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

WRIT PETITION NO. 2487 OF 2017

1. Malu s/o Sambhaji Palekar,
Age: 53 years, Occ: Service,
R/o. Golegaon, Tq. Umari,
District Nanded.
2. Madhav s/o Chandu Ade,
Age: 55 years, Occ: Service,
R/o. Osmannagar, Tq. Kandhar,
District Nanded.
3. Suresh s/o Malharrao Waghmare,
Age: 52 years, Occ: Service,
R/o. Paroti Danda, Tq. Kinwat,
District Nanded.
4. Shaikh Kaisar Shaikh Imam,
Age: 51 years, Occ: Service,
R/o. Balegaon, Tq. Umari,
District Nanded.
5. Hanmanth s/o Deoji Yemmewar,
Age: 57 years, Occ: Service,
R/o. Umari, Tq. Umari,
District Nanded.
6. Gangadhar s/o Vithalrao Yemmewar,
Age: 48 years, Occ: Service,
R/o. Ghoti, Tq. Kinwat,
District Nanded.
7. Madhav s/o Nivruthi Gond,
Age: 50 years, Occ: Service,
R/o. Kamatha (Bk), Tq. Ardhapur,
District Nanded.
8. Hanmanth s/o Lingoji Waghmare,
Age: 54 years, Occ: Service,
R/o. Nila, Tq. & District Nanded.

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9. Narayan s/o Kondiba Junnikar,
Age: 57 years, Occ: Service,
R/o. Kandur, Tq. Naigaon,
District Nanded.
10. Mahammad Ajgar Md. Yasin,
Age: Major, Occ: Service,
R/o. Nivadha, Tq. Mukhed,
District Nanded.
11. Vinayak s/o Anandrao Pallewad,
Age: Major, Occ: Service,
R/o. Loha, Tq. Hadgaon,
District Nanded.
12. Ramrao s/o Santram Sawargave,
Age: Major, Occ: Retired,
R/o. Manjaram, Tq. Naigaon,
District Nanded.
13. A.R. Shingarwar,
Age: Major, Occ: Service,
R/o. Hadgaon, Tq. Hadgaon,
District Nanded.
14. Ganesh s/o Babasaheb Deshpande,
Age: Major, Occ: Service,
R/o. Chambhara, Tq. Hadgaon,
District Nanded.
15. Chandrakanth s/o Tukaram Wadiyar,
Age: Major, Occ: Service,
R/o. Yeoti, Tq. Mukhed,
District Nanded.
16. Ramaji s/o Chintaman Chavan,
Age: Major, Occ: Retired,
R/o. Bhokar, Tq. Bhokar,
District Nanded.

..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department
Mantralaya, Mumbai.

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2. The Chief Executive Officer,
Zilla Parishad, Nanded.
3. The Chief Veterinary Officer,
Zilla Parishad, Nanded.
4. Account & Finance Officer,
Zilla Parishad, Nanded,
Tq. & District Nanded.

..RESPONDENTS

Mr G.J. Karne, Advocate for petitioners;
Mr S.Y. Mahajan, A.G.P. for respondent No.1;
Mr N.S. Kadam, Advocate for respondent Nos. 2,3 & 4

**CORAM : PRASANNA B. VARALE
AND
MANISH PITALE, JJ.**

DATE : 23rd October, 2018

ORAL ORDER:

Heard learned Counsel for the respective parties.

2. The petitioners are employees of respondent no.2 Zilla Parishad, Nanded. It is the case of the petitioners that they were appointed as Livestock Supervisors by following due procedure and are attached to veterinary hospitals at taluka places being run by Zilla Parishad, Nanded. The petitioners challenge the communication dated 31st August, 2013.

3. The document placed on record at page 20 of the petition is a communication forwarded to one of the petitioners i.e. petitioner no.8

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Shri H.L. Waghmare. In the said communication, respondent no.4 communicates that on perusal of the original service record it revealed that there are certain deficiencies. Then it is stated that the deficiencies be removed and the service book be re-submitted for fixation of pay. In the very communication, the petitioners are aggrieved by clauses (1) and (2) of the said communication. Clause (1) of the said communication states that the petitioners' revised pay be fixed as per the pay scale of 1st July, 2013 and on undertaking this exercise the excess amount paid to the petitioners be recovered from them. Clause (2) states that the petitioners have not passed the examination after their entry in the service and they have been given the rise in the pay scale. This rise in pay scale granted to the petitioners be recovered and then there is direction to the Officer of the Zilla Parishad to resubmit the proposal. The thrust of the learned Counsel for the petitioners, in challenge to this communication was on the principle which is recognized by the judicial pronouncements of the Honourable the Apex Court. It was the submission of the learned Counsel for the petitioners that the petitioners were never informed about the so called pre-requisite condition, namely, passing the examination within a stipulated period after entering in the service and then it was submitted that once the benefit was given to them by the respondents authorities in general and the employer in particular and if such benefit granted to the petitioners is not by

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misrepresentation of the petitioners and if it is claim of the employer that it is by inadvertence the benefit is granted to the petitioners, in that case the respondents authorities are not entitled to seek recovery of such benefit granted to the petitioners.

4. Learned Counsel appearing on behalf of the petitioners submitted that in pursuance to the letter/communication impugned in the petition, the authorities quantified the amount and sought recovery. This quantification of the amount and recovery to that effect is placed before this Court by the documents in petition at pages 28 to 32. Learned Counsel for the petitioner then submitted that even the Chief Executive Officer, Zilla Parishad, Nanded sought guidance from the Secretary of the State of Maharashtra and it was the opinion of the Chief Executive Officer that the petitioners and alike employees could not have been put to prejudice merely because they have not passed the examination within a stipulated period. Learned Counsel, by inviting our attention to the very document i.e. communication dated 3rd February, 2012 placed on record at Exh.E submitted that the Chief Executive Officer in clear terms stated that the petitioners and the alike employees could not have been deprived of their seniority and the claims and the benefits to which they were entitled as per their seniority. With these observations and the opinion, the Chief Executive Officer sought for

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the guidance from the State of Maharashtra. Then the learned Counsel for the petitioner invited our attention to the oftenly quoted judgment of the Honourable the Apex Court in the matter of **State of Punjab & ors. vs. Rafiq Masih (White Washer) & ors.**, reported in **(2015) 4 Supreme Court Cases 334** and particularly to the observations in paragraph 18 thereof to submit that the petitioners are in cadre of class III employees of the Zilla Parishad, as such the recovery initiated against them is certainly causing hardship to them. It will be useful to refer to the relevant paragraph and the same reads thus :-

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

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(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.”

5. Learned Counsel for the petitioners submitted that while issuing notice to the respondents, the Division Bench of this Court protected the interest of the petitioners with an interim order that no recovery be made against them pursuant to the impugned communication. Learned Counsel for the petitioners submitted that though there was an interim order passed by this Court, the recovery was initiated with a rider that the recovery would be subject to final outcome of the petition. Learned Counsel for the petitioners then submitted that by order dated 17th July, 2018, the Division Bench of this Court directed the petitioners to place on record an affidavit giving the details of recovery claimed from the petitioners except petitioner Nos.2, 10 and 13. Accordingly, the petitioners filed affidavit of petitioner No.1 Malu Sambhaji Palekar on their behalf. Learned Counsel invited our attention to para 3 of the affidavit to submit that the list of the petitioners is provided in a tabular form with a reference

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to the recovery against each of the petitioners.

6. The petition is opposed by the respondents and more particularly by respondent Zilla Parishad by filing affidavit-in-reply. Though the petition is opposed, it is interesting to note that the respondent Zilla Parishad submits in the affidavit-in-reply at paragraph 4 that though the petitioners have not passed the departmental examination within prescribed period and though they were not eligible to get the increments, still the said increments were given to them inadvertently and when the Zilla Parishad came to know about the said fact, the action for recovery of the excess payment has been initiated which is within four corners of law.

(Emphasis supplied)

7. We have no hesitation to state that respondent Zilla Parishad in clear and loud words states before this Court that it is an inadvertence of the Zilla Parishad, undisputedly the Zilla Parishad nowhere takes a stand that there was any misrepresentation by the petitioners or the petitioners mislead the Zilla Parishad.

8. Learned Counsel appearing on behalf of the Zilla Parishad made an attempt to support the action of the Zilla Parishad by taking assistance of an unreported judgment. He invited our attention to the

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judgment dated 29th July, 2016 of the Apex Court, in the matter of **High Court of Punjab & Haryana & ors. vs. Jagdev Singh in Civil Appeal No.3500 of 2006**. Though learned Counsel for the Zilla Parishad made an attempt to place reliance on the judgment in support of his submissions, bare perusal of the judgment clearly shows that this judgment is of no help to the learned Counsel for the Zilla Parishad. In the said judgment, the Honourable the Apex Court refers to the judgment in the matter of State of Punjab & ors. etc. vs. Rafiq Masih (White Washer) etc. (supra) and then it further states in paragraph 11, which reads thus:-

“11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

9. On a specific query made to the learned Counsel for the Zilla Parishad as to whether any such undertaking was obtained from the petitioners, learned Counsel appearing for the Zilla Parishad fairly submitted before us that no such undertaking is obtained by the Zilla Parishad from the petitioners.

10. Learned Counsel for Zilla Parishad raised a point that the petitioners have approached this Court belatedly, to which a justification is provided in the petition and the learned Counsel for the petitioners orally also submitted before us that the recovery was initiated sometime in the year 2016 and as such, the petitioners immediately approached this Court by filing present petition in the year 2017, as such, it cannot be said that there is inordinate delay by the petitioners to approach this Court.

11. Learned Counsel for the petitioners submitted that the amount is recovered from the petitioners and a statement to that effect is made in the affidavit in a tabular form. Learned Counsel appearing for the Zilla Parishad submitted that this statement is not factually correct and the Zilla Parishad has recovered the amount only from petitioner Nos.3, 12, 14 and 16. Learned Counsel for Zilla Parishad submits that in the additional affidavit filed on 28th September, 2018 on behalf of District Animal Husbandry Officer, Zilla Parishad, Nanded, it is stated that the excess payment has not been recovered except petitioner Nos.3, 12, 14 and 16. In view of this statement, we direct the Zilla Parishad to refund the amount recovered from petitioner Nos.3, 12, 14 and 16 as expeditiously as possible and not later than eight weeks from the date of order of this Court.

12. We find considerable substance in the submissions of the learned Counsel appearing for the petitioners. Considering the aforesaid facts, we are of the clear opinion that the communication impugned herein is clearly unsustainable. Learned Counsel for the petitioners made out a case. Petition as such deserves to be allowed. Petition is accordingly allowed in terms of prayer clause (A).

13. It is not in dispute that the respondent Zilla Parishad recovered the amount from the petitioners as stated in the additional affidavit in the tabular form at page 79. As the petition is allowed by us, we direct the respondent Zilla Parishad to refund the amount recovered from each petitioner, which is referred to in the tabular form at paragraph 3 on page 79. The exercise of such refund be undertaken as expeditiously as possible and preferably within eight weeks from the date of the order of this Court.

With the aforesaid directions, writ petition stands disposed of.

(MANISH PITALE, J.)

(PRASANNA B. VARALE, J.)

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