

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

WRIT PETITION NO. 9279 OF 2016

1. Nandkumar s/o. Bhagwanappa Mandge .. Petitioners
Age.49 years, Occ. Service,
R/at Osmanabad,
Tq. & Dist. Osmanabad.
2. Prakash s/o. Vishwanath Pimple
Age. 57 years, Occ. Service,
R/at Osmanabad,
Tq. & Dist. Osmanabad.
3. Vivek s/o. Gopalrao Kulkarni
Age. 56 years, Occ. Service,
R/at Osmanabad,
Tq. & Dist. Osmanabad.
4. Arun s/o. Vishnu Sarang,
Age. 56 years, Occ. Service,
R/at Lohara, Tq. Lohara,
Dist. Osmanabad.
5. Kashinath s/o. Shivdas Kurund
Age. 57 years, Occ. Service,
R/at Kallam, Tq. Kallam,
Dist. Osmanabad.

Versus

1. The State of Maharashtra .. Respondents
through the Secretary,
Rural Development and Water
Conservation Department,
Maharashtra State, Mantralaya,
Mumbai-32.

2. The Chief Executive Officer,
Zilla Parishad, Osmanabad,
Dist. Osmanabad.
3. The Executive Engineer,
(Construction & Irrigation),
Zilla Parishad, Osmanabad,
Dist. Osmanabad.
4. The Sub-Divisional Engineer,
Minor Irrigation, Z.P. Omerga,
Tq.Omerga, Dist. Osmanabad.
5. The Block Development Officer,
Panchayat Samitee, Somanabad,
Tq. & Dist. Osmanabad.

Mr.R.P. Bhumkar, Advocate for the petitioners.

Mr.C.S. Kulkarni, AGP for respondent No.1.

Mr.U.B. Bondar, Advocate for respondent Nos.2 to 5.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.**

DATED : 30.11.2017

ORAL JUDGMENT [PER : S.V. GANGAPURWALA, J.] :-

1. Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final hearing.

2. The petitioner assails the order of the respondents thereby claiming recovery and re-fixing the salary.

3. Mr. Bhumkar, learned advocate for the petitioners submits that the petitioners were initially working as Mistri (Grade-II). In the year 1999, six cadres were merged and were designated as Civil Engineering Assistant. On completion of 12 years of service and completing 45 years of age, the petitioners were granted benefit of ACPS. Learned Counsel submits that show-cause notices were issued to the petitioners on 18.08.2016 as to show cause why recovery should not be claimed and re-fixation of salary is made. On 19.08.2016 order is passed claiming the recovery. Learned Advocate submits that the petitioners were rightly awarded with the benefit of ACPS on completion of 12 years of service and on completion of 45 years of age. The impugned order is incorrect. Learned advocate relies on the judgment of Division Bench of this Court in Writ Petition No. 5182 of 2012 dated 30.01.2014 and order dated 12.08.2014 in Writ Petition No.1495 of 2014 with connected Writ Petitions.

4. Mr. Bondar, learned advocate for the Zilla Parishad submits that the Zilla Parishad relied upon circular issued by the State dated 20.07.2014. It is upon petitioners' completing 45 years of age and after entering the cadre of Civil Engineering Assistant, they have to complete 12 years of service and thereafter benefit is to be given to them and no illegality is committed in that regard.

5. We have also heard learned AGP.

6. Certainly the benefit to the petitioners could not have been given before completion of 45 years of age and on completion of 12 years of service.

7. The petitioners have given the details of date of appointment, the date of completion of 45 years of age and the date of completion of 12 years of service. Same is reproduced as under :-

Sr. No.	Name	Date of Appointment	Completion of 14 years of Age or qualifying date	Date of completion of 12 years services
1	Nandkumar Bhagwanappa Mande	05/09/1990	06/03/2002	14/09/2009
2	Prakash Vishwanath Pimple	05/06/1985	06/03/2002	12/06/1997
3	Arun Vishnu Sarang	01/04/1982	10/06/2006	01/04/2000
4	Vivek Gopalrao Kulkarni	04/06/1985	01/06/2006	04/06/1997
5	Kashinath Shivdas Kurund	01/04/1988	12/30/2003	01/04/2000

8. It is submitted that even if the petitioners have completed the age of 45 years earlier, they are given benefit only after completing 12 years of service. Even if the petitioners have completed 12 years earlier, they have been given benefit only after completing 45 years of age. Same was the proper method. The Division Bench of this Court in case of Writ Petition No.5182 of 2012 under order dated 30.01.2014 has categorically observed that the petitioner was entitled to pay-scale of Junior Engineer on completion of 12 years of Mistri (Grad-I). Same is the view taken in Writ Petition No.1495 of 2014.

9. Considering the above, the writ petition is allowed. The impugned order is quashed and set aside. Rule is made absolute in terms of prayer clause (B). No costs.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]