

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10149 OF 2017

1. Sakharam Sukhdeo Mule,
Age: 53 Years, Occu.: Service,
Working at Social Forestry Range Jalna (East),
R/o.: At Post Borkhedi, Tq.: Jalna,
Dist.: Jalna
2. Bhagaji Shankar Kharat,
Age: 46 Years, Occu.: Service,
Working at Social Forestry Range Jalna (East),
R/o.: At Post Ghanewadi, Tq.: Jalna,
District: Jalna
3. Laxman Ganpat Shinde,
Age: 56 Years, Occu.: Service,
Working at Social Forestry Range Jalna (East),
R/o.: At Post Mhasrul, Tq. and Dist.: Buldhana
4. Tulshiram Deorao Bhalsingh,
Age: 51 Years, Occu.: Service,
Working at Social Forestry Range Jalna (East),
R/o.: At Post Pirkalyan, Tq.: Jalna,
District: Jalna
5. Vishwas Bapurao Bachate,
Age: 46 Years, Occu.: Service,
Working at Social Forestry Range Jalna (East),
R/o.: At Post Golapangri, Tq.: Jalna,
District: Jalna
6. Ganpat Jagannath Rathod,
Age: 50 Years, Occu.: Service,
working at Social Forestry Range Jalna (East),

R/o.: At Post Bawane Pangri, Tq.: Badnapur,
District: Jalna

7. Amruta Baburao Shinde,
Age: 50 Years, Occu.: Service,
Working at Social Forestry Range Jalna (East),
R/o.: At Post Badnapur, Tq.: Badnapur,
District: Jalna
8. Sundar Dajiba Kharabe,
Age: 56 Years, Occu.: Service,
Working at Social Forestry Range Jalna (East),
R/o.: At Post Pimparkheda, Tq.: Mantha,
District: Jalna

.. **Petitioners**

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 32
2. The Principal Chief Conservator of Forests
and Director General of Social Forestry,
Maharashtra State, Central Building, Pune
3. The Chief Conservator and Deputy Director General,
Social Forestry Zone, Plot No. 3, Ramdas Tower,
Kalpataru Housing Society, Garkheda, Aurangabad
4. The Deputy Director,
Social Forestry Division,
Raj Building, Jalna, District: Jalna

.. **Respondents**

Shri Avishkar S. Shelke, Advocate for Petitioners.
Shri A. S. Shinde, A.G.P. for Respondent Nos. 1 to 4.

WITH
WRIT PETITION NO. 10180 OF 2017

1. Nemichand Tarachand Chavan,
Age: 48 Years, Occu.: Service,
Working at Social Forestry Range Kannad,
R/o.: At Post Brahmni Garada, Tq.: Kannad,
District: Aurangabad
2. Bharat Totaram Kadam,
Age: 50 Years, Occu.: Service,
Working at Social Forestry Range Soygaon,
R/o.: At Post Soygaon, Tq.: Soygaon,
District: Aurangabad
3. Ashok Dhondu Chavan,
Age: Major, Occu.: Service,
Working at Social Forestry Range Soygaon,
R/o.: At Post at Nimbhora, Post Gadegaon,
Tq.: Soygaon, District: Aurangabad
4. Shamrao Ragho Karhale,
Age: 56 Years, Occu.: Service,
Working at Social Forestry Range Soygaon,
R/o.: At Post Tidka, Tq.: Soygaon,
District : Aurangabad
5. Baburao Ramrao Kabade,
Age: 58 Years, Occu.: Service,
Working at Social Forestry Range Paithan,
R/o.: At Katpur, Tq.: Paithan,
District: Aurangabad
6. Vitthal Asaram Mahore,
Age: 50 Years, Occu.: Service,
Working at Social Forestry Range Paithan,
R/o.: At Post Kadim Tikali, Tq.: Paithan,
District: Aurangabad

7. Magan Radhaji Brahmkar,
Age: 48 Years, Occu.: Service,
Working at Social Forestry Range Gangapur,
R/o.: At Post Padegaon, Tq. and District: Aurangabad
8. Fatimabi Babu Patel,
Age: 52 Years, Occu.: Service,
Working at Social Forestry Range Gangapur,
R/o.: At Post Chikalthana, Tq. and Dist.: Aurangabad
9. Bhaginath Appa Borude,
Age: 53 Years, Occu.: Service,
Working at Social Forestry Range Aurangabad,
R/o.: At Post Chikalthana, Tq. and Dist.: Aurangabad
10. Sanduba Natuba Zond,
Age: 55 Years, Occu.: Service,
Working at Social Forestry Range Sillod,
R/o.: At Post Golegaon, Tq: Sillod,
District: Aurangabad
11. Sumanbai Trimbak Choutmal,
Age: 48 Years, Occu.: Service,
Working at Social Forestry Range Gangapur,
R/o.: At Post Chikalthana, Tq. and Dist.: Aurangabad
12. Vasant Haribhau Doiphode,
Age: 48 Years, Occu.: Service,
Working at Social Forestry Range Gangapur,
R/o.: Radhaswami Colony, Jatwada Road,
Tq. and District: Aurangabad
13. Hansraj Kachru Dukre,
Age: 58 Years, Occu.: Service,
Working at Social Forestry Range Vaijapur,
R/o.: Vaijapur, District: Aurangabad
14. Sajan Mahadu Palhal,
Age: 59 Years, Occu.: Service,

Working at Social Forestry Range Khultabad,
R/o.: At Pimpalgaon Post Vanegaon,
Tq.: Phulambri, District: Aurangabad

15. Magan Nathaji Salve,
Age: 55 Years, Occu.: Service,
Working at Social Forestry range Aurangabad (Rural),
R/o.: At Post Tisgaon, Tq.: Gangapur,
District: Aurangabad
16. Ramesh Bajirao Bhavar,
Age: 48 Years, Occu.: Service,
Working at Social Forestry Range Aurangabad (Rural),
R/o.: At Bhambarda, Post: Dudhad,
Tq.: and District: Aurangabad
17. Vishnu Sahebrao Chinchole,
Age: 58 Years, Occu.: Service,
Working at Social Forestry Range Khultabad,
R/o.: At Mangrul, Post: Karmad,
Tq. and District: Aurangabad
18. Sandu Baburao Mankape,
Age: 45 Years, Occu.: Service,
Working at Social Forestry Range Gangapur,
R/o.: At Post Jategaon, Tq.: Phulambri,
District: Aurangabad
19. Shalikram Manaji Gavhad,
Age: 47 Years, Occu.: Service,
Working at Social Forestry Range Aurangabad (Rural),
R/o.: At Waki Post Nevpur, Tq.: Kannad,
District: Aurangabad
20. Raju Sandu Dehade,
Age: 45 Years, Occu.: Service,
Working at Social Forestry Range Aurangabad (Rural),
R/o.: At Post Chikalthana, Tq. aand Dist.: Aurangabad

21. Janardhan Pandurang Bankar,
Age: 48 Years, Occu.: Service,
Working at Social Forestry Range Sillod,
R/o.: At Post Karmad, Tq. And Dist.: Aurangabad
22. Vinayak Karbhari Wagh,
Age: 53 Years, Occu.: Service,
Working at Social Forestry Range Sillod,
R/o.: At Khullod, Post: Undangaon,
Tq.: Sillod, District: Aurangabad
23. Appasaheb Punjaram Najan,
Age: 52 Years, Occu.: Service,
Working at Social Forestry Range Khultabad,
R/o.: At Post Kingaon, Tq.: Phulambri,
District: Aurangabad
24. Ashok Deorao Autade,
Age: 53 Years, Occu.: Service,
Working at Social Forestry Range Aurangabad City,
R/o.: At Post Harsul, Tq. and Dist.: Aurangabad
25. Sarangdhar Gangadhar Aher,
Age: 64 Years, Occu.: Retired,
Worked at Social Forestry Range Sillod,
R/o.: At Post Nillod, Tq.: Sillod,
District: Aurangabad
26. Shobhabai Bhagwat Shinde,
age: 52 Years, Occu.: Service,
Working at Social Forestry Range Sillod,
R/o.: At Post Chikalthana, Tq. And Dist.: Aurangabad
27. Mherunissa Isak Shaikh,
Age: 45 Years, Occu.: Service,
Working at Social Forestry Range Sillod,
R/o.: At Post Chikalthana, Tq. and District: Aurangabad

28. Rafiyabi Shahanur Pathan,
Age: 47 Years, Occu.: Service,
Working at Social Forestry Range Kannad,
R/o.: At Post Chikalthana, Tq. and Dist.: Aurangabad
29. Hafijabi Sherfoddin,
Age: 55 Years, Occu.: Service,
Working at Social Forestry Range Kannad,
R/o.: At Post Chikalthana, Tq. and Dist.: Aurangabad
30. Nayarshah Sandu Shaikh,
Age: 52 Years, Occu.: Service,
Working at Social Forestry Range Gangapur,
R/o.: At Post Nachanvel, Tq. : Kannad,
District: Aurangabad
31. Sahebrao Ramrao Pathade,
Age: 55 Years, Occu.: Service,
Working at Social Forestry Range Paithan,
R/o.: At Bhambarda, Post: Dudhad,
Tq. and District: Aurangabad
32. Ambadas Bhimrao Autade,
Age: 46 Years, Occcu.: Service,
Working at Social Forestry Range Aurangabad Rural,
R/o.: At Post Harsul, Tq. and District: Aurangabad
33. Hemrao Devman Bakle,
Age: 53 Years, Occu.: Service,
Working at Social Forestry Range Kannad,
R/o.: At Post Harsul, Tq. and District: Aurangabad
34. Nirmalabai Hemrao Bakle,
Age: 53 Years, Occu.: Service,
Working at Social Forestry Range Kannad,
R/o.: At Post Harsul, Tq.: Kannad,
District: Aurangabad

35. Anita Kaduba Bankar,
Age: 47 Years, Occu.: Service,
Working at Social Forestry Range Gangapur,
R/o.: At Post Chikalthana, Tq. and Dist.: Aurangabad
36. Jagan Dada Perkar,
Age: 54 Years, Occu.: Service,
Working at Social Forestry Range Gangapur,
R/o.: At Padegaon, Tq. and District: Aurangabad
37. Ankush Baburao Tonpe,
Age: 54 Years, Occu.: Service,
Working at Social Forestry Range Aurangabad,
R/o.: At Zalta Post Chikalthana,
Tq. and Dist.: Aurangabad
38. Shalikram Manik Kalyankar,
Age: 50 Years, Occu.: Service,
Working at Social Forestry range Sillod,
R/o.: At Post Balapur, Tq.: Sillod,
District: Aurangabad
39. Shriram Shankar Walke,
Age: 52 Years, Occu.: Service,
Working at Social Forestry Range Kannad,
R/o.: At Post Andhaner, Tq.: Kannad,
District: Aurangabad
40. Pandurang Deorao Mokase,
Age: 51 Years, Occu.: Service,
Working at Social Forestry Range Kannad,
R/o.: At Post Pishor, Tq.: Kannad,
District: Aurangabad
41. Vishwas Govinda Mokase,
Age: 55 Years, Occu.: Service,
Working at Social Forestry Range Kannad,
R/o.: At Post Pishor, Tq.: Kannad,
District: Aurangabad

42. Dhanu Budha Phule,
Age: 57 Years, Occu.: Service,
Working at Social Forestry Range Vaijapur,
R/o.: At Post Jadhavwadi, Tq.: Aurangabad,
District: Aurangabad
43. Ashok Rambhau Chandane,
Age: 58 Years, Occu.: Service,
Working at Social Forestry Range Vaijapur,
R/o.: At Post Navnathangar, HUDCO,
Aurangabad, District: Aurangabad
44. Anna Govinda Wagh,
Age: 57 Years, Occu.: Service,
Working at Social Forestry Range Kannad,
R/o.: At Post Kannad, Tq.: Kannad,
District: Aurangabad

.. **Petitioners**

Versus

1. The State of Maharashtra,
Through Secretary, Revenue and Forest
Department, Mantralaya, Mumbai-32
2. The Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32
3. The Principal Chief Conservator of Forests
and Director General of Social Forestry,
Maharashtra State, Central Building, Pune
4. The Chief Conservator and Deputy Director General,
Social Forestry Zone, Plot No. 3, Ramdas Tower,
Kalpataru Housing Society, Garkheda,
Aurangabad

5. The Deputy Director,
Social Forestry Division,
N-3, CIDCO, Plot No. 243,
Aurangabad

.. **Respondents**

Shri Avishkar S. Shelke, Advocate for Petitioners.
Shri A. S. Shinde, A.G.P. for Respondent Nos. 1 to 5.

CORAM : **S. V. GANGAPURWALA &**
A. M. DHAVAL, JJ.

Reserved for Orders on : 16th February, 2018
Order pronounced on : 27th April, 2018

ORDER (*Per S. V. Gangapurwala, J.*) :

1. Both these writ petitions are based on similar set of facts and involve common question of law, as such, to avoid rigmarole are decided by common Judgment.

2. The petitioners are appointed as daily wage employees on the establishment of respondent Nos. 3 and 4 in Writ Petition No. 10149 of 2017 and 4 and 5 and Writ Petition No. 10180 of 2017 respectively. The Government of Maharashtra, Rural Development and Water Conservation Department issued Government Resolution dated 19.10.1996, regularizing the services of the daily wage employees working on plan and non

plan schemes under the department for a period of five years and more. Subsequently, 1416 supernumerary posts were created. The Government Resolution contemplates that, an employee who has completed five years of continuous service as on 01.11.1994, is held eligible for regularization with effect from 01. 11.1994. The supernumerary posts were created in Group – D in time scale of Rs.750-940 and the employees were designated as 'Samajik Vanikaran Mujoor'. The present petitioners were not regularized in service as per Government Resolution dated 19.10.1996 and were continued in employment on daily wages. On 16.10.2012, the Government of Maharashtra, Revenue and Forest Department issued another Government Resolution and decided to confer the benefits of regularization in favour of employees who have been deployed on daily wages for carrying out the function of the forest conservation and protection of plants, transportation of forest produce and maintenance of Rest House. On the basis of the report of the committee, the Government sanctioned 5089 supernumerary posts for Social Forestry Department and 1006 supernumerary posts for Forest Development Corporation. Pursuant to the Government

Resolution dated 16.10.2012 daily wage employees who have completed five years on the service or intermittent service during the period from 01.11.1994 to 30.06.2004 were regularized with effect from 01.06.2012. On the basis of the Government Resolution dated 16.10.2012, the Rural Development and Water Conservation Department issued Government Resolution dated 31.10.2013, conferring the benefits of the Government Resolution dated 16.10.2012 to such daily wage employees under the Social Forestry Department. The petitioners were found eligible for the benefits as per the Government Resolution dated 31.10.2013, as they have completed five years in service between 01.11.1994 to 30.06.2004 and the petitioners were appointed on supernumerary posts with effect from 01.06.2012 in Group – D in the pay scale of 4,440-7440 with grade pay of Rs. 1300/-. The petitioners joined services as per the Government Resolution dated 16.12.2012 and 31.10.2013. All the petitioners are paid salary and wages from 01.06.2012 to November / December - 2013.

3. A complaint was received that the persons who have not

worked for a period 01.06.2012 to November / December – 2013 were also paid salary for the said period. The Principal Chief Conservator of Forests and Director General of Social Forestry, Maharashtra State directed the Chief Conservator and Deputy Director General, Social Forestry to make enquiry in the matter and to submit the report in that regard. The Chief Conservator and Deputy Director General, Social Forestry Zone, Aurangabad (*hereinafter referred to 'respondent No. 3/4'*) thereupon directed the Deputy Director of Social Forestry, Jalna / Aurangabad (*hereinafter referred to 'respondent No. 4/5'*) to conduct an inquiry in marathwada region. Upon inquiry report the respondent No. 3 / 4 passed an order dated 17.3.2016, that payment of wages made to 50 employees under the control and supervision of respondent No. 4 / 5 is illegal and further directed respondent No. 4 / 5 to recover the amount of excess payment forthwith. Pursuant thereto, respondent No. 4 / 5 issued order dated 4.7.2016 in Writ Petition No. 10149 of 2017 and 7.5.2016 in Writ Petition No. 10180 of 2017, directing recovery of wages paid to the petitioners for the period 01.06.2012 to November - 2013. These petitioners filed Original Application before the tribunal.

The tribunal dismissed the Original Application filed by the petitioners, aggrieved thereby the present writ petitions.

4. Mr. Shelke, learned advocate for the petitioners submits that the decision is taken to regularize the service of the eligible employees with effect from 01.06.2012. Clause 15 of the Government Resolution dated 16.10.2012 requires provisions to be made for the payment of wages to the employees from 1.6.2012. The learned advocate further relies on Clause 16 of the said Government Resolution and submits that budgetary provisions is also made with the sanction of Finance Department for payment of the salary with effect from 01.06.2012. The Government Resolution dated 31.10.2013 created 451 supernumerary posts of 'Samajik Vanikaran Majoor' under the Social Forestry Department. Clause 15 of the Government Resolution dated 31.10.2013 directs adjustments of expenditure from 01.11.2013 to 28.2.2014 from the amounts received for the year 2013 – 2014. It further directs to make provisions for payment of arrears of wages during the financial year 2014 – 2015. The learned advocate submits that all these petitioners

were found eligible for conferring the benefits of Government Resolution dated 31.10.2013 and as such respondent No. 4 / 5 issued appointment orders to the petitioners with effect from 4.12.2013 and 25.11.2013. All these petitioners pursuant thereto joined their services at various places. All these petitioners have been paid their wages from 01.06.2012 to November – 2013 in Writ Petition No. 10180 of 2017 and from 1.6.2012 to December - 2013 to the petitioners in Writ Petition No. 10149 of 2017.

5. The learned advocate further submits that the object of the Government Resolution dated 31.10.2013 is to regularize the long standing services of the petitioners. In view of said object, the Government thought it fit to regularize the services with retrospective effect from 01.06.2012. The learned advocate submits that the respondents and the tribunal have not properly interpreted the clauses of the Government Resolution. The Government has taken conscious decision to regularize the services of the employees who have been working with the department on daily wages for number of years. The benefit of regularization are granted with effect from 01.06.2012. The

regularization is from retrospective effect, and that the salary shall be payable to the petitioners from the date of their regularization with retrospective effect. The very object of the Government Resolution is frustrated by claiming recovery for the period 01.06.2012 till the date of issuance of appointment orders upon regularization. The Government Resolution dated 31.10.2013 makes the provisions of Maharashtra Civil Services Rules, applicable to the services of the petitioners with effect from 01.06.2012, as such, these employees are entitled and eligible for the payment of wages and salary for the period 01.06.2012 onwards. It is submitted that the alleged consent relied by the respondents is not given by the petitioners. The petitioners never consented for recovery of excess payment nor admitted that they have received excess payment. The signatures of petitioners are obtained under coercion and by pressuring them. Mr. Shelke, learned advocate relies on the Judgment of the Apex Court in a case of **The Commissioner, Karnataka Housing Board Vs. C. Muddaiah** reported in **(2007) 7 SCC 689** and submits that the order of regularization is granted from 01.06.2012, however, the appointment orders are

subsequently issued. Only because the appointment orders are subsequently issued, the petitioners were deprived of the work illegally by the respondents and the respondents cannot be allowed to take undue advantage of their own wrong. The petitioners cannot be denied the benefit for the period 01.06.2012 till the date of issuance of the appointment orders.

6. The learned advocate also relies on the Judgment of the Apex Court in a case of **Ramesh Kumar Vs. Union of India (UOI) and others** reported in **(2015) 14 SCC 335**. In the said case, the appellant before the Supreme Court was granted permission with anti dated seniority alongwith his batch mates, however, pay and allowances were not paid from back date. The Apex Court held that, when retrospective permissions are effected all benefits flowing there from including monetary benefits must be extended to an employee who has been denied permission earlier. According to the learned advocate, as the petitioners are given appointment with retrospective effect they would be entitled for salary with retrospective effect. The learned advocate submits that no work no pay is not an absolute

rule. In appropriate cases the employee can be granted arrears of pay with retrospective effect. The learned advocate relies on the Judgment of the Apex Court in a case of **State of Kerala and others Vs. E. K. Bhaskaran Pillai** reported in **(2007) 6 SCC 524** and another Judgment of the Apex Court in a case of **State of Uttar Pradesh Vs. Dayanand Chakrawarty and others** dated **2nd July, 2013**.

7. Mr. Shelke, learned advocate further submits that all these petitioners are Group - D employees. They have not misrepresented to the respondents. The payment with retrospective effect was made by the respondents interpreting the Government Resolution. In view of that, recovery could not have been directed against the petitioners. The learned advocate relies on the Judgment of the Apex Court in a case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc.** reported in **2015 (1) All M. R. 957**.

8. Mr. Shinde, learned Assistant Government Pleader submits that these petitioners have received wages from

01.06.2012 to November / December – 2013, though they were not in service or were absent during the said period. The petitioners received wrong payment i.e. payment for the absence period / non working days on the establishment of Social Forestry Department and therefore recovery has been ordered against these petitioners and other persons. The petitioners have given consent for recovery. The orders issued by the respondents for recovery of excess payment of wages is proper and justifiable in view of the doctrine of no work no pay.

9. The learned Assistant Government Pleader relies on the Judgment of the Apex Court in a case of **Airport Authority of India and others Vs. Shambhu Nath Das @ S. N. Das** reported in **2008 (11) SCC 498**. The learned A.G.P. submits that, once the petitioners have given consent directing recovery on account of wrong payment, then they cannot oppose the recovery. The learned A.G.P. relies on the Judgment of the Apex Court in a case of **High Court of Punjab and Haryana and others Vs. Jagdev Singh** dated **29th July, 2016**, in **Civil Appeal No. 3500 of 2006**. The learned A.G.P. further submits

that the recovery is made only from those employees who had not worked during the said period and for the period they have worked no recovery is being claimed.

10. We have considered the submissions canvassed by the learned counsel for respective parties.

11. The petitioners herein have been regularized in service upon being found eligible as per the Government Resolution dated 31.10.2013 and with retrospective effect from 01.06.2012. The appointment orders are issued to these petitioners in Writ Petition No. 10180 of 2017 on 25.11.2013. The appointment orders are issued to the petitioners in Writ Petition No. 10149 of 2017 on 4.12.2013 with effect from 01.06.2012 as 'Samajik Vanikaran Majoor'.

12. The gravamen of the petitioners case rests on the fact that regularization is given to them with effect from 01.06.2012, though the appointment orders are issued in the months of November and December – 2013 and once regularization is given with effect from 01.06.2012 they are entitled for all the

emoluments from 01.06.2012. Heavy reliance is placed on the Government Resolution dated 31.10.2013, more particularly, Clauses 14 and 15 of the said Government Resolution. Clauses 14 and 15 of the Government Resolution are in regional language reads thus -

“१४) सदर वनमजूरांच्या अधिसंख्य पदासाठीच्या आस्थापनेवरील खर्चासाठी प्रत्येक वर्षात आवश्यकतेनुसार अर्थसंकल्पीय तरतूद करण्यात यावी.

१५) सदर पदांचा १/११/२०१३ ते २८/०२/२०१४ पर्यंतचा खर्च सन २०१३-१४ या वर्षासाठी मंजूर करण्यात आलेल्या अनुदानातून भागविण्यात यावा व थकवाकीची रक्कम अदा करण्यासाठी आवश्यक ती तरतूद सन २०१४-२०१५ या वर्षाच्या अर्थसंकल्पात करण्यात यावी.”

13. The petitioners also rely on Clause 15 of the Government Resolution dated 16th October, 2012, in contending that the provision is directed to be made for payment of wages from 01.06.2012 from their own sources by the Forest Development Corporation. The reliance is placed on Clause 1 of the Government Resolution dated 16th October, 2012, granting regularization. The petitioners rely on the Clauses that these employees would be regularized from 01.06.2012 and that all the provisions of the Maharashtra Civil Services Rules as on 01.06.2012 would apply.

14. All these petitioners have not worked for the full period from 01.06.2012 till the issuance of appointment orders to them in November / December – 2013. In the affidavit filed by the respondents before the tribunal it is contended by the respondents that the respondents had not worked continuously from 01.06.2012 to December – 2013 all the labourers worked for total 1170 days and the payment was made to them without confirmation of non working days i.e. absence days, therefore recovery was claimed. The chart is given in the affidavit-in-reply showing that how excess payment has been made to them.

15. It appears that, all these petitioners have not continuously worked from 01.06.2012 till the date of their appointment and still payment was made to them as per the pay scale with effect from 01.06.2012, without considering the period the petitioners have not worked.

16. The petitioners having been regularized from 01.06.2012 naturally will have to be paid as per the pay scale applicable from 01.06.2012. The chart shows that the recovery is claimed

after considering the payment that would be made to the petitioners as per the pay scale applicable upon regularization and not on daily wages. To illustrate, petitioner No. 1 in Writ Petition No. 10149 of 2017 had worked only for 107 days from 01.06.2012 till the date of issuance of appointment order and is paid the emoluments for each and every month from June – 2012 till the date of appointment. As per the pay scale for the days he had worked he was entitled to an amount of Rs. 37,539/- but was paid daily wages of Rs. 23,293.66/-. He was required to be paid Rs. 14,245.34/- but was paid Rs. 1,67,638/- and as such amount of Rs. 1,53,392.66/- was paid in excess as per the calculations of the respondents.

17 The respondents on one hand had accepted that payment is to be made to these petitioners as per the pay scale from 01.06.2012 for the days the petitioners had worked. However, from 01.06.2012 the respondents had given the work to the petitioners as and when it was available and not for the whole period. The petitioners stood regularized with retrospective effect from 01.06.2012. It is certainly not the case of respondents

that the petitioners had not worked though work was allotted. Upon recovery being demanded from these petitioners by the respondents, the petitioners represented that they are ready to pay the excess payment, however, installments be given to them.

18. Referring to the Government Resolution dated 16th October, 2012 and 31st October, 2013, it is manifest that the petitioners are regularized with retrospective effect from 1st day of June, 2012, and would be entitled for the pay scale from 01.06.2012. Even the respondents while calculating the wages payable to the petitioners for the days they have worked have calculated at a rate of the pay scale payable to a regular employee. However, the employee were not given the work for the entire period from 1st June, 2012, till the date of their appointments and have worked only as and when work was available and as directed by respondent No. 4 / 5. It appears that the consent was given by these petitioners for recovery only after notice was issued to these petitioners to repay the amount and these petitioners stated that they would repay the amount but installments be given to them. The impugned order of recovery

passed by Chief Conservator of Forest and Deputy Director, Social Forestry, Aurangabad puts the blame on the department for making excess payment to these petitioners. It is not the case that prior to the appointments being made an undertaking was taken by them or that they had given the consent.

19. It is difficult to set down any hard and fast rule with regard to monetary benefit from retrospective effect. It is trite that principle of no work no pay is not accepted as a rule of thumb. The situation with regard to monetary benefits from retrospective effect would depend upon case to case. The provisions of the Maharashtra Civil Services Rules are made applicable to all the petitioners from 1st June, 2012. If an employee is prevented by the employer from performing his duties, the employee cannot be blamed for not having worked and the abstract principle of no pay no work shall not be applicable to such an employee in toto. In the present case, undisputedly the petitioners are regularized with effect from 1st June, 2012. It is not the fault of employee that they were not provided the work for the entire period. From 01.06.2012 for the

days the petitioners have worked the respondents have paid them the emoluments as per the pay scale applicable to a regular employee but only for the number of days they have worked in a particular month and not for the whole month. Upon regularization, the petitioner is entitled for the monthly salary as per the pay scale. It is not the case of respondents that the respondents had allotted work to the petitioners but the petitioners refused to do. As and when work was allotted to the petitioners, the petitioners have performed their work and the salary is paid to them.

20. The Government Resolution regularizing the services of the petitioners states that the Maharashtra Civil Services Rules would apply to these petitioners from 01.06.2012.

21. The reliance by the State on the consent letters given by the petitioners for recovery is unfounded as the said consent is after the demand is made. The order of recovery is dated 17.03.2016 and the consent letters relied by the respondents are given by the employees on 11.8.2016 only to avoid lumpsum

recovery. The said letters are given as the entire recovery was being claimed and it was not possible for these persons to pay the entire amount. In view of that, the Judgment of the Apex Court in a case of **High Court of Punjab and Haryana and others Vs. Jagdev Singh** (*Supra*) would not apply. The matter can be viewed from the other facet. The amount is paid to these persons probably in the year 2014 and the entire recovery is claimed in the year – 2016. Some of the petitioners are on verge of retirement. All these petitioners are working in Group - D. It would be inequitable and harsh if the entire recovery is allowed to be made. The Judgment of the Apex Court in a case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc.** would also be relevant.

22. In such scenario equities shall have to be adjusted. We deem it proper to award 50% wages as per the pay scale for the period petitioners were not given work.

23. In the result, we pass the following order.

24. The impugned orders are quashed and set aside. For the period petitioners have worked they will be entitled to pay as per the pay scale from 01.06.2012 till the issuance of appointment orders. For the period petitioners have not been allotted work the petitioners shall be paid 50% of the salary. The remaining 50% amount shall be recovered in installments from the petitioners.

25. The writ petitions accordingly stand disposed of. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

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