

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

WRIT PETITION NO.5089 OF 2017

Vinayak Gangaram Marathe,
Age. 69 years, Occu. Retired,
R/o 7/B, Bijali Nagar,
Nakane Road, Deopur,
Dhule.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through its Department of Rural Development
Mantralaya, Mumbai- 32.
2. The Chief Executive Officer,
Zilla Parishad, Dhule,
District-Dhule.
3. The Chief Executive Officer,
Zilla Parishad, Nandurbar,
District – Nandurbar.

... **Respondents**

WITH

WRIT PETITION NO.2624 OF 2017

Kamal Arjun Deore,
Age. 62 years, Occu. Household,
R/o Near Mahadeo Mandir,
Behind Jakat Naka, Sakri Road,
Dhule.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through its Department of Rural Development
Mantralaya, Mumbai- 32.
2. The Chief Executive Officer,
Zilla Parishad, Dhule,
District-Dhule.

3. The Chief Executive Officer,
Zilla Parishad, Nandurbar,
District – Nandurbar.

... **Respondents**

WITH

WRIT PETITION NO.2613 OF 2017

Farhim Khan Yusuf Khan Pathan,
Age. 69 years, Occu. Retired,
R/o At Post – Navapur,
Taluka – Navapur
District Nandurbar.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through its Department of Rural Development
Mantralaya, Mumbai- 32.
2. The Chief Executive Officer,
Zilla Parishad, Dhule,
District-Dhule.
3. The Chief Executive Officer,
Zilla Parishad, Nandurbar,
District – Nandurbar.

... **Respondents**

WITH

WRIT PETITION NO.2614 OF 2017

Pandharinath Yadav Wani,
Age. 71 years, Occu. Retired,
R/o 42, Badgujar Colony,
Deopur, Dhule.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through its Department of Rural Development
Mantralaya, Mumbai- 32.
2. The Chief Executive Officer,
Zilla Parishad, Dhule,

District-Dhule.

3. The Chief Executive Officer,
Zilla Parishad, Nandurbar,
District – Nandurbar.

... **Respondents**

...

Mr. S.P.Shah, Advocate for Petitioners
Smt. G.L.Deshpande, AGP for Respondents-State
Mr. N.S.Desale, Advocate for Respondent No.2
Mr. A.S.Sawale, Advocate for Respondent No.3

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**CORAM : PRASANNA B. VARALE AND
MANGESH S. PATIL, JJ.**

DATE : 11.12.2018

JUDGMENT : (Per Mangesh S.Patil J.) :-

Heard. Rule. Rule is made returnable forthwith. The learned AGP waives service for the respondent no.1 and the learned advocates for the other respondents also waive service. With the consent of both the sides, the matters have been heard together and are being disposed of by this common judgment.

2] The learned advocate for the petitioners Mr.Shah submits that the petitioners were appointed on the post of Mistry Grade-II on 14/3/1975. On 8/3/1983 the post was converted from work charge basis to regular temporary establishment. The petitioners were granted pay scale of the next promotional post on completion of more than 12 years of service. It was duly approved and their pay was accordingly revised. It is further pointed out that the benefit of 5th Pay Commission was also extended to the petitioners w.e.f. 1/1/1996. The petitioners stood retired around the year 2005 on superannuation. Their gratuity was computed and pension was determined.

3] The learned advocate further submits that on 15/2/2007, a decision was taken by the respondents to merge various posts like Assistant Junior Engineer, Mistry Grade-I, Mistry Grade-II, Road Clerk etc. and a new post was created as Civil Engineering Assistant. Obviously the employees who were appointed on the post of Mistry Grade-II and such other similar posts, who were still in the employment on the date of coming into force of such order on 15/2/2007 were thus absorbed and posted as Civil Engineering Assistants. In the process, many employees who were junior to the petitioners but were still on the establishment on 15/2/2007 were granted pay scale of next promotional post on completion of 12 years of service. But the petitioners who stood already retired were refused the benefit and thus it has resulted in discrimination. As a result, the pension of the petitioners was revised and recoveries were made which is not legal and proper being arbitrary and discriminatory.

4] Mr.Shah, further submits that although as a condition for absorption of the persons on the post of Mistry Grade-II and such other posts were subject to rider of undergoing a training, the condition was relaxed in respect of the employees who had attained the age of 45 years. Since the petitioners had already crossed that age, on the date the absorption took place, they had become automatically eligible for being absorbed.

5] Lastly, Mr.Shah referred to and relied upon the decision of the Division Bench of this Court (Coram : S.S.Shinde and P.R.Bora,JJ.)in Writ Petition No.5511/2013 decided on 16/2/2016 in the case of

Bapurao Vitthalrao Dhobale and others Versus the State of Maharashtra and others, wherein the employees who were similarly situated but who were appointed in Nanded District on the post of Road Clerk have been held to be entitled to such absorption in the Civil Engineering Assistant post and for consequential benefits. For the same reasons, even these petitions could be allowed by following that decision. The learned advocate also pointed out that in Writ Petition No.4095/2016 and several other such petitions, a similar view has been taken by the Division Bench of this Court (Coram : S.V.Gangapurwala and S.M.Gavhane,JJ.) on 4/12/2017 in the case of Pandurang Kisan Wadnere and others Versus the State of Maharashtra and others, and these petitions may be allowed.

6] The learned advocate for the respondents opposes the petitions on the ground that when the decision to merge different cadres like Mistry Grade-II etc. and to form a post of Civil Engineering Assistant was taken by the Government Resolution dated 20/5/1999 the petitioners had already retired and the policy could not have been made operational retrospectively. There was no discrimination and after realising the mistake of absorbing the petitioners in that cadre, pension has been revised and the recoveries have been made.

7] We have carefully considered the rival submissions. We have also gone through the decisions of the Division Bench of this Court in many matters including Writ Petitions No.5511/2013 and 4095/2016. A careful perusal of these decisions would clearly demonstrate that the fact situation obtaining in those matters is exactly similar to the fact situation obtaining in the matters in hand. Even in those petitions, the petitioners had already retired and the

decision to merge the cadre and to revise the salary was taken after their retirement. It was also noticed that employees who continued to be in the employment but who were junior to the petitioners were granted the benefit. In view of such conspectus of these matters, we find no reason but to subscribe to the reasons given by the Division Benches in the earlier proceedings and for the same reasons, in our considered view, the petitioners herein are entitled to the same benefit. We therefore, allow the Writ Petitions in terms of prayer clauses "A" to "C".

8] The Rule is accordingly made absolute.

(MANGESH S. PATIL, J.)

(PRASANNA B. VARALE, J.)

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