



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

WRIT PETITION NO. 13441 OF 2023

Malu s/o Sambhaji Palekar & ors. ... **PETITIONERS**

**VERSUS**

The State of Maharashtra & ors. ... **RESPONDENTS**

.....  
Mr. G.J. Karne, Advocate for petitioners  
Mr. S.D. Ghayal, A.G.P. for State  
Mr. N.S. Kadam, Advocate for R.No.2 to 4  
.....

**CORAM : R.G. AVACHAT AND  
ABASAHEB D. SHINDE, JJ.**

**DATE : 3rd DECEMBER, 2025**

**ORDER :**

Heard. The petitioners claim to have joined service as Live Stock Supervisors during the period 1983-1986. They were appointed with various Veterinary Hospitals under the respondent Zilla Parishad. In the year 2013, the respondent Zilla Parishad sought to recover certain amounts, said to have been overpaid to the petitioners herein. The petitioners, therefore, preferred Writ Petition, (No.2487/2017), challenging

the said recovery only. This Court, vide order dated 23/10/2018, allowed the said Writ Petition, holding the letter regarding the recovery of the overpaid amount to be illegal and therefore set it aside.

2. Now the petitioners are before us, contending that the increments withheld by the respondent Zilla Parishad be directed to be released in their favour.

3. Learned Advocate for the petitioners would submit that, this Court held that the recovery of the so called over-payment was illegal. Consequently, the respondent Zilla Parishad is under obligation to release the unauthorisedly withheld increments. According to him, some of the petitioners have even retired from service. He adverted our attention to paragraph Nos.7 and 9 of the order dated 23/10/2018 passed in the Writ Petition. He has also placed on record a chart indicating how much amount is liable to be released in favour of the petitioners. He therefore urged for allowing the Writ Petition.

4. We have perused each and every paragraph of the

petition. It is necessary to first advert to the main prayer clauses, which read thus :

- (B) By a writ of mandamus or any other appropriate writ, or order in the nature of mandamus the respondents may be directed to release the amount of increment which is withheld by the respondents along with statutory interest thereof.
- (C) By a writ of mandamus or any other appropriate writ, or order in the nature of mandamus the respondents may be directed to re-fix the pension of the petitioners who have retired and also direct to calculate an amount of due increment and deposit in this Hon'ble Court.

5. On close reading of the averments made in the petition, it has nowhere been mentioned in which year/s and how many increment/s of the petitioners have been withheld. Reason/s for withholding of those increment/s have also not been given therein. None of the petitioners either claim to have passed departmental examination or claimed exemption from appearing in such examination.

6. The respondent Zilla Parishad has, on the other hand, filed an affidavit-in-reply, stating therein that the petitioners, on joining the service, were under obligation to clear Language and Departmental examination. Our attention

has been adverted to Rule 5 of the Maharashtra Zilla Parishads District Service Post Recruitment Examination Rules, 1985 whereunder unless and until the petitioners and like employees clear such examination, no due increments could be released in favour of such employees. For better appreciation, Rule 5 is reproduced below :

**“5. Consequences of failure to pass the Examination :-**

(1) A Parishad employee who fails to pass the examination within the period and chances specified in Rule 4, shall not, until he passes the Examination or is exempt from passing the Examination under Rule 6, -

- (a) be confirmed in the post which he is holding;
- (b) be allowed to draw his next increment in the scale of the post which he is holding.

(2) Increments so withheld under paragraph (b) of sub-rule (1) shall become payable to a Parishad employee with effect from the date of which he passes the Examination and future increments shall occur as if no increment was withheld. The arrears of increment shall not be admissible for the period during which his increment was so withheld.

(3) Notwithstanding anything contained in sub-rule 91) or (2), a Parishad employee appointed to the post by nomination after the appointed date who fails to pass the Examination within the period and chances specified in Rule 4 shall be liable for termination of his services.”

7. At the cost of repetition, it is stated that, none of the petitioners have claimed exemption from appearing in such examination nor have they come with a case to have cleared such examination and, therefore, the withholding of increment/s was illegal one. Reliance on the judgment of this Court would be of little consequence for grant of relief claimed in this Writ Petition. The prayers in the decided Writ Petition pertained only for stalling recovery of the amount said to have been overpaid and/or refund of the amount recovered. Relying on the judgment of the Apex Court in case of **State of Punjab & ors. Vs. Rafiq Masih (White Washer) & ors.** reported in **(2015) 4 SCC 334**, the Division Bench of this Court granted the relief to the petitioners. In the very Writ Petition, the petitioners could have come with a prayer made in the present Writ Petition. The present Petition also suffers from the principle of constructive res judicata.

8. For want of specific pleadings, and having not made out any right for release of increment/s said to have been withheld on account of the petitioners to have not cleared

Language and/ or Departmental examination, we found the petition without merit and, therefore, liable to be dismissed.

The petition is, therefore, dismissed.

**(ABASAHEB D. SHINDE, J.)**

**(R.G. AVACHAT, J.)**

fmp/-