

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

WRIT PETITION NO. 8690 OF 2021

Digambar s/o. Dnyanoba Kolekar,
Age 65 years, Occu. Retired – Nil,
R/o. Rajgad Nagar, Dnyaneshwar Building,
Nanded-Purna Road, Taroda (Kh.), Nanded.

...Petitioner.

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Public Works Department,
Mantralaya (Annex), Mumbai – 400032.
2. The Additional Chief Secretary,
Department of Agriculture & Marketing,
Mantralaya, Mumbai – 400032.
3. The Additional Chief Secretary,
Department of Finance,
Mantralaya, Mumbai – 400032.
4. Vasantao Naik Marathwada
Agriculture University, Parbhani,
Basmat Road, Krishinagar, Parbhani,
Taluka & District : Parbhani – 431402,
Through its Registrar

....Respondents.

...

Mr. N.K. Chaudhari, Advocate for petitioner.

Mrs. M.A. Deshpande, AGP for respondent Nos. 1 to 3.

Mr. M.N. Navandar, Advocate for respondent No. 4.

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WITH

WRIT PETITION NO. 8691 OF 2021

Abdul Raheem s/o. Shaikh Ahmed,
Age 63 years, Occu. Retired – Nil,
R/o. Turabul Haq Nagar, Dargah Road,
House No. 1578, Parbhani.

...Petitioner.

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Public Works Department,
Mantralaya (Annex), Mumbai – 400032.
2. The Additional Chief Secretary,
Department of Agriculture & Marketing,
Mantralaya, Mumbai – 400032.
3. The Additional Chief Secretary,
Department of Finance,
Mantralaya, Mumbai – 400032.
4. Vasantrao Naik Marathwada
Agriculture University, Parbhani,
Basmat Road, Krishinagar, Parbhani,
Taluka & District : Parbhani – 431402,
Through its Registrar

....Respondents.

...

Mr. N.K. Chaudhari, Advocate for petitioner.
Mrs. M.A. Deshpande, AGP for respondent Nos. 1 to 3.
Mr. M.N. Navandar, Advocate for respondent No. 4.

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WITH

WRIT PETITION NO. 8692 OF 2021

Gulam Murtuza s/o. Gulam Gaus,
Age 62 years, Occu. Retired – Nil,
R/o. Darga Road, Ek Minar Road,
Parbhani, Taluka and District Parbhani.

...Petitioner.

Versus

1. The State of Maharashtra,
Through its Additional Chief Secretary,
Department of Agriculture & Marketing,
Mantralaya, Mumbai – 400032.
2. Vasantrao Naik Marathwada
Agriculture University, Parbhani,

Basmat Road, Krishinagar, Parbhani,
Taluka & District : Parbhani – 431402,
Through its Registrar.

3. The Comptroller,
Vasantrya Naik Marathwada
Agriculture University, Parbhani,
Basmat Road, Krishinagar, Parbhani,
Taluka & District : Parbhani – 431402.

....Respondents.

...

Mr. N.K. Chaudhari, Advocate for petitioner.
Mrs. M.A. Deshpande, AGP for respondent No. 1.
Mr. M.N. Navandar, Advocate for respondent No. 2 & 3.

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WITH
WRIT PETITION NO. 8693 OF 2021

Ulhas s/o. Mahadeorao Khambayatkar,
Age 61 years, Occu. Retired – Nil,
R/o. C/o. “Sahas”, 75/2, Mathura Nagar,
Near Krishi Sarathi Colony, Vasmat Road,
Parbhani, Tq. and District Parbhani.

...Petitioner.

Versus

1. The State of Maharashtra,
Through its Additional Chief Secretary,
Department of Agriculture & Marketing,
Mantralaya, Mumbai – 400032.
2. Vasantrya Naik Marathwada
Agriculture University, Parbhani,
Basmat Road, Krishinagar, Parbhani,
Taluka & District : Parbhani – 431402,
Through its Registrar.
3. The Comptroller,
Vasantrya Naik Marathwada
Agriculture University, Parbhani,
Basmat Road, Krishinagar, Parbhani,
Taluka & District : Parbhani – 431402.

....Respondents.

...

Mr. N.K. Chaudhari, Advocate for petitioner.

Mrs. M.A. Deshpande, AGP for respondent No. 1.

Mr. M.N. Navandar, Advocate for respondent No. 2 & 3.

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WITH

WRIT PETITION NO. 8717 OF 2021

Devidas s/o. Gambhirrao Sutar,
Age 60 years, Occu. Retired – Nil,
R/o. Sahakar Nagar, Old Pedgaon Road,
Parbhani, Tq. and District Parbhani.

...Petitioner.

Versus

1. The State of Maharashtra,
Through its Additional Chief Secretary,
Department of Agriculture & Marketing,
Mantralaya, Mumbai – 400032.

2. Vasantao Naik Marathwada
Agriculture University, Parbhani,
Basmat Road, Krishinagar, Parbhani,
Taluka & District : Parbhani – 431402,
Through its Registrar.

3. The Comptroller,
Vasantao Naik Marathwada
Agriculture University, Parbhani,
Basmat Road, Krishinagar, Parbhani,
Taluka & District : Parbhani – 431402.

....Respondents.

...

Mr. N.K. Chaudhari, Advocate for petitioner.

Mrs. M.A. Deshpande, AGP for respondent No. 1.

Mr. M.N. Navandar, Advocate for respondent No. 2 & 3.

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

DATED : 07/03/2022.

ORAL JUDGMENT :

1. Rule. The learned AGP waives service for respondent/ State. Learned counsel Mr. M.N. Navandar waives service for respondent/University. Rule made returnable forthwith. By consent of parties, all the petitions were heard together finally and are being disposed of by a common order.

2. The parties have addressed this Court in Writ Petition No. 8693/2021 as a lead matter and stated that as the facts involved in all the petitions and questions of law raised are also identical, common order can be passed.

3. By these petitions, filed under Article 226 of Constitution of India, the petitioners seek declaration that the initiation of the departmental enquiry/proceedings against the petitioners under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 is arbitrary and illegal and further seek writ of prohibition against the respondents for conducting the disciplinary enquiry against the petitioners.

4. The petitioners were appointed on various posts. According to the respondents, there were certain irregularities in the civil construction, carried out during the period 2011-2012 in the premises of the University. The show cause notices were issued to the

petitioners during the period between 24th February 2014 and 28th February 2014. Petitioners in Writ Petition Nos. 8690/2021, 8692/2021, 8693/2021, 8717/2021 filed their reply on 4.3.2014, 3.3.2014, 4.3.2014 and 4.3.2014, respectively. Each of the petitioner also made representation in October 2015. In the meanwhile, the petitioner in Writ Petition No. 8690/2021 retired on 31.7.2014, petitioner in Writ Petition No. 8691/2021 on 31.5.2016, petitioner in Writ Petition No. 8692/2021 on 5.10.2015, petitioner in Writ Petition No. 8693/2021 on 31.7.2017 and petitioner in Writ Petition No. 8717/2021 on 30.6.2018. It is not in dispute that till the date of retirement, no charges were issued by the University against each of the petitioner.

5. The learned counsel for the petitioners invited our attention to the unreported judgment of this Court delivered in **Writ Petition No. 12735/2018 on 14th October, 2019 in case of Ulhas Mahadeorao Khambayatkar Vs. The State of Maharashtra** and would submit that after considering the identical facts and Rule 27 of the Maharashtra Civil Services (Pension) Rules 1982, this Court having found that the charges not having been issued before the date of retirement, the entire enquiry proceedings were vitiated.

6. The learned counsel for University and the learned A.G.P

would submit that various decisions were required to be taken before issuing any statement of charges against each of the petitioner. The State Government had issued various instructions to the University to start departmental enquiry against the petitioners.

7. The learned counsel for the University states that the State Government is responsible for not issuing directions to conduct the enquiry before the date of retirement of each of the petitioner.

8. None of the respondents are in a position to distinguish the decision in the case of **Ulhas Khambayatkar** (supra) and are blaming each other for not issuing statement of charges against the petitioners before their retirement.

9. The Division Bench of this Court in the judgment of **Ulhas Khambayatkar** (supra), after adverting to Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 and more particularly Rule 27 (2) (b)(ii) has held that the departmental enquiry is deemed to be instituted on the date on which the statement of charges is issued. The events alleged were of the year 2011-2012 i.e. more than seven years prior to the date of of issuing charges. This Court accordingly held that even on that count, it would not be permissible to institute the departmental enquiry against the petitioner.

10. In the facts of this case, the period of occurrence of alleged

event was also 2011-2012. In these cases, we are informed that statement of charges have been issued by the University only in the year 2020-2021 i.e. much after the date of retirement of each of the petitioner. The issuance of charges is also much after expiry of four years from the date of alleged occurrence of the event which was the subject matter of the statement of charges. In our view, the action initiated by the University is in breach of Rule 27 (2)(b)(ii). The principles of law laid down in the case of **Ulhas Khambayatkar** (supra) applies to the facts of these cases. We do not propose to take any different view in the matters.

11. In our view, since the respondents have not issued statement of charges before the retirement of the petitioners, the departmental enquiry could not have been initiated after the retirement of each of the petitioner. Even otherwise, in view of the fact that the statement of charges were issued for the alleged event after more than four years of happening of such alleged event, the department enquiry could not have been initiated even on that ground. The initiation of enquiry is accordingly vitiated and cannot be allowed to be continued. We accordingly pass the following order :-

ORDER

(I) Writ Petitions are allowed in terms of prayer clauses 'B'

and 'C'.

- (II) Insofar as the consequential benefits, which would accrue in favour of the petitioners, shall be paid to each of the petitioner within four weeks from today without fail, with interest to be paid under Rule 129-A and 129-B of the Maharashtra Civil Services (Pension) Rules 1982. The same shall be released in favour of the petitioners if not released so far within four weeks from today.
- (III) It is made clear that the payment of interest would be computed from the date of payment due till payment. It is made clear that the benefits of pension along with interest payable to the petitioners at the first instance to be paid by the University subject to their right to apply for grant to the State Government in accordance with law.
- (IV) Insofar as Writ Petition No. 8693/2021 is concerned, if the petitioner has already received part of the pension in accordance with the judgment delivered by this Court on 14th October, 2019 cited supra, the respondents are at liberty to deduct the said amount and pay the balance amount with interest.
- (V) Rule is made absolute in aforesaid terms. No order as to

costs.

Parties to act on authenticated copy of this order.

[S. G. MEHARE, J.]

[R. D. DHANUKA, J.]

ssc/