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

WRIT PETITION NO. 1869 OF 2008

1 The State of Maharashtra

2 The Collector, Aurangbad.

3 The Director,
Accounts and Treasuries,
Free Press Journal Marg,
Kutir No.15 & 16,
Opposite Mantralaya,
Mumbai.

4 Dy. Director,
Accounts and Treasury,
Treasury Office, Aurangabad.

5 Senior Treasury Officer,
Treasury Office, Aurangabad.

6 The Secretary,
Planning Department, Mantralaya
Mumbai. Petitioners.

Versus

Sahebkha Rasulkha Pathan
Age : 45 yrs, occu. : service
R/o, c/o Sayeed A. Nabi Talathi,
Nehrunagar, Katkat Gate,
Aurangabad. Respondent.

WITH

WRIT PETITION NO. 1874 OF 2008

1 The State of Maharashtra

2 The Collector, Aurangbad.

3 The Director,
Accounts and Treasuries,
Free Press Journal Marg,
Kutir No.15 & 16,
Opposite Mantralaya,
Mumbai.

4 Dy. Director,
Accounts and Treasury,
Treasury Office, Aurangabad.

5 Senior Treasury Officer,
Treasury Office, Aurangabad.

6 The Secretary,
Planning Department, Mantralaya
Mumbai. Petitioners.

Versus

Rangnath Somnath Kadam
Age : 49 yrs, occu. : service
R/o At Post : Lasur Station,
Tal. Gangapur, Dist. Aurangabad. Respondent.

WITH

WRIT PETITION NO. 1891 OF 2008

1 The State of Maharashtra

2 The Collector, Aurangbad.

3 The Director,
Accounts and Treasuries,
Free Press Journal Marg,
Kutir No.15 & 16,
Opposite Mantralaya,
Mumbai.

4 Dy. Director,
Accounts and Treasury,
Treasury Office, Aurangabad.

5 Senior Treasury Officer,
Treasury Office, Aurangabad.

6 The Secretary,
Planning Department, Mantralaya
Mumbai. Petitioners.

Versus

Deepak s/o Laxmanrao Kulkarni
Age : 45 yrs, occu. : service
R/o, Gavaliwada, Daulatabad,
Aurangabad. Respondent.

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Smt. V.S. Chaudhary, A.G.P. for petitioners in all three Petitions.

Mr. A.S. Deshmukh, Advocate for respondents in all three Petitions.

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CORAM : **RAVINDRA V. GHUGE**
AND
SUNIL K. KOTWAL, JJ.

Dated : 10-11-2017.

ORAL JUDGMENT (PER RAVINDRA V. GHUGE) :-

1. In all these three Petitions, as the original applicants before the learned Maharashtra Administrative Tribunal are identically placed, this Court heard these three Petitions and granted interim relief in terms of prayer Clause-C.

2. Since the three employees in these three Petitions are identically situated, we have taken up these three Petitions together.

3. We have considered the strenuous submissions of the learned A.G.P. on behalf of the petitioners and Mr. Deshmukh, learned Advocate on behalf of the respondent employees.

4. Respondents herein were working as Mustering Assistants on Work Charged Establishment under the Employment Guarantee Scheme. They were being paid their salaries with allowances as were awarded to them from 01.10.1988 by virtue of the orders of the Hon'ble High Court and the Hon'ble Supreme Court. Considering the effect of the Kalelkar Settlement, they continued in service.

5. From 21.01.2000, these respondents were absorbed as Peon/Junior Clerk. Absorption has occurred on the basis of the Government Resolution dated 01.12.1995 by which a scheme for considering the Mustering Assistants in the State Government for absorption was presented before the Apex Court. By an order delivered by the Hon'ble Apex Court in December 1996, the Government Resolution was approved and the scheme for absorption was implemented.

6. The controversy before the learned Maharashtra Administrative Tribunal was that after absorption, the pay fixation done by the Authorities was implemented. These respondents were

paid as per the pay fixation which was made notionally effective from 01.01.1996. In 2006, the Authorities of the Establishment with which these employees were working, noticed that the pay fixation was wrongly done and an excess payment was being made to these employees. By notices dated 23.02.2006, 06.03.2006 and 06.03.2006 issued to these three employees, the concerned Establishment sought to recover the excess payment made. It was, as against this cause of action, that these respondents approached the learned Maharashtra Administrative Tribunal by filing original applications.

7. By judgment dated 17.07.2007, the learned Maharashtra Administrative Tribunal allowed the original applications filed by these employees and concluded that as none of these employees were held responsible for the wrong pay fixation and since there was no allegation against these employees that the wrong pay fixation had occurred on account of their misrepresentation or fraud, the learned Maharashtra Administrative Tribunal quashed the impugned notices considering the judgments delivered by the Hon'ble Supreme Court in the matters of **Col. (Retd.) B.J. Akkara Vs. Government of India and others with Retd. Armed Forces Medical Association and Others Vs. Union of India (2006 AIR SCW 5252), Sahib Ram Vs. State of Haryana (1995 Supp 1 SCC 18), Shyam Babu Verma Vs.**

Union of India [1994 (2) SCC 521], Union of India Vs. M. Bhaskar [1996 (4) SCC 416] and **Gangaram Vs. Regional Joint Director (AIR 1997 SC 2776)**.

8. The learned A.G.P. has strenuously contended that though the respondent employees may not be guilty of any fraud or misrepresentation, no employee can be permitted to earn excess wages/salaries than the wages, which they are duly entitled to. She submits that excess payment made by mistake by the petitioners has resulted in draining the public exchequer. The said payment is being made from the tax payers' money and no employee should be permitted to retain such amounts or money to which he is not legally entitled to.

9. In so far as the submissions of the learned A.G.P. are concerned, no doubt excess payment made to these employees is from the tax payers' money. However, in recent judgments delivered by the Hon'ble Supreme Court in the matter of **Syed Abdul Quadir Vs. State of Bihar and others [(2009) 3 SCC 475]** and **State of Punjab and others Vs. Rafiq Masih (White Washer) [(2015) 4 SCC 334]**, it has been held that though recovery is not prohibited in each and every case, it should be assessed as to whether excess payment received by the employee is a result of his handiwork. He should have played a fraud or should have caused misrepresentation

with the intention to cause a wrong pay fixation and thereby earn excess amount to which he is not legally entitled to.

10. We do not find from the pleadings on behalf of the petitioners and the observations of the learned Maharashtra Administrative Tribunal in the impugned judgments that these employees have deliberately and intentionally caused misrepresentation or have played a fraud for causing wrong pay fixation, so that they would earn excess amounts.

11. We are also informed that the respondent employees namely Shri Sahebkha Rasulkha and Shri Rangnath Somnath Kadam in the first two Petitions have already superannuated and Shri Deepak Laxmanrao Kulkarni in the third Petition is aged 55 years and he is at the verge of his retirement. Nevertheless, the State Authorities have not made out a case of deliberate, intentional and willful misrepresentation or fraud by the respondent employees in relation to the wrongful pay fixation. We find that these respondents are squarely covered by the view taken by the Hon'ble Apex Court in the matter of **Syed Abdul Quadir** and **Rafiq Masih (White Washer)** (supra).

12. Considering the above, we do not find any merit in these Petitions and the same are, therefore, dismissed. Rule is discharged.

13. It is made clear that as the maximum amount of Rs. 40,000/- was to be recovered from each of these employees, in the event of any portion of the said amount has been recovered by the petitioners from the legal dues or salaries of these respondent employees, the recovered amount shall be returned to these employees without interest, within 8 weeks from today.

14. In the event the said amount is not repaid within 8 weeks, it will carry interest @ Rs. 3 % per annum from the date of the judgment of the learned Maharashtra Administrative Tribunal.

(SUNIL K. KOTWAL)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

vdd/