

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

WRIT PETITION NO.5345 OF 2018

Rajkumar Damodar Bodhane,
Age: 49 years, Occu. Service,
R/o: Jay Prakash Nagar, Nanded Road, Udgir,
Taluka: Udgir, District: Latur. ..Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai- 400 032.
2. Senior Auditor (Administrative)
Local Fund, Auditor,
Latur, District Latur.
3. The Chief Officer,
Municipal Council, Udgir,
Office of the Municipal Council Udgir,
Taluka: Udgir, District: Latur.
4. Kishan s/o Dadarao Satpote,
Internal Auditor, Municipal Council, Udgir,
Office of the Municipal Council Udgir,
Taluka: Udgir, District Latur. ..Respondents

**WITH
WRIT PETITION NO.5337 OF 2018**

Pathan Ejaj Ahmad s/o Abdul Gaffur Khan,
Age: 55 years, Occu. Service,
R/o: Sant Kabir Nagar,
Near Railway Station, Udgir
Taluka: Udgir, District: Latur. ..Petitioner

Versus

1. The State of Maharashtra

Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai- 400 032.

2. Senior Auditor (Administrative)
Local Fund, Auditor,
Latur, District Latur.
3. The Chief Officer,
Municipal Council, Udgir,
Office of the Municipal Council Udgir,
Taluka: Udgir, District: Latur.
4. Kishan s/o Dadarao Satpote,
Internal Auditor, Municipal Council, Udgir,
Office of the Municipal Council Udgir,
Taluka: Udgir, District Latur. ..Respondents

**WITH
WRIT PETITION NO.5362 OF 2018**

Ravikant S/o Shivajirao Kale,
Age: 38 years, Occu. Service,
R/o: S.R.T. Quarter No.2 Udgir,
Near Old Rest House
Taluka: Udgir, District: Latur. ..Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai- 400 032.
2. Senior Auditor (Administrative)
Local Fund, Auditor,
Latur, District Latur.
3. The Chief Officer,
Municipal Council, Udgir,
Office of the Municipal Council Udgir,
Taluka: Udgir, District: Latur.
4. Kishan s/o Dadarao Satpote,

Internal Auditor, Municipal Council, Udgir,
Office of the Municipal Council Udgir,
Taluka: Udgir, District Latur. ..Respondents

...
Mr. Tauseef Yaseen Sayyed, Advocate for the
Petitioners.

Mrs. P. V. Diggikar, AGP for Respondents-State.

Mr. Parag Vijay Barde and Mr. Ajinkya Reddy,
Advocate for Respondent No.3.

...

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATED : 28th JANUARY, 2019.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

1. The learned counsel for petitioners seeks leave to delete respondent no.4. Leave granted in all writ petitions.

2. Rule. Rule made returnable forthwith. With consent of the parties, matter is taken up for hearing at admission stage.

3. The learned counsel for petitioners submits that the enquiry is initiated by respondents against petitioners. The enquiry is not yet concluded and before conclusion of the enquiry recovery is claimed holding petitioners guilty.

4. Mr. Barde and Mr. Reddy, learned counsel for respondent no.3 submit that petitioners have

alternate efficacious remedy available. They can approach the Labour Court and if the Labour Court finds that the enquiry is defective, the enquiry can be conducted in the Court by adducing evidence. Even the employer can conduct *de novo* enquiry.

5. In the present case, we are not concerned with the disciplinary enquiry. It is not disputed by either parties that the enquiry has been initiated against petitioners and the enquiry is not yet concluded and before conclusion of the enquiry recovery is claimed from petitioners. The respondent-Municipal Council is an instrumentality of the State and is expected to act as a model litigant.

6. As the enquiry has not been concluded, the recovery ought not to have been claimed by the respondents.

7. In light of the above, the impugned orders claiming recovery from petitioners are quashed and set aside.

8. It is made clear, we have not considered the merits of the enquiry. The respondents on conclusion of the enquiry or such other proceedings may claim recovery from the petitioner, if petitioners are found guilty in the same.

9. The amount if recovered from petitioners pursuant to the impugned communication shall be refunded to petitioners within a period of four months.

10. Rule made absolute in above terms. No costs.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE