

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

**WRIT PETITION NO. 9120 OF 2016
KRISHNA RAMCHANDRA KATE
VERSUS
THE STATE OF MAHARASHTRA & OTHERS**

**WITH
WRIT PETITION NO. 9129 OF 2016
NANABHAU FAKIRA NHAVERI
VERSUS
THE STATE OF MAHARASHTRA & OTHERS**

**WITH
WRIT PETITION NO. 9140 OF 2016
DASHRATH DEORAM PATIL
VERSUS
THE STATE OF MAHARASHTRA & OTHERS**

Mr.Amol Sawant, Advocate for the petitioners.
Mr.S.P. Sonpawale, AGP for respondent/State.

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

DATED : 11.10.2018

P.C. :-

1. The petitioners in Writ Petition Nos.9020 of 2016 and 9140 of 2016 assailed the notice dated 19.07.2016 and the petitioner in Writ Petition No.9129 of 2016 assails the notice dated 22.07.2016 issued by the Block Development Officer, Panchayat Samiti, Dhule wherein the

pay scale of the petitioners has been revised as per the Circular dated 28.07.2014.

2. Under Circular dated 28.07.2014 it is clarified by the State that the services prior to 20.05.1999 shall not be counted for the purpose of granting time bound promotional pay scale. The petitioners had filed writ petition bearing no. 10156 of 2012 taking exception to the orders dated 04.05.2009 and 05.10.2012 issued by the respondent whereunder recovery of the difference of the higher pay scale paid to them was sought to be claimed on the basis of grant of time bound promotional pay scale counting the services from their initial date of appointment. This Court allowed the said writ petition on the basis of the judgment delivered by this Court in Writ Petition No. 3476 of 2011 dated 11.09.2012 and directed refund the amount recovered from the pensionary benefits of the petitioners. In the said judgment this Court observed thus -

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4. Government Resolution dated 08.06.1995 prescribes that employees categorised as

Group C and Group D (erstwhile Class III and Class IV) are entitled to higher pay scale on completion of twelve years of regular service. Clause 'A' of paragraph 2 of the Government Resolution provides that the scheme came into operation from 1.10.1994 whereas clause 'C' of paragraph 2 of the Government Resolution provides that direct recruits or the employees appointed by way of promotion are entitled to receive benefits after completion of twelve years tenure after regularisation of their services. In the instant matter, from the record made available for perusal, it appears that all the petitioners are held eligible to draw benefits of higher pay scale on fulfillment of condition prescribed in paragraph 2 of the Government Resolution dated 08.06.1995. It also appears that employees have been extended benefit after they completed twelve years of continuous service after passing of the order of regularisation. It is thus clear that employees have been granted benefits strictly in accordance with parameters laid down in the Government Resolution dated 08.06.1995. In these circumstances, it was not permissible for the employer to withdraw the benefits extended to the employees relying upon the advice rendered by the Additional Secretary, Maharashtra State. The advice rendered by the Additional Secretary, Maharashtra State, by communication dated 1305.2008 is contrary to the policy of the Government contained in Government Resolution dated 08.06.1995. Even otherwise, it is not open for the employer to direct deductions from the salary admissible to the petitioners, much

less, in respect of employees who have already attained age of superannuation. In this respect reliance can be placed on judgment on the Apex Court in the matter of Syed Abdul Qadir and others Vs. State of Bihar and others reported in (2009) 3 SCC 475 so also unreported judgments of this Court in Writ Petition No. 316/2010 (Narayan Shravan Shingane Vs. The State of Maharashtra) Writ Petition No. 7596/2008 (Laxman Dagadu Chaudhari Vs. the State of Maharashtra) and Writ Petition No. 3596/2009 (Samadhan s/o Daulat Patil Vs. The State of Maharashtra). It is to be noted that petitioners were not instrumental in securing higher pay scale fraudulently and as such, recovery of amount is not permissible. Petition therefore deserves to be allowed and the same is accordingly allowed.'

3. It appears that the petitioners are considered as regular employee from 01.04.1990.

4. In the light of judgment passed by this Court in Writ Petition No. 10156 of 2012 filed by the petitioner and the order of this Court in Writ Petition No. 3476 of 2011 dated 11.09.2012 it will not be open for the respondent now to issue the impugned notice. The impugned notice as such is quashed and set aside. As we have set aside the impugned notice on the basis of the judgment

delivered by this Court in Writ Petition filed by the petitioner earlier and the connected writ petition, we are not entering into the legality of Circular dated 28.07.2014.

5. Writ Petitions are disposed of. No costs.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]