

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11188 OF 2018

Sharad s/o. Ravan Naik,
Age-56 Years, Occ.: Service,
R/o-Flat No.17, Siddheshwar Housing
Society, Old AUSA Road, Latur,
Tq. & Dist. Latur.

.. PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Welfare of Vimukta Jatis, Nomadic Tribe,
Other Backward Class and
Special Backward Class Department,
Mantralaya, Mumbai-32.
- 2) The Managing Director,
Vasantrao Naik Vimukta Jatis & Nomadic Tribes
Development Corporation Ltd.
Juhu Supreme Shopping Center,
Gulmohar Cross Road No.9,
J (RAUTT) Maski D.P.V.
Ville Parle (West), Mumbai 400049

.. RESPONDENTS

WITH

WRIT PETITION NO.11189 OF 2018

Dadasaheb s/o. Ganpati Jadhav,
Age: 55 Years, Occ. Service,
R/o. Sushiladevi Nagar, Old AUSA Road,
Latur, Tq. & Dist. Latur.

.. PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Welfare of Vimukta Jatis, Nomadic Tribe,
Other Backward Class and
Special Backward Class Department,
Mantralaya, Mumbai-32.
- 2) The Managing Director,
Vasantrao Naik Vimukta Jatis & Nomadic Tribes
Development Corporation Ltd.
Juhu Supreme Shopping Center,
Gulmohar Cross Road No.9,
J (RAUTT) Maski D.P.V. Ville Parle (West)
Mumbai 400049

.. RESPONDENTS

WITH

WRIT PETITION NO.11190 OF 2018

Popat s/o. Mahadeo Zombade,
Age: 47 Years, Occ: Service,
R/o. Vijaypagar By Pass Road,
Near Gas Pump, Osmanabad,
Tq. & Dist. Osmanabad.

.. PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Welfare of Vimukta Jatis, Nomadic Tribe,
Other Backward Class and
Special Backward Class Department,
Mantralaya, Mumbai-32.

- 2) The Managing Director,
Vasantrao Naik Vimukta Jatis & Nomadic Tribes
Development Corporation Ltd.
Juhu Supreme Shopping Center,
Gulmohar Cross Road No.9,
J (RAUTT) Maski D.P.V. Ville Parle (West)
Mumbai 400049

.. RESPONDENTS

**WITH
WRIT PETITION NO.11191 OF 2018**

Dattu s/o. Ashruba Sangle,
Age: 55 Years, Occ. Service,
R/o. Flat No.14, Sunny Center,
New Mondha, Pisadevi Road,
Aurangabad.

.. PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Welfare of Vimukta Jatis, Nomadic Tribe,
Other Backward Class and
Special Backward Class Department,
Mantralaya, Mumbai-32.
- 2) The Managing Director,
Vasantrao Naik Vimukta Jatis & Nomadic Tribes
Development Corporation Ltd.
Juhu Supreme Shopping Center,
Gulmohar Cross Road No.9,
J (RAUTT) Maski D.P.V. Ville Parle (West)
Mumbai 400049

.. RESPONDENTS

WITH

WRIT PETITION NO.11192 OF 2018

Sandeep s/o. Shivram Chavan,
Age: 41 Years, Occ. Service,
R/o. Gupta Road Chaal, Near Sai Baba Mandir,
Jai Hind Nagar, Khar (East)

.. PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Welfare of Vimukta Jatis, Nomadic Tribe,
Other Backward Class and
Special Backward Class Department,
Mantralaya, Mumbai-32.
- 2) The Managing Director,
Vasantrao Naik Vimukta Jatis & Nomadic Tribes
Development Corporation Ltd.
Juhu Supreme Shopping Center,
Gulmohar Cross Road No.9,
J (RAUTT) Maski D.P.V. Ville Parle (West)
Mumbai 400049

.. RESPONDENTS

WITH

WRIT PETITION NO.11193 OF 2018

Shrikant s/o. Gangaram Chaukekar,
Age: 57 Years, Occ. Service,
R/o. A-4/016, Nupur Lokpuram,
Pokhran Road No.2, Thane
Tq. & Dist. Thane [West]

.. PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Welfare of Vimukta Jatis, Nomadic Tribe,
Other Backward Class and
Special Backward Class Department,
Mantralaya, Mumbai-32.
- 2) The Managing Director,
Vasantrao Naik Vimukta Jatis & Nomadic Tribes
Development Corporation Ltd.
Juhu Supreme Shopping Center,
Gulmohar Cross Road No.9,
J (RAUTT) Maski D.P.V. Ville Parle (West)
Mumbai 400049

.. RESPONDENTS**WITH****WRIT PETITION NO.11194 OF 2018**

Chhaya Prakash Gaydhane,
Age: 57 Years, Occ. Service,
R/o. Flat No.1205, B-wing, 12th Floor,
Rachana Medhsparsh Apartment,
Swalambi Nagar, Bhende Lay Out,
Nagpur

.. PETITIONER**VERSUS**

- 1) The State of Maharashtra,
Through its Secretary,
Welfare of Vimukta Jatis, Nomadic Tribe,
Other Backward Class and
Special Backward Class Department,
Mantralaya, Mumbai-32.

- 2) The Managing Director,
Vasantrao Naik Vimukta Jatis & Nomadic Tribes
Development Corporation Ltd.
Juhu Supreme Shopping Center,
Gulmohar Cross Road No.9,
J (RAUTT) Maski D.P.V. Ville Parle (West)
Mumbai 400049

.. RESPONDENTS

**WITH
WRIT PETITION NO.11195 OF 2018**

Kishor s/o. Tukaram Wani,
Age: 51 Years, Occ. Service,
R/o. Ward No.4, Vaishali Nagar,
Mhasala, Tq. & Dist. Wardha.

.. PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Welfare of Vimukta Jatis, Nomadic Tribe,
Other Backward Class and
Special Backward Class Department,
Mantralaya, Mumbai-32.
- 2) The Managing Director,
Vasantrao Naik Vimukta Jatis & Nomadic Tribes
Development Corporation Ltd.
Juhu Supreme Shopping Center,
Gulmohar Cross Road No.9,
J (RAUTT) Maski D.P.V. Ville Parle (West)
Mumbai 400049

.. RESPONDENTS

WITH**WRIT PETITION NO.11196 OF 2018**

Sow. Madhavi Indrasen Rele,
Age: 58 Years, Occ. Service,
R/o. A-401, 4th Floor, United Enclave Co-op.
Housing Society Ltd. 60 Feet Road,
Sant Kabir Road, Mahim.

.. PETITIONER**VERSUS**

- 1) The State of Maharashtra,
Through its Secretary,
Welfare of Vimukta Jatis, Nomadic Tribe,
Other Backward Class and
Special Backward Class Department,
Mantralaya, Mumbai-32.
- 2) The Managing Director,
Vasantrao Naik Vimukta Jatis & Nomadic Tribes
Development Corporation Ltd.
Juhu Supreme Shopping Center,
Gulmohar Cross Road No.9,
J (RAUTT) Maski D.P.V. Ville Parle (West)
Mumbai 400049

.. RESPONDENTS**WITH****WRIT PETITION NO.11197 OF 2018**

Aadhar s/o. Madhukar Tajne,
Age: 47 Years, Occ. Service,
R/o. Flat No.5, Godapark Apartment,
Chavan Nagar, Tapovan Road,
Panchavati, Nashik-3.

.. PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Welfare of Vimukta Jatis, Nomadic Tribe,
Other Backward Class and
Special Backward Class Department,
Mantralaya, Mumbai-32.
- 2) The Managing Director,
Vasantrao Naik Vimukta Jatis & Nomadic Tribes
Development Corporation Ltd.
Juhu Supreme Shopping Center,
Gulmohar Cross Road No.9,
J (RAUTT) Maski D.P.V. Ville Parle (West)
Mumbai 400049

.. RESPONDENTS**WITH****WRIT PETITION NO.11198 OF 2018**

Dadasaheb s/o. Ravan Gaikwad,
Age: 55 Years, Occ. Service,
R/o. Near Bhartiya Vidyapeeth,
Konark Nagar, Solapur,
Tq. & Dist. Solapur.

.. PETITIONER**VERSUS**

- 1) The State of Maharashtra,
Through its Secretary,
Welfare of Vimukta Jatis, Nomadic Tribe,
Other Backward Class and
Special Backward Class Department,
Mantralaya, Mumbai-32.

- 2) The Managing Director,
Vasantrao Naik Vimukta Jatis & Nomadic Tribes
Development Corporation Ltd.
Juhu Supreme Shopping Center,
Gulmohar Cross Road No.9,
J (RAUTT) Maski D.P.V. Ville Parle (West)
Mumbai 400049

.. RESPONDENTS

WITH

WRIT PETITION NO.11199 OF 2018

Manikrao s/o. Dajoba Bhatkar,
Age: 54 Years, Occ. Service,
R/o. Sinchan Nagar, Ekvira Hotel,
Chahaya Meghe, Darva Road,
Yavatmal, Tq. & Dist. Yavatmal.

.. PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Welfare of Vimukta Jatis, Nomadic Tribe,
Other Backward Class and
Special Backward Class Department,
Mantralaya, Mumbai-32.
- 2) The Managing Director,
Vasantrao Naik Vimukta Jatis & Nomadic Tribes
Development Corporation Ltd.
Juhu Supreme Shopping Center,
Gulmohar Cross Road No.9,
J (RAUTT) Maski D.P.V. Ville Parle (West)
Mumbai 400049

.. RESPONDENTS

WITH**WRIT PETITION NO.11200 OF 2018**

Popat s/o. Bajinath Gite,
Age: 50 Years, Occ. Service,
R/o. H-2/512, 5th Floor,
Suwarnalekha Lokagram Co-op. Housing
Society Ltd. Lokkalyan HIG School,
Kalyan [East]

.. PETITIONER**VERSUS**

- 1) The State of Maharashtra,
Through its Secretary,
Welfare of Vimukta Jatis, Nomadic Tribe,
Other Backward Class and
Special Backward Class Department,
Mantralaya, Mumbai-32.
- 2) The Managing Director,
Vasantrao Naik Vimukta Jatis & Nomadic Tribes
Development Corporation Ltd.
Juhu Supreme Shopping Center,
Gulmohar Cross Road No.9,
J (RAUTT) Maski D.P.V. Ville Parle (West)
Mumbai 400049

.. RESPONDENTS

...

Mr.G.V.Wani, Advocate holding for Shri Vikrant
S.Valse, Advocate for the petitioners.

Mr.S.B.Narwade, A.G.P. for Respondent No.1 in
all Writ Petitions.

Mr.Tukaram M. Venjane, Advocate for Respondent
No.2 in all Writ Petitions.

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**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE OF RESERVING JUDGMENT : 30TH NOVEMBER, 2018

DATE OF PRONOUNCING JUDGMENT: 6TH DECEMBER, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. In all these Petitions, the Petitioners have prayed to quash and set aside the impugned circulars dated 29th August, 2018, issued by the Managing Director of Vasantrao Naik Vimukta Jatis and Nomadic Tribes Development Corporation. As the issue involved in all these Writ Petitions is the same and similar, all these Petitions are being disposed of by this common Judgment and order.

3. It is the case of the Petitioners that since more than fifteen years all the Petitioners are working with Respondent No.2 Corporation i.e. Vasantrao Naik Vimukta Jatis and Nomadic Tribes Development Corporation (herein after referred to as "Respondent Corporation"), on various posts such as District Manager, Regional Manager, Clerk, Stenographer, Office Assistant.

4. As most of the facts in all these Petitions are almost similar, for the sake of convenience, we will refer the facts from Writ Petition No.11188 of 2018. It is the case of the Petitioner that in the year 1991, he was appointed on the post of clerk and in the year 2004 he was promoted on the post of Regional Manager in the pay-scale of Rs.15600-9100 with Grade Pay of Rs.6600/- and accordingly, the pay fixation has been done.

5. It is the case of the Petitioners that on 19th November, 2007, the State of Maharashtra passed resolution with regard to sanction of increments to the employees of the Respondent Corporation, and accordingly the Respondent Corporation paid increments to the Petitioners as per various Government Resolutions, as paid to other employees of the State of Maharashtra.

6. It is the case of the Petitioners that, in the meantime the State of Maharashtra, on 26th June, 2012 passed Government Resolution and applied 6th Pay Commission to the employees of the Respondent Corporation with effect from 26th June, 2012. Accordingly the pay fixation of all the Petitioners had been done on their respective posts. By considering the provisions of Maharashtra Civil Services (Revised Pay) Rules, 2009, the Respondent Corporation on 12th September, 2012 and on 10th June, 2013, sanctioned increments

to the Petitioners, by passing the resolutions by the Board of Directors.

7. It is the case of the Petitioners that on 11th April, 2018, the Board of Directors of the Respondent Corporation passed resolution and took decision to cancel the increments given to the employees which are paid in contravention of the Government rules. It is further the case of the Petitioners that all of sudden without notice, without hearing to the Petitioners, the new Managing Director of Respondent Corporation, by misinterpreting the resolution dated 11th April, 2018, passed circulars on 29th August, 2018 and cancelled all the increments paid to the Petitioners and directed to recover the said increments from the monthly salary of the Petitioners. It is the case of the Petitioners that vide said circulars dated 29th August, 2018, the Managing Director without having powers, also

made wrong pay fixation of the Petitioners without considering the service record of the Petitioners, without hearing to the Petitioners. In all these Petitions, the Petitioners have challenged the said circulars dated 29th August, 2018 issued by the Managing Director of Respondent Corporation.

8. Learned counsel appearing for the Petitioners submitted that though it is mentioned in the said Circulars dated 29th August, 2018, that, if there are any objection with regard to pay fixation, submit the same within a period of fifteen days, without waiting for the same, the Respondent Corporation started to recover the increments already paid to the Petitioners. Learned counsel further submits that since more than fifteen years all the Petitioners are working with Respondent Corporation. It is submitted that by issuing impugned circulars the Managing Director of Respondent Corporation cancelled all

the increments paid to the Petitioners, which is unjustified and against the principle of natural justice. Learned counsel further submits that by issuing impugned circulars, the Respondent Corporation directed to recover the increments which are already paid to the Petitioners, which is not permissible as per the various pronouncements of the Hon'ble Supreme Court, wherein it is specifically observed that, even though the employees are paid excess salary wrongly in past, the same cannot be recovered now. Learned counsel further submits that Respondent Corporation by issuing the impugned circulars, made wrong pay fixation of the Petitioners without seeking explanation from the concerned auditor. In the impugned circulars no details are mentioned about how and which increments are cancelled. It is further submitted that till today the earlier resolutions passed by the Board of Directors of Respondent Corporation, as per which the

increments are paid to the Petitioners are not cancelled. Learned counsel further submits that the Respondent Corporation while passing the impugned circulars made reference of Government Resolution dated 24th August, 2017, but it failed to consider that, the Government Resolution dated 24th August, 2017, cannot be implemented with retrospective effect. Learned counsel further submits that prior to issuing the impugned circulars dated 29th August, 2018, the Managing Director of Respondent Corporation has neither issued notices to the Petitioners nor given hearing to the Petitioners, hence the impugned circulars are liable to be quashed and set aside. It is therefore prayed that the Petitions deserved to be allowed.

9. Learned A.G.P. appearing for the State, submitted that the Government of Maharashtra has issued Resolution on 26th June, 2012, making

applicable the benefits of 6th Pay Commission to the employees of the Respondent Corporation from 26th June, 2012. It is further submitted that, it is specifically mentioned in the said Government Resolution dated 26th June, 2012, that the benefits of 6th Pay Commission are made applicable to the employees of Respondent Corporation from 26th June, 2012, only and no arrears will be payable to any of the employees of the Respondent Corporation. However, in contravention of the said Government Resolution, the pay of the Petitioners has been wrongly fixed from 1st January, 2006, as per the provisions of 6th Pay Commission. It is further submitted that from time to time additional increments were given to the Petitioners, which were not permissible. Considering the aforesaid facts, the Respondent Corporation has rightly issued the impugned circulars directing to recover the excess payment made to the Petitioners. Learned A.G.P. therefore submits that the

Petitions are liable to be dismissed.

10. Learned counsel appearing for Respondent Corporation, referring to the reply filed on behalf of Respondent No.2 Corporation, submitted that in the present Writ Petition the circulars dated 29th August, 2018 is under challenge, in pursuance of which the increments which are wrongly paid to the Petitioners, are cancelled. It is submitted that as per Government Resolution dated 26th June, 2012, the State Government applied 6th Pay Commission to the employees of Respondent Corporation with effect from 26th June, 2012 only and the 6th Pay Commission is made applicable to the employees of the Corporation on the condition that they are not entitled for any arrears prior to 26th June, 2012. Despite of the said condition in the Government Resolution dated 26th June, 2012, wrongly arrears paid to the Petitioners with effect from 1st January, 2006, which is in

contravention with the said Government Resolution. Therefore, the Respondent Corporation has rightly issued impugned circulars dated 29th August, 2018. Prior to that, one circular was already issued on on 7th April, 2018.

11. Learned counsel further submits that as per Government Resolution dated 24th August, 2017, it was specifically mentioned in Clause-3 thereof, not to pay the benefits of increments to the employees who are being paid 6th Pay Commission during the period from 1st October 2006 to 1st October, 2015, still advance increments were given to many of the employees, including Petitioners. Therefore, by following due procedure of law, the Board of Directors passed resolution on 11th April, 2018 directing to cancel the increments which are wrongly and illegally paid to the Petitioners. It is submitted that in pursuance of the said Resolution dated 11th April, 2018, statement of pay

fixation, revised pay scale is prepared and finalized by the officials of Respondent Corporation. The chart to that effect is displayed on the notice board and already sent to every District Officer of Respondent Corporation. Therefore, full opportunity of hearing has been given to the Petitioners before passing the impugned circulars dated 29th August, 2018.

12. Learned counsel further submits that, at the time of sanction of 6th Pay Commission, wrong pay scale has been sanctioned to the employees of the Respondent Corporation by considering their applicability with effect from 1st January, 2006, instead of 26th June, 2012. Therefore, now by passing the said impugned circulars dated 29th August, 2018, the said mistake has been rectified by the Managing Director of Respondent Corporation. It is submitted that due to wrong payment of arrears, wrong payment of increments

and wrong pay fixation, huge loss has been caused to the Government and Respondent Corporation. Learned counsel further submits that in Government Resolution dated 3rd July, 2009, it is specifically mentioned that, if there is wrong pay fixation and wrong payment of increments, that has to be cancelled and the same would be recovered from the employees. Learned counsel therefore submits that there is no substance in all the Writ Petitions and the same are liable to be dismissed.

13. We have carefully considered the submissions of the learned counsel appearing for the Petitioners, learned A.G.P appearing for the State and learned counsel appearing for Respondent Corporation. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, and the affidavit in reply filed on behalf of Respondent Corporation.

14. Admittedly, all the Petitioners are in the employment of Respondent Corporation since more than fifteen years. The pay of all the Petitioners was fixed in the year 2012 and as per the said pay fixation, wages were already paid to the Petitioners since the year 2012 onwards. By impugned circulars dated 29th August, 2018, the Respondent Corporation has directed to re-fix the pay of the Petitioners, considering the fact that 6th Pay Commission was made applicable to the Petitioners from 26th June, 2012. As per the impugned circulars, it is further directed to recover the excess payment made to the Petitioners. It is pertinent to note that prior to issuing the impugned circulars dated 29th August, 2018, neither notices were issued to the Petitioners nor an opportunity of hearing was extended to them. Though in the impugned circulars the Petitioners are directed to submit their say within fifteen days in respect of their pay

fixation, however in the same circulars further the Respondent Corporation has called upon the Petitioners to submit in how much installments the excess payment made to them has to be recovered. Thus, it appears that without giving an opportunity of hearing to the Petitioners, the Respondent Corporation has unanimously taken decision to recover the amount which was already paid to the Petitioners. Thus, it appears that without following the principles of natural justice, the Respondent Corporation has issued impugned circulars.

15. In that view of the matter, the impugned circulars dated 29th August, 2018, passed by the Managing Director, Vasantrao Naik Vimukta Jatis and Nomadic Tribes Development Corporation, to the extent of the present Petitioners, deserve to be quashed and set aside and the cases of the Petitioners need to be remitted back to Respondent

No.2 for its fresh consideration, with direction to decide the same within stipulated period, after giving an opportunity of hearing to the Petitioners and to submit their reply, if any.

16. In the result, the impugned circulars dated 29th August, 2018, issued by Respondent No.2 - the Managing Director, Vasantrya Naik Vimukta Jatis and Nomadic Tribes Development Corporation to the extent of present Petitioners, are quashed and set aside. The cases of the Petitioners remitted/ referred back to the Managing Director, Vasantrya Naik Vimukta Jatis and Nomadic Tribes Development Corporation, for its fresh consideration, in the light of the observations made herein above. Needless to observe that Respondent No.2 shall give full opportunity of hearing to the Petitioners and to put forth their contentions and also to submit their reply and documents, if any. The Petitioners are directed to

appear in the office of Respondent No.2 on 17th December, 2018 at 11.00 a.m. Respondent No.2 - the Managing Director of the Corporation is directed to decide the issue afresh, within TWELVE weeks from the date of appearance of the Petitioners before it. The Petitioners shall extend full co-operation for an expeditious hearing of the matters before the Managing Director of the Corporation. Respondent No.2 to take decision on its own merits qua each of the Petitioner. We make it clear that we have not expressed any opinion on merits. Till the issue is decided finally by the Managing Director of the Corporation, the Respondents are directed not to recover any amount from the salaries of the present Petitioners, on account of alleged wrong payment of arrears, wrong pay fixation and wrong payment of increments.

17. All the Writ Petitions are partly

allowed. Rule is made absolute on above terms.

Writ Petitions are disposed of, accordingly.

. The parties to act upon authenticated
copy of this order.

[K.K. SONAWANE, J.]

asb/DEC18

[S.S. SHINDE, J.]