke,
Age : 54 years, Occ. Service,
 29. Hiralal s/o. Gangaram Salunke,
Age : 55 years, Occ. Service,
 30. Bhikan s/o. Shenpadu Wanarase,
Age : 42 years, Occ. Service,
 31. Nilkanth s/o. Ambadas Losarwar,
Age : 47 years, Occ. Service,
 32. Minakshi Amrutrao Shinde,
Age : 42 years, Occ. Service,
 33. Bapu s/o. Karbhari Narwade,
Age : 38 years, Occ. Service,
- All r/o. c/o. Z.P. Aurangabad,
Tq. and Dist. Aurangabad ..Petitioners

Vs

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai
2. The Secretary,
General Administration Department,
Mantralaya, Mumbai
3. The Chief Executive Officer,
Zilla Parishad, Aurangabad

4. The Education Officer (Primary),
Zilla Parishad, Aurangabad
5. The Chief Accountant and Finance
Officer, Zilla Parishad,
Aurangabad
6. The Block Education Officer,
Panchayat Samiti, Kannad ..Respondents

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Mr.G.K.Kshirsagar, Advocate for petitioners

Mr.S.D.Kaldate, AGP for respondent nos.1 and 2

Mr.S.M.Ganachari, Advocate for respondent nos.3 to
6

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CORAM : S.S. SHINDE AND

SANGITRAO S. PATIL, JJ.

RESERVED ON : JULY 15, 2016

PRONOUNCED ON : JULY 19, 2016

JUDGMENT (PER SANGITRAO S. PATIL, J) :

Heard. Rule. Rule made returnable
forthwith. With consent of the parties, the Writ
Petition is heard finally.

2. The petitioners, who are serving as
Assistant Teachers with respondent no.3 – Zilla
Parishad, Aurangabad have challenged the vires of

the letter/order at Exhibit 'G' page 40 of the compilation of the Writ Petition, issued by respondent no.5 – the Chief Accountant and Finance Officer, Zilla Parishad, Aurangabad whereby the amount of additional increments paid to them has been ordered to be recovered from them.

3. The learned Counsel for the petitioners submits that the petitioners fall under the category of Class-III employees. The additional increments have been paid to them by respondent no.3 considering their outstanding work. The amount of the additional increments has not been obtained by the petitioners by practising fraud or making misrepresentation. Therefore, in view of the judgment in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others, (2015)4 SCC 334**, the amount of additional increments already paid to them cannot be recovered from them.

4. The learned Counsel for respondent nos.1 and 2 strongly opposes the petition. He submits that the additional increments were wrongly granted in favour of the petitioners. The said fact came to be noticed by respondent no.5. Therefore, he issued the impugned letter/order seeking explanation from the concerned Administrative Officer as to under what rules the additional increments were granted to the petitioners and further directed to recover the said amount from them. He supports the impugned letter/order and prays that the Writ Petition may be dismissed.

5. It is not the case of the respondents that the additional increments were granted to the petitioners because they practised fraud or made misrepresentation. If the authority concerned granted additional increments in favour of the petitioners, either by inadvertence or by mistake,

without there being any fault on the part of the petitioners, the petitioners cannot be held responsible for payment of the additional amount.

6. On the point of recovery of such amount from the employees, it would be apt here to reproduce the situations referred to in paragraph 18 of the judgment in the case of **State of Punjab and others** (supra) under which, recovery by the employer would be impermissible in law, which are as under :-

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

7. Indisputably, the petitioners fall in the category of Class-III employees. Therefore, their case would be covered under Clause (i), referred to above. In the circumstances, recovery of the excess amount paid to the petitioners on account of additional increments would be impermissible.

8. The petitioners have claimed that they are entitled to get additional increments for

their outstanding work in view of the circulars issued by the Government from time to time. We are not expressing any opinion on this claim of the petitioners. If they are entitled to get additional increments on the basis of any Circular/Government Resolution, they would be at liberty to approach the appropriate authority for grant of necessary relief.

9. In the above circumstances, the Writ Petition is allowed partly with the following directions :-

(i) The respondents are restrained from making recovery of the excess payments made to the petitioners on account of the additional increments.

(ii) The petitioners would be at liberty to approach the concerned authority to vindicate

their claim for additional increments on the basis of the Circular/Government Resolution, if any.

(iii) With these directions, the Rule is made partly absolute.

(iv) The Writ Petition is disposed of accordingly.

(v) The parties are left to bear their own costs.

Sd/-
[SANGITRAO S. PATIL, J.]

Sd/-
[S.S. SHINDE, J.]

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