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

WRIT PETITION NO.3500 OF 2020

- 1) Pralhad s/o Rambhau Dhage,
Age : 61 years, Occ. Pensioner,
R/o Near Panchayat Samiti, Paithan,
Tq. Paithan, Dist. Aurangabad
2. Bhaskar s/o Dnyandeo Kunte,
Age : 60 years, Occ. Pensioner
R/o Samta Nagar, Sillod,
Tq. Sillod, Dist. Aurangabad
3. Dattu @ Dattatray Kale,
Age : 57 years, occ. Service,
R/o Z.P. Irrigation Sub-Division,
Kannad, Tq. Kannad,
Dist. Aurangabad

..PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32
2. The Chief Executive Officer,
Zilla Parishad, Aurangabad,
Dist. Aurangabad
3. The Chief Accounts & Finance Officer,
Zilla Parishad, Aurangabad
Dist. Aurangabad
4. The Executive Engineer (Civil),
Zilla Parishad, Aurangabad,
Dist. Aurangabad
5. The Executive Engineer
Zilla Parishad (Minor Irrigation)
Zilla Parishad, Aurangabad
Dist. Aurangabad
6. The Sub-Divisional Water Conservation
Officer (Minor Irrigation)
Sub-Division, Aurangabad
Zilla Parishad, Aurangabad
Dist. Aurangabad

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7. The Block Development Officer,
Panchayat Samiti Soygaon,
Tq. Soygaon, Dist. Aurangabad
8. The Block Development Officer,
Class-I, Panchayat Samiti Paithan,
Tq. Paithan, Dist. Aurangabad ..RESPONDENTS

Mr Sudhir K. Chavan, Advocate for petitioners;
Mr P.S. Patil, Addl. G.P. for respondent no.1;
Mr S.M. Ganachari, Advocate for respondent nos.2 & 4

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 13th August, 2021

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.)

1. Leave to correct the name of petitioner no.3 and correct prayer clause (B). Correction be carried out forthwith.
2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
3. The petitioners have putforth prayer clauses (B) and (C) as under:-

“(B) To issue writ of certiorari or any other appropriate writ or order or directions in the like nature thereby, the impugned Orders dated 18.10.2019, 15.02.2020 and 7.02.2020 issued by the Respondent Authorities which are at Exhibits “C”, “D” and “E”, to the extent of recovery, may kindly be quashed and set aside.

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(C) To issue writ of mandamus or any other appropriate writ or order or directions in the like nature thereby, the Respondents No.2 to 8 may kindly be directed to refund the amount recovered by them if any, in pursuant to the impugned Orders issued by the Respondent Authorities which are at Exhibits "C", "D" and "E", within stipulated period, which this Hon'ble Court may pleased to direct."

4. While issuing notice on 3rd March, 2020, this Court has granted relief to the petitioners by preventing the respondents from resorting to further recovery by virtue of the impugned communication.

5. All the petitioners are Class-III employees. They were absorbed as Civil Engineering Assistant (Class-III), on the pay scale of Rs.4000-100-6000. Pay fixation as per the 6th Pay Commission recommendations was carried out in 2006. Vide the impugned communication, the respondents have initiated recovery against the petitioners on the ground that they have been the beneficiaries of wrong pay fixation which has resulted in making excess payments to them. One person, namely, Raju Vinayak Bhadane, similarly situated as like these petitioners, approached this Court in Writ Petition No.9854 of 2018 and his petition was allowed on 11th January, 2019. By an order dated 28th July, 2021, this Court had allowed Writ Petition No.904 of 2020 filed by Gajanan Eknath Joshi, against the same respondents. The review petition filed before this Court bearing (Stamp) No.9850 of 2020 in the case of Sopan Apparao Atule (Writ Petition No.3441 of 2019 allowed on 24th September, 2019) has been rejected by

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this Court vide order dated 26th February, 2020.

6. It is undisputed in the case in hand that:-

- a) The petitioners were not personally involved in the pay fixation at issue.
- b) The petitioners have not played any fraud and there is no allegation by the respondents that any of these petitioners have fraudulently obtained excess pay.
- c) Laches are not attributed to the conduct of the petitioners.
- d) Though an undertaking was given, petitioner nos.1 and 2 retired prior to the filing of this petition and petitioner no.3 superannuated after the filing of this petition.

7. Considering the above, we are of the view that the law laid down by the Honourable Apex Court in Chandi Prasad **Uniyal & ors. vs. State of Uttarakhand & ors., (2012) 8 SCC 417** and **High Court of Punjab and Haryana & ors vs. Jagdevsing (2016) 14 SCC 267**, would not be applicable in this case. The cases of these petitioners would be covered by **State of Punjab & ors. vs. Rafiq Masih (White Washer), (2015) 4 SCC 334** and **Syed Abdul Qadir & ors. vs. State of Bihar & ors, (2009) 3 SCC 475**.

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8. In view of the above, this petition is allowed in terms of prayer clauses (B) and (C). In the event of any amounts recovered by the respondents from the petitioners prior to the interim relief granted by this Court, the said amount shall be returned to these petitioners within six weeks from today, without interest, failing which the amount shall carry interest at the rate of 6% per annum from the date of recovery till actually paid.

9. Rule made absolute in the above terms. No order as to costs.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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