

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1743 OF 2020
WITH
CIVIL APPLICATION NO.1278 OF 2022
AND
CIVIL APPLICATION NO.5671 OF 2022
IN
WRIT PETITION NO.1743 OF 2020**

1. Dr. Shivaji Tulsiram Pachpute,
Age 57 years, Occ. Service.
2. Dr. Vinu Shrikushna Lawar,
Age 59 years, Occ. Service.
3. Dr. Jayashri Shivaji Pachpute,
S/o Kashinath Krishnaji Kumkar,
Age 52 years, Occ. Service.
4. Dr. Fernandes Angelo Padru,
Age 61 years, Occ. Service.
5. Dr. Gajanan Nathu Deore,
Age 59 years, Occ. Service.
6. Dr. Krishna Bhagwan Pawar,
Age 59 years, Occ. Service.
7. Dr. Arun Bhagwan Bhosale,
Age 45 years, Occ. Service.
8. Dr. Anilkumar Madhav Tirmali,
Age 49 years, Occ. Service.
9. Dr. Babasaheb Kashiram Mali,
Age 60 years, Occ. Service.
10. Dr. Somnath s/o Ramnath Dhonde,
Age 55 years, Occ. Service.
11. Dr. Namdeo Deorao Sarode,
Age 57 years, Occ. Service.
12. Dr. Raosaheb Baburao Pawar,
Age 58 years, Occ. Service.

13. Dr. Nandkumar Surendra Kute,
Age 55 years, Occ. Service.
14. Dr. Laxman Nivrutti Tagad,
Age 52 years, Occ. Service.
15. Dr. Anil Bajirao Rajguru,
Age 48 years, Occ. Service.
16. Dr. Bhagwan Sahebrao Kadam,
Age 59 years, Occ. Service.
17. Dr. Babasaheb Ramchandra Bhide,
Age 53 years, Occ. Service.
18. Shri. Kadam Shrikant Appasaheb,
Age 56 years, Occ. Service.
19. Dr. Shinde Hanumant Ramchandra,
Age 57 years, Occ. Service.
20. Dr. Joshi Govind Ganesh,
Age 56 years, Occ. Service.

All R/o Mahatma Phule Krishi
Vidyapeeth, Rahuri, Tq. Rahuri,
Dist. Ahmednagar.

21. Arvind Tukaram Deokar,
Age 58 years, Occ. Service,
239/C, Plot NO.8/A, Radhanagari Road,
Kolhapur-416012.
22. Dr. Uddhav s/o Yashvantrao Bhoite,
Age 62 years, Occ. Retired,
R/o. D32, Gulmohor Colony,
Rahuri.
23. Dr. Dhanaji Malhari Gaikwad,
Age 58 years, Occ. Service,
R/o. Sunchiti, Wing-B-2, Flat No.707,
Damani Nagar, Solapur-413001.
24. Dr. Chandrashekhar s/o Raghunath,
Age 61 years, Occ. Retired,

Kshirsagar, R/o. Plot No.40, Sgar Society,
Lane No.4, Pashan, Pune 411021.

25. Kumar Ramling Waykar,
Age 62 years, Occ. Retired,
R/o. At post Pimpri (Sakat),
Tal Barshi. Dist. Solapur 413403.
26. Dr. Baban Bhau Khutal,
Age 63 years, Occ. Retired,
At Post – Manglur (Pargaon),
Tq. Junnar, Dist. Pune 412410.
27. Dr. Ravindra Haridas Kolse,
Age 56 years, Occ. Service,
R/o In front of Jain Tempal,
Tq. Shrirampur, Belapur Bk.,
District Ahmednagar.
28. Dr. Vasant Shamrao Patil,
Age: 60 years, Occupation: Service,
R/o: Yashwantrao Chavan Housing Society,
Kadamwadi, Building No.4,
Flat No.23, Near Municipal School No.12,
Kolhapur- 416 003.
29. Prof. Sharad Jingonda Patil,
Age: 61 years, Occupation: Service,
R/o: In front of Jain Mandir,
Halondi, Tq. Hatkanagle,
District. Kolhapur. ...Petitioners

Versus

1. The State of Maharashtra,
Through the Secretary for
Agricultural Department
Mantralaya, Mumbai.
2. Mahatma Phule Krishi Vidyapeeth,
Rahuri, Tq. Rahuri,
Dist. Ahmednagar,
through its Registrar. ..Respondents

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Mr. V. D. Hon, Senior Advocate i/by Mr. A. V. Hon,
Advocate for the Petitioners.

Mr. S. B. Yawalkar, AGP for Respondent No.1.
Mr. A. S. Shelke, Advocate for Respondent No.2.

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AND

WRIT PETITION NO.7248 OF 2020

1. Dr. Badgujar Chintamnarao Doghu,
Age: 60 years, Occupation: Service,
R/o: Plot No.17, Gat No.94/1,
Subhadra, Khote Nagar, Nimkhedi,
Shivar, Jalgaon,
Jalgaon 425 001.
2. Shri. Bibhishan Balkrishna Patil,
Age: 60 years, Occupation: Service,
R/o: Survey No.68 2A/2B,
Plot No.13, Sangamwadi,
Pune- 411 003.
3. Shri. Ashok Chandrabhan Jadhav,
Age: 53 years, Occupation: Service,
R/o: A-5, Harshada Enclave, Samata Nagar,
New Sangavi, Pune 411 061.
4. Dr. Ulhas Madhukar Borle,
Age: 59 years, Occupation: Service,
R/o 6/1 Shubham Karoti Apartment,
Near Vivekanand College,
Nagala Park Kolhapur,
Karvir, Kolhapur 416 003.
5. Dr. Murlidhar Shirpati Kamble,
Age: 48 years, Occupation: Service,
R/o: Flat No.102, HR-II,
Paranjape Schemes,
Near Ruikar Colony,
Mahadik Mal, Kolhapur 416 005.
6. Dr. Hasure Rajendra Ramgonda,
Age: 57 years, Occupation: Service,
R/o: Teachers Hostel R. No.4,
M.P.K.V. Rahuri, Digrao,
Ahmednagar 413 722.
7. Dr. Bapurao Govinda Gaikawad,
Age: 57 years, Occupation: Service,
R/o: Guruvihar Apartment, Flat No.4,

Nagar Manmad Road, Rahuri Bk.
Taluka Rahuri, Near New Court,
Rahuri, Ahmednagar 413 705.

8. Shri. Sadashiv Bhaskar Deshmukh,
Age: 60 years, Occupation: Service,
R/o: Survey No.32/2/2/12, Sonai Park,
Near Said Sundaram, Kharadi Road,
Chandannagar, Pune 411 014.
9. Dr. Uday Shankarrao Shinde,
Age: 54 years, Occupation: Service,
R/o: 80/2, Near Agni Mandir,
Mahasve Road, Karanje,
Satara City 415 002.
10. Dr. Pushpalata Chandrakant Bhosale,
Age: 48 years, Occupation: Service,
R/o: B-307, Rajarampuri, 13th Lane,
Rajarampuri, Karvir, Kolhapur 416 008.
11. Dr. Hrishikesh Panditrao Sonawane,
Age: 47 years, Occupation: Service,
R/o: Flat No.B-202, Belleza, Hadapsar,
Malwadi, Pune City, Pune 411 028.
12. Shri. Baliram Bandu Meher,
Age: 62 years, Occupation: Retired,
R/o: Sr. No.161/162, Plot No.5,
Pooja Sankur, Flat No.101,
DP Road, Aundh,
Pune 411 007.
13. Dr. Subhash Bhanudas Shinde,
Age: 62 years, Occupation: Retired,
R/o: B-9, Swapnapurti Building,
Lane No.1, Shrinagar Colony,
Opposite to 10 Ellite Project,
Pimple Gurav, Pune 411 001.
14. Shri. Hemand Tukaram Patil,
Age: 60 years, Occupation: Retired,
R/o: At and Post Chinawal,
Taluka Raver, Dist. Jalgaon.
15. Dr. Bharat Dattatray Tamboli,

Age: 62 years, Occupation: Retired,
 R/o: S. No.71/1,2,
 Krishnanagar Lane No.2,
 New Sangavi Pune, Maharashtra 411 061.

16. Nanasaheb Karbhari Kale,
 Age: 59 years, Occupation: Service,
 R/o: C-0401, Sai Laurel Park,
 47/1, Vidyanagar, Pimple Gurav,
 Pune 411 061. ...Petitioners

Versus

1. The State of Maharashtra,
 Through the Secretary for
 Agricultural Department
 Mantralaya, Mumbai.
2. Mahatma Phule Krishi Vidyapeeth,
 Rahuri, Tq. Rahuri,
 Dist. Ahmednagar,
 through its Registrar. ..Respondents

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Mr. V. D. Hon, Senior Advocate i/by Mr. A. V. Hon,
 Advocate for the Petitioners.

Mr. S. B. Yawalkar, AGP for Respondent No.1.

Mrs. J. P. Reddy, Advocate for Respondent No.2.

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AND

WRIT PETITION NO.5947 OF 2020

1. Balwant S/o Gopalrao Pawar,
 Age 64 years, Occ. Retired,
 R/o. 5, Swami Niwas, Bhakti Apartment,
 Vishal Nagar, Near Saibaba Mandir,
 New D.P. Road, Pune 411 027. ...Petitioner

Versus

1. The State of Maharashtra,
 Through the Secretary for
 Agricultural Department
 Mantralaya, Mumbai.
2. Mahatma Phule Krishi Vidyapeeth,
 Rahuri, Tq. Rahuri,

Dist. Ahmednagar,
through its Registrar.

..Respondents

...

Mr. V. D. Hon, Senior Advocate i/by Mr. A. V. Hon,
Advocate for the Petitioner.

Mr. S. B. Yawalkar, AGP for Respondent No.1.

Mr. M. P. Gude, Advocate for Respondent No.2.

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AND

WRIT PETITION NO.7247 OF 2020

1. Dr. Baban Yuvraj Suryawanshi,
Age: 62 years, Occupation: Service,
R/o: Shiv Krupa, Plot No.61,
Behind Savedi Bus Stop,
Savedi, Ahmendnagar 414 003.
2. Shri Vitthal Ramdas Pati,
Age: 55 years, Occupation: Service,
R/o: C/o Kantabai Fandhade,
Rajeshwar Colony,
Rahuri (Kh.), Taluka Rahuri,
District: Ahmednagar.
3. Dr. Sumersingh Dhondusing Rajput,
Age: 53 years, Occupation: Service,
R/o: Plot No.39, Gat No.27,
Nivruttinagar, Near Kerali Mandi, Jalgaon.
4. Dr. Ramesh Shankar Bhadane,
Age: 46 years, Occupation: Service,
R/o: Plot No.45, Gat No.105,
Shriram Samarth Colony,
Opp. Manav Seva School, Jalgaon 425 001.
5. Dr. Chatur Sayaji Thakare,
Age: 54 years, Occupation: Service,
R/o: Mangal Murti Colony,
Plot No.50,
Near Panchavati Gas, Deopur, Dhule.
6. Shri. Pankaj Bhatu Deore,
Age: 44 years, Occupation: Service,
R/o: Plot No.154, Flat No.6,
Shrinivas Park Apartment,
Shivparvati Colony, Datta mandir,
Deopur, Dhule 424 005.
7. Dr. Ramesh Digambar Chaudhari,
Age: 58 years, Occupation: Service,

R/o: Plot No.91, Vidyanagar,
Opposite Mundade High School,
Vidyanagar, Pimprala,
Jalgaon.

8. Dr. Rakesh Balvantrao Sonawane,
Age: 49 years, Occupation: Service,
R/o: Flat No.11, Ganesh Pooja Apartment,
Swami Samarth Nagar,
Behind Jatra Hotel,
Nashik-3.
9. Shri. Munjabapu Haribhau Gawade,
Age: 52 years, Occupation: Service,
R/o. Digras, Mahatma Phule Krishi Vidyapeeth,
Rahuri, Taluka Rahuri, Dist. Ahmednagar.
10. Shri. Dagadu s/o. Dashrath Pardhe,
Age: 43 years, Occupation: Service,
R/o. Chandrapur, Taluka Rahata,
Dist. Ahmednagar.
11. Shri. Shashikant s/o Vikram Patil,
Age: 53 years, Occupation: Service,
R/o> Talai, Taluka Erandol,
Dist. Jalgaon.
12. Dr. Maruti s/o. Harhari Waghmare,
Age: 57 years, Occupation: Service,
R/o. B-3, 10 Bungalow,
Agriculture College Campus,
Shivajinagar, Pune.
13. Kailas Bhaurao Nawale,
Age: 59 years, Occupation: Service,
R/o. E-32, Ravindra Colony,
Mahatma Phule Krushi Vidyapeeth,
Rahuri, Ahmednagar. ...Petitioners

Versus

1. The State of Maharashtra,
Through the Secretary for
Agricultural Department
Mantralaya, Mumbai.
2. Mahatma Phule Krishi Vidyapeeth,
Rahuri, Tq. Rahuri,

Dist. Ahmednagar,
through its Registrar.

..Respondents

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Mr. V. D. Hon, Senior Advocate i/by Mr. A. V. Hon,
Advocate for the Petitioners.

Mr. S. B. Yawalkar, AGP for Respondent No.1.

Mrs. J. P. Reddy, Advocate for Respondent No.2.

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CORAM : R. D. DHANUKA &
S. G. MEHARE, JJ.

RESERVED ON : 11th April, 2022.

PRONOUNCED ON : 06th May, 2022.

JUDGMENT (Per R. D. Dhanuka, J.):—

1. Rule. Rule is made returnable forthwith.
2. Mr. Yawalkar, learned Addl. G.P. for respondent no.1 in all Writ Petitions waives notice. Mr. Shelke, learned counsel for respondent no.2 in WP/1743/2020 waives notice. Mr. Gude, learned counsel for respondent no.2 in WP/5947/2020 waives notice. Mrs. Reddy, learned counsel for respondent no.2 in WP/7247/2020 and WP/7248/2020 waives notice
3. Writ Petition No.1743/2020 is filed by the petitioners under Article 226 of Constitution of India *inter alia* praying for Writ of Certiorari for quashing and setting aside orders/communications dated 30.06.2010, 30.03.2011, 31.05.2013 and 30.06.2014 annexed at Exhibits-F, H, I and J respectively of the Under Secretary, Government of Maharashtra, Agriculture, animal Husbandry, Dairy Development Department and Fisheries Department and

Circular dated 17.08.2010 issued by respondent no.2 Mahatma Phule Agriculture University, Rahuri.

4. The petitioners have also prayed for Writ of Mandamus against respondents not to make any recovery from the salary or otherwise the retirement benefits received by the petitioners while working on the posts of Senior Research Assistants with the respondent no.2-University.

5. Civil Application No.1278/2022 is filed by the applicants *inter alia* praying for impleadment of the applicant no.28 as petitioner no.28. Civil Application No.5671/2022 is filed by the applicants *inter alia* praying for impleadment of applicant no.29 as petitioner no.29.

6. Writ Petition No.7248/2020 is filed by the petitioners under Article 226 of Constitution of India *inter alia* praying for Writ of Certiorari for quashing and setting aside orders/communications dated 30.06.2010, 30.03.2011, 31.05.2013 and 30.06.2014 annexed at Exhibits-F, H, I and J respectively of the Under Secretary, Government of Maharashtra, Agriculture, animal Husbandry, Dairy Development Department and Fisheries Department and Circular dated 17.08.2010 issued by respondent no.2 Mahatma Phule Agriculture University, Rahuri.

7. The petitioners have also prayed for Writ of Mandamus against respondents not to make any recovery from the salary or otherwise the

retirement benefits received by the petitioners while working on the posts of Senior Research Assistants with the respondent no.2-University.

8. Writ Petition No.5947/2020 is filed by the petitioner under Article 226 of Constitution of India *inter alia* praying for Writ of Certiorari for quashing and setting aside orders/communications dated 30.06.2010, 07.09.2019, 30.03.2011, 31.05.2013 and 30.06.2014 annexed at Exhibits-F, H, I, J and K respectively of the Under Secretary, Government of Maharashtra, Agriculture, animal Husbandry, Dairy Development Department and Fisheries Department and Circular dated 17.08.2010 issued by respondent no.2 Mahatma Phule Agriculture University, Rahuri.

9. The petitioner has also prayed for Writ of Mandamus against respondents not to make any recovery from the salary or otherwise the retirement benefits received by the petitioner while working on the post of Senior Research Assistant with the respondent no.2-University and further seeks order and direction against respondent no.2-University to forthwith release the amount of Rs.7,35,702/- withheld from the retirement benefits of the petitioner.

10. Writ Petition No.7247/2020 is filed by the petitioners under Article 226 of Constitution of India *inter alia* praying for Writ of Certiorari for quashing and setting aside orders/communications

dated 30.06.2010, 30.03.2011, 31.05.2013 and 30.06.2014 annexed at Exhibits-F, I, J and K respectively of the Under Secretary, Government of Maharashtra, Agriculture, animal Husbandry, Dairy Development Department and Fisheries Department and Circular dated 17.08.2010 issued by respondent no.2 Mahatma Phule Agriculture University, Rahuri.

11. The petitioners have also prayed for Writ of Mandamus against respondents not to release the amount recovered from the salary of the petitioner nos.5 to 8 while working on the post of Senior Research Assistants with the respondent no.2-University and also all the consequential benefits.

12. By consent of parties, all these petitions and two civil applications were heard together and being disposed of by a common order.

13. The learned counsel appearing for parties jointly state that, facts and issues involved in all these petitions are identical and have argued before this Court in Writ Petition No.7248/2020 as a lead matter. The learned counsel states that, the reasons that would be recorded by the Court in the said judgment would also apply to the companion matters. The statement is accepted.

14. In so far as Civil Application Nos.1278/2022 and 5671/2022 in Writ Petition No.1743/2020 are concerned, the same are for impleadment of the applicant nos.28 and 29 as

petitioner nos.28 and 29 respectively. For the reasons recorded in the Civil Applications, Civil Applications are allowed in terms of prayer Clause 'A'. Amendment to be carried out within two weeks from the date of this order. Amendment shall also be carried out in the copies supplied to the respondents' simultaneously.

15. Some of the relevant facts and arguments in Writ Petition No.7248/2020 are as under:

The details of the petitioners are as under:

Petitioner No.	Date of appointment on the post of Junior Research Assistant	Date of promotion on the post of Senior Research Assistant	Date of promotion on the post of Assistant Professor	Date of Retirement
1.	11.06.1984	25.02.1988	30.07.2004	NA
2.	05.01.1985	18.04.1990	10.08.2004	NA
3.	21.06.1993	17.08.2004	19.11.2009	NA
4.	24.05.1985	15.02.1988	20.12.2007	NA
5.	30.07.1996	14.08.2003	19.12.2007	NA
6.	01.05.1990	18.08.1998	18.08.2005	NA
7.	15.02.1988	11.05.1993	22.04.2001	NA
8.	30.05.1985	21.08.1998	25.07.2005	NA
9.	30.12.1998	01.09.2004	08.11.2009	NA
10.	18.10.1996	24.01.2008	31.07.2012	NA
11.	23.07.1996	18.08.2004	07.08.2008	NA(R)
12.	14.06.1982	12.02.1988	22.03.2001	31.05.2020
13.	27.04.1981	17.08.1982	26.09.1997	31.05.2020
14.	04.05.1984	05.03.1988	20.07.1996	31.05.2020
15.	07.11.1983	29.05.1985	25.06.2004	30.04.2020
16.	11.02.1988	20.07.1996	23.07.2004	NA

16. The petitioner nos.2, 3, 6, 8, 12, 14 and 16 have completed their post graduation in M.Sc. (Agri) and the petitioner nos.1, 4, 5, 6, 7, 9, 10, 11, 13 and 15 have completed their Ph.D. The petitioner nos.12 to 15 have retired from service and are apprehending recovery from their pensionary benefits.

17. On 14.01.1999, the Government of Maharashtra, Department of Agriculture issued a Government Resolution fixing the revised pay scale of the Senior Research Assistants. The revised pay scale fixed was Rs.2200-3700, which was earlier 2000-3500 with qualification of M.Sc. and having five years' service experience. It is the case of the petitioners that, the petitioners were receiving the pay scale as fixed by the Government at the relevant time to the posts of Senior Research Assistants. The State Government also revised from time to time, the pay scale making applicable as per the 4th, 5th and 6th Pay Commissions. Since, the petitioners were eligible on the day when the scale was made applicable as they had Master's degree and also requisite five years' experience, they were paid the salary as per the revised pay scale.

18. On 15.04.1999, the State Government, Agriculture Department issued a resolution thereby re-fixing the scale making effective from 01.01.1996. The scale fixed for the post of Senior

Research Assistant was 7450-1150, Master's Degree with Second Class in relevant subject with five years' experience. The petitioners were eligible for the payment as per the said revised pay scale. The respondents had paid the pay scale as per Government policy decision without raising any objection. No grievance of any nature whatsoever was made regarding the pay scale which had been made applicable to the petitioners and salary were drawn by these petitioners while working on the posts of Senior Research Assistants at the relevant time.

19. Sometime in the year 1990, Virendra Shankarrao Gonge and others filed a Writ Petition bearing No.2750/1990 before the Nagpur Bench of this Court. The petitioners in the said Writ Petition were the employees of the Punjabrao Deshmukh Krishi Vidyapeeth working as Senior Research Assistants and had prayed for deletion of condition of five years' service experience imposed for getting salary of pay scale of Rs.680-1250 in the same cadre. This High Court at Nagpur Bench delivered the judgment in the said Writ Petition on 21.06.2006 holding that, the condition of five years total experience of University service for claiming pay scale of Rs.680-1250 in the cadre of Senior Research Assistant was unsustainable. The five years' service had to be after the candidate is appointed or promoted as the Senior Research Assistant. This Court directed the respondents to

step up the pay of the petitioners as mentioned in the said judgment and to release to them all consequential arrears within a period of four months from the date of the said order.

20. Sometime in the year 2016, respondent no.2-University filed Special Leave to Appeal (C) No.14166 of 2016 in the Hon'ble Supreme Court impugning the said judgment and order dated 17.07.2015 passed by this High Court at Nagpur Bench. The Hon'ble Supreme Court passed an order on 04.01.2018 dismissing the said Special Leave Petition filed by respondent no.2-University. The petitioners having apprehended that, the respondents will recover the salary already paid to the petitioners earlier on the basis of the Government Resolution have filed this petition.

21. On 30.06.2010, the Government of Maharashtra, Agriculture Department issued communication to all the Registrar of Agriculture Universities to take action in accordance with the judgment and order of this Court in the said Writ Petition and to step up all those working on the posts of Senior Research Assistants and re-fix the salary of the concerned employees.

22. The respondent no.2-University thereafter issued Circular dated 17.08.2010 thereby issuing a direction to all those, who had worked on the posts of Senior Research Assistants and sanctioned the pay scale of Rs.7450-225-11500 working in Class I,

II and III employees, who were serving and/or retired, the service books were to be verified within a period of one month. The respondent no.2-University issued an order on 26.08.2020 thereby deciding not to withhold and/or recover the amount from the Professors, who had already approached this Court by way of Writ Petition No.7905/2014.

23. Mr. Hon, learned senior advocate for the petitioners in these batch of petitions invited our attention to the various documents annexed to the writ petitions including the chart referred to aforesaid. He invited our attention to the judgment delivered by this High Court at Nagpur Bench on 21.06.2006 in **Writ Petition No.2750/1990** filed by **Virendra Shankarrao Gonge and others** (supra) and also judgment delivered by the Division Bench of this Court Bench at Aurangabad on 17.07.2015 in **Writ Petition No.7905/2014** in case of **Popat Pandurang Kadu and Others Vs. State of Maharashtra and Others** and would submit that, five years' service has to be completed after the candidate is appointed or promoted as the Senior Research Assistant.

24. It is submitted that, Circular issued by the State Government was in pursuance of the judgment of this High Court at Nagpur Bench in Writ Petition No.2750/1990. He submits that, the Aurangabad Bench in the said judgment in case of **Popat Pandurang Kadu and Others** (supra) held that, the Division Bench of the Nagpur bench did not

direct the respondents to reduce the pay scale and had directed to step up the pay scale of the petitioners therein to bring at par with such of the Senior Research Assistants like that of the petitioners. If the pay scale was given to the petitioners for more than 10 to 15 years back, the recovery at such belated stage will not be permitted in view of the judgment in the case of **State of Punjab Vs. Rafiq Masih (White Washer)** delivered on 18.12.2014. He submits that, Aurangabad Bench has accordingly directed respondents not to revise/re-fix the pay scale of the petitioners pursuant to the impugned circular dated 17.08.2010. He invited our attention to the order dated 04.01.2018 passed by the Hon'ble Supreme Court in the Special Leave Petition No.14166/2016 filed by respondent no.2-University before the Hon'ble Supreme Court impugning the judgment of the Nagpur Bench thereby dismissing the said Special Leave Petition.

25. The learned senior advocate for the petitioners placed reliance on the judgment of this Court in case of **Vaijinath Jadhav Vs. State of Maharashtra** reported in 2009 (3) **Mh.L.J.** 286 directing respondents not to make any recovery from the salary of the petitioners for which he was not eligible to hold the post of Assistant Accountant. He submits that, principles laid down by this Court in above referred case would apply to the facts of this case. He also placed reliance in case of

Koyala Udyog Kamgar Sanghtana Vs. The Central Mining reported in 2007 (4) Mh.L.J. 766 holding that, the recovery of amount of H.R.A. allegedly paid in excess to the employees for no fault of the employees cannot be permitted and thereby quashing and setting aside the order of recovery.

26. The learned senior advocate for the petitioners invited our attention to the circular and order dated 26.08.2020 passed by respondent no.2-University whereby decided not to withhold and/or recover the amount from the Professors who had already approached this Court by way of Writ Petition No.7905/2014. He submits that, the respondent no.2 cannot treat the petitioners differently than the petitioners who had approached this Court for impugning an action of recovery on the part of respondents from their salary on the ground of alleged excess payment. He submits that, University cannot be allowed to treat the employees similarly situated differently. The pay scale for the post of Senior Research Assistant was fixed in the year 1981. This High Court at Nagpur Bench in Writ Petition No.2750/1990 had specifically observed that, the question raised in that petition was not called for and therefore, this Court had not answered the said issue.

27. The learned senior advocate for the petitioners submits that, case of **Popat Pandurang Kadu and Others** (supra) was filed by the similarly situated persons in this Court. This Court had

allowed the said Writ Petition and had directed the respondents not to revise/re-fix the pay scale of the petitioners therein pursuant to the impugned circular. The Special Leave Petition filed by the State Government against the said judgment of this Court delivered on 17.07.2015 came to be dismissed.

28. The learned senior advocate for the petitioners placed reliance on the judgment delivered at Aurangabad Bench comprising of one of us (R.D. Dhanuka, J.) in case of **Ramkrishna s/o Narayan Ghuge Vs. State of Maharashtra and Others** reported in 2018 (2) Mh.L.J. 750 and in particular paragraph nos.39 to 47 in support of the submissions that, respondents cannot be allowed to recover any amount from the salary of the petitioners on account of alleged excess payment made due to any mistake or any other ground or from the retiral benefits of some of the petitioners.

29. Mr. Gude, learned advocate for respondent no.2 in Writ Petition No.5947/2020, Mrs. Reddy, learned advocate for respondent no.2 in Writ Petition Nos.7247/2020 and 7248/2020 on the other hand invited our attention to paragraph no.4 of the judgment delivered by this High Court at Aurangabad Bench in case of **Popat Pandurang Kadu and Others** (supra). In the said judgment after considering the judgment delivered at Nagpur Bench of this Court had directed respondents not to revise/re-fix the pay scale of the petitioners pursuant to the impugned circular. It is submitted that, the

present Writ Petition is time barred and suffered from latches on the part of the petitioners.

30. It is submitted by the learned counsel that, five years' service had to be after the candidate is appointed or promoted as the Senior Research Assistant and thus State Government had directed all the Agriculture Universities including his client to verify the cases of such employees who had been granted higher pay scale of Senior Research Assistant considering their past services on the post of Junior Research Assistant. It was further directed that, the University should count five years' service only after appointment as Senior Research Assistant for higher scale and revised and re-fixed the salary of concerned employees. He submits that, the said circular dated 17.08.2010 was thus rightly issued by the University.

31. It is submitted by the learned counsel for the University that, the pay scale of the petitioners was verified and it was discovered that the higher pay scale of Rs.680-1250 was granted to the petitioners considering their past services on the posts of Junior Research Assistants. The respondent no.2-University therefore, had passed an order on 30.03.2011, 31.05.2013 and 30.06.2014 revising pay of the petitioners and hold them eligible for grant of higher pay scale with effect from the date of completion of five years of service as Senior Research Assistants. He submits

that, the Nagpur Bench of this Court has already interpreted the condition of five years' service experience in the said judgment for claiming pay scale of Rs.680-1250 in the cadre of Senior Research Assistants.

32. Mr. Yawalkar, learned Addl. G.P. for the State submits that, as per Government Resolution dated 01.08.1981, person to be held eligible for the higher pay scale for the post of Senior Research Assistant is required to pass post graduation degree in the relevant subject and should possess five years of experience. He also placed reliance on the judgment delivered at Nagpur Bench in Writ Petition No.2750/1990. He submits that, the petitioners have given undertaking which are binding upon them. He invited our attention to the undertaking given by one of the petitioner and would submit that, in view of such undertaking given, this Writ Petition is not maintainable.

33. It is submitted that, period of five years has to be counted after the candidate is appointed or promoted as Senior Research Assistant. The Government Resolution was issued after judgment of Nagpur Bench came to be delivered and was applicable to all existing employees and in future in case of revision of pay scale. He placed reliance on the judgment delivered by the Division Bench of this Court at Aurangabad Bench on 07.10.2021 in **Writ Petition No.950/2020** in case of **Hai Mujahid Ekbal Abdul Siddiqui Vs. The State of**

Maharashtra and Ors. in support of his submission that, the petitioners having given undertaking not to oppose the recovery, if any, by the employer in case of excess payment cannot be allowed to challenge such action of recovery.

34. The learned Addl. G.P. placed reliance on the following judgments:

1. Chandi Prasad & Ors. Vs. State of Uttarakhand & Ors. reported in (2012) 8 SCC 417.
2. High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh reported in 2016 (14) SCC 267.
3. Walmik Sitaram Sirsath Vs. State of Maharashtra & Ors. reported in 2018 (4) Mh.L.J. 490.
4. Mandeep Singh Kohli & Ors. Vs. Union of India & Ors. reported in 2021 (1) Mh.L.J. 370

35. Mr. Hon, learned senior advocate for the petitioners submits that, the pay fixation was done by the University. 51 identically situated employees were granted reliefs. The reliefs were not granted to the petitioners herein on the ground that, they were not parties to the earlier Writ Petition. He submits that, the recovery cannot be permitted beyond the period of limitation. The revised pay scale was fixed by the State Government after delivery of Nagpur Bench judgment. He submits that, the Nagpur Bench had rendered a decision in the year 2006. The action of recovery, if any, could be taken in the year 2006. The Government Resolution was issued in the year 2010. The circular was issued by the University in the year 2011. The recovery proposed is in the year 2020.

REASONS AND CONCLUSIONS

36. A perusal of the chart annexed in Writ Petition No.7248/2020 indicates that, all these petitioners were appointed on the posts of Junior Research Assistants during the period between 1984 and 1996. They were promoted on the post of Senior Research Assistants during the period between 1988 and 2008. They were promoted on the posts of Assistant Professors during the period between 1996 and 2012. 12 of the petitioners have not retired till date. 3 of the petitioners have retired on 31.05.2020 and one petitioner has retired on 30.04.2020.

37. Virendra Shankarrao Gonge and others had filed a Writ Petition bearing No.2750/1990 before the Nagpur Bench, who were working as Senior Research Assistants and had prayed for deletion of condition of five years experience imposed for getting pay scale of Rs.680-1250 in the same cadre. There was no dispute that all the petitioners therein were duly qualified and had been selected as Senior Research Assistants on the basis of Post Graduate Degree of M.Sc. (Agri.) held by them. The pay scale of those Senior Research Assistants was revised. It was provided that, the higher scale would be paid to those Senior Research Assistants who had educational qualification of Master's Degree with atleast Second Class in relevant subject with five years' experience in research

with identifiable research contribution. The said pay scale was prescribed from 01.08.1981.

38. The said condition of five years' experience in research was impugned in the said petition. This Court in the said judgment held that, the higher pay scale of Rs.2200-3700 had been sanctioned to Senior Research Assistants for their earlier pay-scale of Rs.2000-3500, if they were having Post Graduate qualification in second class with experience of five years with University. The experience of five years with University had been treated as factor to distinguish and classify the Senior Research Assistants into two pay-scale. It was apparent that, the Junior Research Assistants with total five years experience had been given higher pay scale by University after they became Senior Research Assistants. A senior Senior Research Assistant already in said cadre on that day continued to draw wages in lower pay scale because he had not completed five years' service.

39. This Court accordingly held that, a person with B.Sc. Degree in first division with distinction has been treated as equivalent to a person holding B.Sc. Degree in Second class with three years experience and similarly, a person with M.Sc. (Agri.) degree has also been treated as equivalent to person with B.Sc. (Agri.) second class with three years experience. This Court held that, the grievance of the petitioners could

be ventilated by directing the respondents to step up their pay to the existing pay of the Senior Research Assistants who got the fixation in scale of 680-1250 accordingly prior to them because of completion of total five years of service in University, but is junior to them in cadre of Senior Research Assistants. This Court accordingly held that, if pay of petitioners is stepped up, no injustice would be caused to such junior in cadre of Senior Research Assistants who were already placed in time scale of Rs.680-1250 at the relevant time and whose salary had been revised accordingly from time to time.

40. This Court accordingly held that, condition of having five years total experience of University service for claiming pay scale of Rs.680-1250 in the cadre of Senior Research Assistant was unsustainable. The five years service has to be after the candidate is appointed or promoted as the Senior Research Assistant. The Nagpur Bench did not think it necessary to quash and set aside the said condition and directed the respondents to step up the pay of the petitioners therein and to release to them all consequential arrears within a period of four months from the date of the said judgment.

41. A perusal of the said judgment of the Nagpur Bench clearly indicates that, the Nagpur Bench directed the respondents to step up the pay

of these petitioners to the existing pay of the Senior Research Assistants, who got the fixation in scale of 680-1250 accordingly prior to them because of completion of total five years of service in University, but was junior to them in cadre of Senior Research Assistant with a view to do justice to the petitioners and not to do injustice to such juniors in cadre of Senior Research Assistant who were already placed in time scale of Rs.680-1250 at the relevant time and whose salary had been revised accordingly from time to time.

42. A perusal of the Government Resolution and Circular issued by the University clearly indicates that, the said judgment of the Nagpur Bench has been misinterpreted by the respondents for suggesting recovery of the alleged over paid amount due to said re-fixation of pay.

43. The Aurangabad Bench of this Court in case of **Popat Pandurang Kadu and Others** (supra) had considered the petition filed by the petitioners who had joined services with the University as Junior Research Assistants and had completed their Post Graduation in M.Sc. (Agri.). They were also promoted to Senior Research Assistants. The revision of pay scale had been done applying the scale as per 5th and 6th Pay Commissions. The State Government had issued Resolution on 15.04.1999 thereby re-fixing the scale with effect from 01.01.1996. This Court considered the submissions

made by the learned senior advocate for the petitioners that, the Division Bench of Nagpur Bench in the judgment delivered on 21.06.2006 did not direct to reduce the pay scale of the Senior Research Assistants in the scale of Rs.680-1250, but had directed to step up the pay scale of the petitioners therein so as to bring them at par with the pay scale which had been received by the present petitioners in the scale of Rs.680-1250.

44. The Aurangabad Bench of this Court accepted the submissions made by the learned senior advocate in the said judgment in case of **Popat Pandurang Kadu and Others** (supra) that, the Nagpur Bench had not directed to reduce the pay scale, but had directed to step up the pay scale of the petitioners therein so as to bring them at par with such of the Senior Research Assistants like that of the petitioners in the said petition. This Court accordingly held that, if the pay scale was given to the petitioners more than 10 to 15 years back, the recovery at such belated stage will not be permitted in view of the judgment in the case of **State of Punjab vs. Rafiq Masih (White Washer)** (supra). The Aurangabad Bench accordingly in the said judgment directed the respondents not to revise/re-fix the pay scale of the petitioners pursuant to the impugned circular nor any recovery shall be claimed against the petitioners pursuant to the impugned communication.

45. In our view, the said judgment of

Aurangabad Bench of this Court in case of **Popat Pandurang Kadu and Others** (supra) would apply to the facts of this case. The Hon'ble Supreme Court by order dated 04.01.2018 has already dismissed the Special Leave Petition filed by the University arising out of the said judgment delivered by this Court on 17.07.2015. The impugned communication and the Government Resolutions/Circulars issued by the State Government or the respondent no.2-University as the case may be are contrary to the judgment delivered by the Aurangabad Bench of this Court in case of **Popat Pandurang Kadu and Others** (supra).

46. The Division Bench of this Court at Aurangabad in case of **Ramkrishna s/o Narayan Ghuge** (supra) has considered the judgment of the Hon'ble Supreme Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others** reported in (2015) 4 SCC 334 and other various judgments would not assist the case of the petitioners.

47. In our view, the undertaking pressed in service by the learned counsel for the University and the State is contrary to the principles laid down by the Hon'ble Supreme Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others** (supra).

48. In so far as the judgments relied upon by the learned Addl. G.P. are concerned, there is no dispute about the proposition of law that, any

amount paid or received without authority of law can always be recovered. The facts before this Court in this judgment were totally different. The Circulars/Resolutions issued by the State Government or the University are issued by misinterpreting the judgment of the Nagpur Bench.

49. The Aurangabad Bench of this Court has interpreted the judgment of the Nagpur Bench and has thereafter stopped the action of recovery from the payment of salary or retirement benefits. The said judgment would apply to the facts of this case. In our view, the petitioners have made out a case for grant of reliefs as prayed. We accordingly pass the following order:

(a) Writ Petition No.7248/2020 is allowed in terms of prayer Clause (B) to (D). If any amount is recovered from the salary of the petitioners or from the retirement benefits of the petitioners, the same shall be refunded to the petitioners within a period of four weeks from today.

(b) Writ Petition No.1743/2020 is allowed in terms of prayer Clause (B) to (D). If any amount is recovered from the salary of the petitioners or from the retirement benefits of the petitioners, the same shall be refunded to the petitioners within a period of four weeks from today.

(c) Writ Petition No.5947/2020 is allowed in terms of prayer Clause (B) to (D). If any amount is

recovered from the salary of the petitioner or from the retirement benefits of the petitioner, the same shall be refunded to the petitioner within a period of four weeks from today.

(d) Writ Petition No.7247/2020 is allowed in terms of prayer Clause (B) to (E). If any amount is recovered from the salary of the petitioners or from the retirement benefits of the petitioners, the same shall be refunded to the petitioners within a period of four weeks from today.

(e) Rule is made absolute in aforesaid terms.

(f) Parties to act on the authenticated copy of this order.

(S. G. MEHARE)
JUDGE

(R. D. DHANUKA)
JUDGE