

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

WRIT PETITION NO.8232 OF 2013

- 1) Aanandrao s/o Krishnarao Tirmanwar,
Age; 47, Occ; Service,
- 2) Nagnath s/o Narhari Damkondwar,
Age; 35, Occ; Service,
- 3) Balaji s/o Keshavrao Dongare,
Age; 38, Occ; Service,
- 4) Anila w/o Sidharth Engole,
Age; 40, Occ; Service,
- 5) Shanta Kisanrao Kendre,
Age; 38, Occ; Service,
- 6) Shashikala Rama Karkare,
Age; 46, Occ; Service,
- 7) Sumitra laxman Chavan,
Age; 41, Occ; Service,
- 8) Shindhu Jayaram Rathod,
Age; 38, Occ; Service,
- 9) Kalabai Namanna Mangarpawad,
Age; 44, Occ; Service,
- 10) Bini Maniram Madavi
Age; 45, Occ; Service,
- 11) Gangabai Sopanrao Malwade,
Age; 45, Occ; Service,
- 12) Shantabai Punjaji Kotwal,
Age; 38, Occ; Service,
- 13) Lalita Milind Bansode,
Age; 46, Occ; Service,

- 14) Dilip S/o Shripat Rathod,
Age; 47, Occ; Service,
- 15) Savita Tukaram Telang,
Age; 30, Occ; Service,
- 16) Baliram Parasram Kakade,
Age; 52, Occ; Service,

All above R/o; Primary Health Centre,
Bodhadi (Bud.), Tq. Kinvat, Dist. Nanded.
- 17) Shalini Shamrao Kadu,
Age; 49, Occ; Service,
R/o; Primary Health Centre,
Vanola, Tq. Kinvat, Dist. Nanded.
- 18) Shobha Kishanrao Kasture,
Age; 48, Occ; Service,
R/o; Primary Health Centre, Lalampur,
Tq. Kinvat, Dist. Nanded.
- 19) Prakash Udhavrao Chetalewar,
Age; 47 yrs, Occ; Service,
R/o; Primary Health Centre,
Vanola, Tq.Kinvat, Dist. Nanded.
- 20) Pushpa Ramkrishna Sukhadeve,
Age; 48 yrs, Occ; Service,
R/o; Primary Health Centre Jaldhara,
Tq. Kinvat, Dist. Nanded.
- 21) Prabhu S/o Bhima Pendare,
Age; 47, Occ; Service,
R/o; Primary Health Centre Vai (Bu.)
Tq. Kinvat, Dist. Nanded.
- 22) Jairam Marotrao Bande,
Age; 44 yrs, Occ; Service,
- 23) Maroti Udaybhan Raut,
Age; 41 , Occ; Service,
- 24) Nasrsingh Narayan Anilwar,
Age; 45, Occ; Service,
- 25) Lalita Kuberrao Patil,

Age; 47, Occ; Service,

26) Umakant S/o; Narayan Takale,
Age; 46, Occ; Service,

27) Shanta Ramchandra Davale,
Age; 39, Occ; Service,

28) Sumitra Tukaram Jabhale,
Age; 32 yrs, Occ; Service,

29) Tulshiram Devanna Daralwar,
Age; 46, Occ; Service,

30) Subhash S/o; Chanuram Boddewar,
Age; 51, Occ; Service,

31) Usman Shaikh Ali Shaikh,
Age; 52, Occ; Service,

32) Jijabai Vitthal Kanake,
Age; 42, Occ; Service,

All above R/o; Primary Health Centre, Rajgad,
Tq. Kinvat, Dist. Nanded.

33) Ramkishan S/o; Nivrutti Tambare,
Age; 41, Occ; Service,
R/o; Primary Health Centre, Jaldhara,
Tq. Kinvat, Dist. Nanded.

34) Sunita Shrinivasrao Kannalwar,
Age; 48, Occ; Service,

35) Narayan Hanmunlu Jonpelliwar,
Age; 50, Occ; Service,

36) Sumitra Laxman Mohture,
Age; 45, Occ; Service,

37) Sudhakar S/o; Ramchandra Pandave,
Age; 44, Occ; Service,

38) Ananda S/o; Nagorao Dudhmal,
Age; 51, Occ; Service,

All above R/o; Primary Health Centre,

Umari (Ba.), Tq. Kinvat, Dist. Nanded.

- 39) Shima Ramrao Kale,
Age; 48, Occ; Service,
R/o; Primary Health Centre, Dehila Tanda,
Tq. Kinvat, Dist. Nanded.
- 40) Rajkanya Ramraoji Bagade,
Age; 45, Occ; Service,
R/o; Primary Health Centre, Banola,
R/o; Kinvat, Dist. Nanded.
- 41) Anusaya Ramrao Kamtalwar,
Age; 40, Occ; Service,
R/o; Primary Health Centre, Dehila Tanda,
Tq. Kinvat, Dist. Nanded.
- 42) Ramesh S/o; Santoshrao Gavande,
Age; 47, Occ; Service,
R/o; Primary Health Centre, Dehila Tanda,
Tq. Kinvat, Dist. Nanded.
- 43) Nirmala Narayan Jayswal,
Age; 47, Occ; Service,
R/o; Primary Health Centre, Wai (Ba.)
Tq. Kinvat, Dist. Nanded.
- 44) Shindu Babarao Ughade,
Age; 47, Occ; Service,
R/o; Primary Health Centre, Ivaleshwar,
Tq. Kinvat, Dist. Nanded.
- 45) Vanita Eknathrao Thakare,
Age; 51, Occ; Service,
R/o; Primary Health Centre, Shindkhed,
Tq. Kinvat, Dist. Nanded.
- 46) Ramayya S/o; Shankar Nallewar,
Age; 41, Occ; Service,
R/o; Primary Health Centre, Dehila Tanda,
Tq. Kinvat, Dist. Nanded.
- 47) Lalita Ramreddy Yetwar,
Age; 50, Occ; Service,
R/o; Primary Health Centre, Dehila
Tanda, Tq. Kinvat, Dist. Nanded.

PETITIONERS.

VERSUS

- 1) The State of Maharashtra,
Through Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai.
- 2) The Chief Executive Officer,
Zilla Parishad, Nanded, Dist. Nanded.
- 3) The District Medical Officer,
Nanded, Dist. Nanded.

RESPONDENTS

(Respondent Nos. 1 and 3
to be served through Government
Pleader, High Court, Bench
Aurangabad).

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Shri D.K. Rajput, Advocate for Petitioners.
Shri R.V. Dasalkar, A.G.P. for State.
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CORAM: **T.V. NALAWADE AND**
 SUNIL K. KOTWAL, JJ.

DATED : **19th March, 2018**

JUDGMENT :

- 1) This petition is filed for issuance of appropriate writ to prohibit Respondent No. 3 District Medical Officer, Nanded from directing subordinate Medical Officers, under letter dated 28/08/2013 to recover the increment amount from the pay of the petitioners. Respondent No. 1 is State of Maharashtra. Respondent No. 2 is Chief Executive Officer, Zilla Parishad Nanded.
- 2) Undisputedly, the Petitioners are the employees of Zilla Parishad, Nanded and they are governed by the

Maharashtra Civil Services Rules. All the Petitioners work in the Health Department, Zilla Parishad, Nanded on various posts.

3) Contention of the Petitioners is that considering the dire need of the use of information and technology in Government work for smooth and transparent function in Government Machinery, on 20/11/1999 General Administration Department of the Maharashtra State passed resolution directing the concern State Government Departments to provide Computer Training to the staff members and every employee was directed to undergo MS-CIT training. Initially, the Departments were supposed to bear the expenses of training course. Even, incentive was offered to the staff members who completed the required Computer Training. In brief, contention of the petitioners is that subsequently various Government Resolutions were passed by the Government regarding the said Computer Training. It was the responsibility of Head of the Departments to make necessary arrangement for providing Computer Training to the staff members. None of the Government Resolution provided direction for withholding of the increments of the staff members. According to petitioners, till the date of filing of the petition they had already undergone MS-CIT Course. However, the respondent No. 3, by writing letter dated 28/08/2013, directed the concern Medical Officers of Primary Health Centres to recover/deduct increment amount from the salary of the

Petitioners on account of non completion of MS-CIT course within time limit. Therefore, petitioners were constrained to file this Writ Petition, to prohibit the Respondents from making any recovery from the salary of the Petitioners.

4) Heard learned Advocate for Petitioners at length. He submitted that under Maharashtra Civil Services Rules no provision is made for withholding of increments for not completing MS-CIT course within prescribed time limit. He submitted that none of the Government Resolution authorizes the Respondents to withhold the increments of any staff members or to recover any amount of increments already received by the Petitioners. He submitted that till the date of filing of the petition, all the Petitioners have already undergone the MS-CIT course. He placed reliance on the judgment of this court in the cases **"Shivhar Dhondiram Kalure and Ors. Vs State of Maharashtra & Ors" Writ Petition No. 9958 of 2014** and **"Ganesh Damu Sananse Vs State of Maharashtra & Others"** in **Writ Petition No. 10629 of 2017** wherein the orders of recovery were quashed by this Court, for the reason of lack of service of show cause notice to the Petitioners.

5) Learned Counsel for Respondents submitted that the time limit for undergoing MS-CIT course was time to time extended up to December, 2017. However, none of the Petitioners have completed the required MS-CIT course within

time limit. Therefore, Petitioners cannot challenge the directions given by Respondent No. 3 for recovery of increments, for non compliance of directions of the Government. Our attention was drawn towards the case of "**Chandrakant Sakharam Karkhanis and Others Vs. The State of Maharashtra and Others**" reported in **(AIR 1977 Bombay 193)** wherein, The Full Bench of this Court has held that :

"Circulars, Orders or Resolutions or parts thereof laying down the rules or principles of general application, which have to be observed in the recruitment or fixation of seniority of Government servants generally or a particular class of them, and which have been duly authenticated by a signature under the endorsement "By order and in the name of Governor of Maharashtra" and intended to be applicable straightway can amount to rules framed in exercise of the powers conferred under the proviso to Art. 309 of the Constitution, although the said Circulars, Orders or Resolutions do not expressly state that the same are made or issued in exercise of the powers conferred under the proviso to Art. 309 of the Constitution of India and are not published in the Government Gazette".

6) We have gone through various Government Resolutions issued by General Administration Department, which have binding force like rules as ruled by this Court in above

referred Judgment. No doubt, in the appointment orders of the Petitioners the condition of acquiring MS-CIT qualification was not incorporated. However, by issuing Government Resolution dated 20/07/2002, the Government has made it compulsory to all employees of the State Government, including the employees who have been appointed prior to 1st January, 2001, to complete Computer Course in MS-CIT within stipulated period of one year. In Clause-3 (1) of the Government Resolution dated 20/07/2002, it has been provided that the employees who will not complete the MS-CIT Course within stipulated period, their further increments would be withheld. The time limit for acquiring MS-CIT qualification has been extended from time to time and at last under Government Resolution dated 5th May, 2007 up to 31st December, 2007. However, despite sufficient opportunities, the Petitioners did not complete the MS-CIT course within prescribed time limit. Therefore, they cannot blame their Superior Officers for not making necessary arrangements for their training. Otherwise also, under Government Resolution dated 20/07/2002 all the previous directions regarding providing financial assistance and making arrangement of training to the staff members are deleted. Therefore, after 20/07/2002 it is absolute responsibility of the employees to undergo the MS-CIT course within prescribed time limit.

7) In the circumstances, the Petitioners who are the defaulters in complying with the directions of the Government, cannot avail the discretionary remedy under writ jurisdiction of this Court. Under the impugned letter dated 28/07/2013, the Respondent No. 3 has only given directions to the concerned Medical Officers to recover the increment amount from payment of the employees who have not undergone the required training. Therefore, at this stage, question of issuance of show cause notices to the Petitioners does not arise. Under these distinguishing circumstances the ratio of **Ganesh Vs State** (Supra) and **Shivhar Vs State** (Supra) is not applicable in the case at hand.

8) This court cannot ignore that though time limit for completing MS-CIT course was extended up to December, 2007, most of the petitioners have completed this course only in between 2011 and 2012, which amounts to disobedience of the directions of the Government. In the circumstances, the ratio of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and others** reported in [(2015) 4 SCC 334] is not applicable to the case at hand. Because the Apex Court ruled that the orders passed by employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such a recovery would result in hardship of a nature, which would far outweigh, the equitable

balance of the employer's right to recover.

9) In the result, we hold that Petitioners are not entitled to any relief claimed by them. This petition being devoid of merits, deserves to be dismissed.

10) Hence the following order.

ORDER

- 1) Writ Petition No. 8232 of 2013 is dismissed.
- 2) No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

sbm/