

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

Writ Petition No. 2445 of 2016

* Madhukar Kisan Varade,
Age 59 years
Occupation: Retired/Pensioner,
R/o Sane Guruji Colony,
Hivarkheda Road, Jamner
Taluka Jamner,
District Jalgaon. .. **Petitioner.**

Versus

- 1) The Zilla Parishad, Jalgaon
Through its
Chief Executive Officer.
- 2) The Education Officer (Primary)
Zilla Parishad, Jalgaon. .. **Respondents.**

Shri. Vijay B. Patil, Advocate, for petitioner.

Shri. N.B. Suryawanshi, Advocate, for respondent
Nos.1 to 2.

With

Writ Petition No. 2446 of 2016

* Shravan Onkar Chaudhari
Age 64 years,
Occupation: Retired/Pensioner,
R/o . 64, Supari Bag, Jamner,
Taluka Jamner, Dist. Jalgaon... **Petitioner.**

Versus

- 1) The Zilla Parishad, Jalgaon
Through its
Chief Executive Officer.
- 2) The Education Officer (Primary)
Zilla Parishad, Jalgaon. .. **Respondents.**

Shri. Vijay B. Patil, Advocate, for petitioner.

Shri. N.B. Suryawanshi, Advocate, for respondent
Nos.1 to 2.

With

Writ Petition No. 2447 of 2016

- * Shamrao Shankar Bari,
Age 66 years,
Occupation: Retired/Pensioner,
R/o. Pahur Peth, Jamner,
Taluka Jamner, Dist. Jalgaon... **Petitioner.**

Versus

- 1) The Zilla Parishad, Jalgaon
Through its
Chief Executive Officer.
- 2) The Education Officer (Primary)
Zilla Parishad, Jalgaon. .. **Respondents.**

Shri. Vijay B. Patil, Advocate, for petitioner.

Shri. N.B. Suryawanshi, Advocate, for respondent
Nos.1 to 2.

With

Writ Petition No. 2479 of 2016

* Vimal Babulal Mandole,
Age 59 years,
Occupation: Retired/Pensioner,
R/o. At Post Shendurni,
Taluka Jamner, Dist. Jalgaon... **Petitioner.**

Versus

- 1) The Zilla Parishad, Jalgaon
Through its
Chief Executive Officer.
- 2) The Education Officer (Primary)
Zilla Parishad, Jalgaon. .. **Respondents.**

Shri. Vijay B. Patil, Advocate, for petitioner.

Shri. N.B. Suryawanshi, Advocate, for respondent
Nos.1 to 2.

With

Writ Petition No. 6699 of 2016

- 1) Dattu Dagadu Patil,
Age 60 years,
Occupation: Retired.
R/o. Plot No.18/2,
Gurudatta Colony,
Bhusawal Road, Jamner,
Taluka Jamner, Dist. Jalgaon.
- 2) Ab. Sattar Ab. Rashid
Age 60 years,
Occupation: Retired.

- 3) Mirza Humayunbeg Sikandarbeg,
Age 57 years,
Occupation: Service.
- 4) Ab. Latif Shaikh Mahetab,
Age 57 years,
Occupation: Service.
- 5) Majidkhan Samsherkhan,
Age 62 years,
Occupation: Retired.
- 6) Ab. Khaleef Ab. Rajjak,
Age 57 years,
Occupation: Service.
- 7) A. Rashid Shaikh Bhikan,
Age 60 years,
Occupation: Retired
- 8) Ab. Khalif Ab. Nabi,
Age 60 years,
Occupation: Retired.
- 9) Ab. Saeed Shaikh Latif,
Age 57 years,
Occupation: Service.
- 10) Ajajoddin Shafioddin,
Age 57 years,
Occupation: Service.
- 11) Sayyad Zahirali Manwarali
(Dead) Through his legal heirs
- 11-A Shamim Bano Sayyad Zahirali,
Age 55 years,
Occupation: Household.

Nos.2 to 11-A residents of
Madani Nagar, Jamner,
Taluka Jamner, District Jalgaon.

- 12) Vitthal Shahadu Mahajan,
Age 59 years,
Occupation: Retired.
R/o Gurudatta Colony,
Bhusawal Road, Jamner,
Taluka Jamner, Dist. Jalgaon.
- 13) Manjuri Ananda Sable,
Age 61 years,
Occupation: Retired.
R/o. Neri Digar,
Taluka Jamner, Dist. Jalgaon.
- 14) Janardhan Rajaram Shinde,
Age 57 years,
Occupation: Service,
R/o. Neri Digar,
Taluka Jamner, Dist. Jalgaon.
- 15) Atmaram Daulat Mahajan,
Age 62 years,
Occupation: Retired.
R/o. Kurhe Panache,
Taluka Bhusawal, Dist Jalgaon.
- 16) Radhabai Trambak Wankhede,
Age 57 years,
Occupation: Service
R/o Supari Bagh, Jamner,
Taluka Jamner, Dist. Jalgaon.
- 17) Devraj Ukha Wade,
Age 57 years,
Occupation: Service
R/o. Jankinagar, Jalgaon,
Taluka and District Jalgaon.
- 18) Sakhubai Agarchand Patil
Occupation: Retired,
R/o. Shendurni, Taluka Jamner,
District Jalgaon.

- 19) Devkabai Khandu Wankhede,
Age 57 years,
Occupation: Service,
R/o Pahur Peth,
Taluka Jamner, Dist. Jalgaon. .. **Petitioners.**

Versus

- 1) The Zilla Parishad, Jalgaon
Through its
Chief Executive Officer.
- 2) The Education Officer (Primary)
Zilla Parishad, Jalgaon.
- 3) The Block Development Officer,
Panchayat Samiti, Jamner,
Taluka Jamner, Dist. Jalgaon. .. **Respondents.**

Shri. Vijay B. Patil, Advocate, for petitioner.

Shri. N.B. Suryawanshi, Advocate, for respondent
Nos.1 to 2.

**Coram: T.V. NALAWADE &
SANGITRAO S. PATIL, JJ.**

Date: 8 March 2017

ORAL JUDGMENT:

- 1) Rule, rule made returnable forthwith.
Heard both the sides by consent for final
disposal.

2) The petitions are filed to challenge the order of recovery of the amount allegedly wrongly paid to the petitioners, who were Class III employees of the Zilla Parishad, respondent. The mistake, according to the Zilla Parishad, was committed when the pay fixation was done as per the report of the 6th Pay Commission and wrongly one more increment was given. Recovery of total amount of Rupees eleven Lakh as against 34 employees is ordered and the petitioners are some of those employees and there are some more similarly situated employees though not from the same list.

3) Learned counsel for the petitioners placed reliance on the judgment of this Court in **Writ Petition No.4096/2011 (Gulab Natu Patil v. State of Maharashtra)**. In similar circumstances, this Court had held that if it is not the fault of the employee as pay fixation is the job of the employer to fix the pay, the amount, if any, paid in excess due to wrong pay fixation cannot be

allowed to be recovered. Further, they are the Class III employees. They have already retired. In view of these circumstances and the observations made by this Court in the aforesaid writ petition, this Court holds that it is not desirable to allow the respondents to recover the amount paid in excess due to wrong pay fixation.

4) In the result, all the petitions are allowed. The order of recovery of excess amount is hereby set aside. The amount already recovered is to be refunded to the petitioners. This Court has made it clear that the pension is to be fixed by the respondents as per the fixation made at present. Rule is made absolute in those terms.

Sd/-
(SANGITRAO S. PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)

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