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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12493 OF 2017
WITH
CONTEMPT PETITION NO. 311 OF 2018

Rekha w/o Bhanudas Gorge
Age – 48 years, Occ – Service,
R/o Sanjay Nagar, Near Madhav Nagar,
Latur, Taluka and District – Latur

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai
2. The Commissioner,
Municipal Corporation, Latur
Taluka and District – Latur

RESPONDENTS

WITH
WRIT PETITION NO.12494 OF 2017
WITH
CONTEMPT PETITION NO. 310 OF 2018

Nivrutti s/o Ramrao Gholap
Age – 57 years, Occ – Service,
R/o Sant Goroba Society, Nanded Road
Latur, Taluka and District – Latur

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai
2. The Commissioner,
Municipal Corporation, Latur
Taluka and District - Latur

RESPONDENTS

WITH
WRIT PETITION NO.12495 OF 2017
WITH
CONTEMPT PETITION NO. 309 OF 2018

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| 1. | Sakhubai w/o Ram Gaikwad
Age – 52 years, Occ – Service,
R/o Azad Chowk, AUSA Maroti,
Latur, Taluka and District – Latur | PETITIONERS |
| 2. | Aftabbee w/o Bashumiya Kalyani
Age – 54 years, Occ – Service,
R/o Vivekanand Chowk, Near Varsha Apartment,
Latur, Taluka and District – Latur | |
| 3. | Amrut s/o Maruti Rothod,
Age – 59 years, Occ – Service,
R/o Mantri Nagar,
Latur, Taluka and District – Latur | |
| 4. | Sunita w/o Vilas Kamble,
Age – 43 years, Occ – Service,
R/o Labour Colony,
Latur, Taluka and District – Latur | |
| 5. | Satish s/o Sopan Kshirsagar,
Age – 55 years, Occ – Service,
R/o Siddharth Society, Road No. 15,
Latur, Taluka and District – Latur | |
| 6. | Nagnath s/o Bhimrao Rasal,
Age – 52 years, Occ – Service,
R/o Lal Bahadur Shastri Nagar,
Latur, Taluka and District – Latur | |
| 7. | Prakash s/o Ganpati Kamble
Age – 56 years, Occ – Service,
R/o Siddheshwar Chowk,
Latur, Taluka and District – Latur | |
| 8. | Mahadeo s/o Shankar Kamle
Age – 57 years, Occ – Service,
R/o Indira Nagar,
Latur, Taluka and District – Latur | |

9. Rajaram s/o Bhivaji Kamble
Age – 59 years, Occ – Service,
R/o Indira Nagar,
Latur, Taluka and District – Latur
10. Govind s/o Janardhan Shinde,
Age – 55 years, Occ – Service,
R/o Umbadga (Bk) Taluka – AUSA,
District – Latur
11. Sakhubai w/o Maruti Kamble
Age – 56 years, Occ – Service,
R/o Vilas Nagar,
Latur, Taluka and District – Latur
12. Kisan s/o Bhujang Kamble
Age – 58 years, Occ – Service,
R/o Madhav Nagar, Labour Colony,
Latur, Taluka and District – Latur
13. Bhagwat s/o Mahadu Shinde
Age – 50 years, Occ – Service,
R/o Sidheshwar Chowk,
Latur, Taluka and District – Latur

VERSUS

1. The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai
2. The Commissioner,
Municipal Corporation, Latur
Taluka and District – Latur
3. The Deputy Commissioner,
Municipal Council, Latur
Taluka and District – Latur

RESPONDENTS

WITH
WRIT PETITION NO.13069 OF 2017
WITH

CONTEMPT PETITION NO. 306 OF 2018

Rajendra s/o Moanrao Kiswe PETITIONER
Age – 52 years, Occ – Service,
R/o Sul Galli, In front of Mahatma Gandhi School,
Latur, Taluka and District – Latur

VERSUS

1. The State of Maharashtra RESPONDENTS
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai
2. The Commissioner,
Municipal Corporation, Latur
Taluka and District – Latur

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Mr. Tukaram M. Venjane, Advocate for the petitioners
Mr. A. V. Deshmukh, AGP for respondent - State
Mr. N. P. Patil (Jamalpurkar) and Mr. S. P. Urgunde, Advocates for
respondent No.2 – Corporation
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**[CORAM : SUNIL P. DESHMUKH AND
S. M. GAVHANE, JJ.]**

DATE : 14th OCTOBER, 2019

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. Mr. Venjane, learned advocate appearing for the petitioners submits that impugned communication dated 29th September, 2017, purporting to discontinue benefits accrued to petitioners

under decisions of Labour and Industrial courts as well as subsequent orders passed, based on said decisions of the courts, are being abruptly, without giving any notice and without hearing the petitioners, are sought to be withdrawn.

3. Mr. Venjane, emphatically refers to that while the petitioners had been working as daily wagers, dispute arose in respect of interception in services and matters were taken to Labour court and Labour court had directed reinstatement of petitioners with continuity in service. He further fairly refers to that Labour court, however, had refused to grant request of payment of back wages. He points out that Director of Municipal Administration, Mumbai, had on 18th August, 1990 created and sanctioned various posts in the then Municipal Council, Latur. Municipal Council, Latur had passed an order absorbing services of the petitioners. He submits that while, despite appointments, benefits of 5th pay commission were not being extended, petitioners were compelled to approach industrial court. Industrial court had allowed the complaints lodged by the petitioners directing the Municipal Council, Latur to pay wages recommended under 5th pay commission with arrears from the date of its implementation by the municipal council.

4. He further refers to that writ petitions challenging orders of the Industrial court have been preferred by the municipal council, wherein interim relief has been refused to be granted by this court.

5. Learned advocate Mr. Venjane particularly points out that subsequently, Chief Officer, Municipal Council, Latur had passed orders granting continuity of service to the petitioners and had also applied 5th pay commission pay scales with effect from 1st January, 1996. He submits that while aforesaid is the position in respect petitioners' services and while service careers of the petitioners have not been complained of in any way, impugned communication is abrupt, arbitrary, capricious and infringes Article 14 of the Constitution of India and thus deserves to be quashed and set aside.

6. Mr. Venjane further points out a decision of the Supreme Court in the case of *"State of Punjab and others V/s Rafiq Masih (White Washer) and others"* reported in (2015) 4 SCC, 334, while petitioners are indisputably class IV servants, whereunder the Supreme Court has referred to conditions in which recoveries would be impermissible. Paragraph No. 18 of said judgment reads, thus-

“ 18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where

*payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the **following few situations, wherein recoveries** by the employers, **would be impermissible in law**:*

*(i) **Recovery from the employees belonging to Class III and Class IV services** (or Group C and Group D service).*

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

*(v) In any other case, where the court arrives at the conclusion, **that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.** ”*

7. He submits that even for aforesaid reason, impugned communication with regard to recovery is untenable.

8. Learned advocates for respondent Municipal Corporation – Mr. Jamalpurkar and Mr. Urgunde, however, submit that it may have to be given regard to that writ petitions challenging orders of Industrial court are pending before this court. In such situation, may be ostensibly, impugned communication is abrupt and without notice to the petitioners, yet, legal position will have to be verified in the context of said writ petitions.

9. Though learned advocates for respondent – Corporation have submitted as aforesaid, a clear factual position emerges that petitioners had been directed to be reinstated without back wages by Labour court, since their respective dates of joining, directing continuity of service. Pursuant to the same, services of the petitioners were absorbed granting continuity and since then petitioners are in service without any interruption. No further orders in respect of the same, till the impugned communication had been issued, had been passed, disturbing the situation. Nor there is any court decision against orders passed by labour court, giving continuity in service to the petitioners.

10. While Industrial court had granted relief to the petitioners, directing granting of 5th pay commission pay scales with effect from 1st January, 1996, same is being received by the

petitioners, albeit, writ petitions challenging the same are pending, yet there is obviously no decision thereon. In such a case, impugned communication is indeed from nowhere and is abrupt and it is unsustainable even on the ground of breach of principles of natural justice. It is also not disputed that the petitioners are class IV employees. Paragraph No. 18 of the Supreme Court decision in the case of "*State of Punjab*" (*supra*), would also be pertinent to be taken into account.

11. In the circumstances, impugned communication is absolutely untenable and, as such, is quashed and set aside. So far as granting of pay scale is concerned, needless to refer to that the same would depend on the decision in pending writ petitions.

12. It appears that there is some argument with regard to recovery, while petitioners claim that recoveries have been effected, respondent – Municipal Corporation, however, states otherwise. In such a case, if recoveries are made pursuant to impugned order, same are obviously refundable and accordingly be refunded to concerned petitioners preferably within a period of three months.

13. Writ petitions, as such, stand allowed. Rule is made absolute in aforesaid terms.

14. In view of aforesaid contempt petitions as well stand disposed of.

[S. M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE