

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABA**

**O.A. NO. 208/2017 WITH O.A. NO. 209/2017 WITH O.A. NO.  
364/2017**

**01. ORIGINAL APPLICATION NO. 208 OF 2017**

**DISTRICT: - HINGOLI.**

- 1. Marathwada Sarva Shramik  
Sanghatana,** Registration No. AWB-121,  
Branch office at Trade Union Centre,  
Ghashiram Bungalow, Parbhani,  
District: Parbhani,  
Through its Joint Secretary,  
Shri Uddhav S/o. Namdeo Shinde,  
Age : 59 years, Occu.: Service  
R/o : Trade Union Centre, Ghashiram  
Bunglow, Parbhani,  
District : Parbhani.

**(Deleted as per the order dated 30.03.2017)**

- 2. Shri Sanjay Bapurao Suryawanshi,**  
Age : Major, Occu.: Service.
- 3. Shri Panjab Madhavrao Deshmukh,**  
Age : Major, Occu.: Service.
- 4. Shri Shaikh Khaja Shaikh Babasha,**  
Age : Major, Occu.: Service.
- 5. Smt. Shantabai Rukhmaji Ingale,**  
Age : Major, Occu.: Service.
- 6. Shri Shankar Maroti Barge,**  
Age : Major, Occu.: Service.
- 7. Shri Prakash Kamanrao Mudhal,**  
Age : Major, Occu.: Service.
- 8. Shri Rama Vitthal Narwade,**  
Age : Major, Occu.: Service.

9. **Shri Shivaji Kisanrao Sule,**  
Age : Major, Occu.: Service,  
All R/o : Hingoli,  
District Hingoli.

**.. APPLICANTS.**

**V E R S U S**

1. **The State of Maharashtra,**  
Through the Principal Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai – 32.
2. **The Principal Chief Conservator of Forests  
And Director General of Social Forestry,**  
Maharashtra State, Central Building, Pune.
3. **The Chief Conservator and Deputy  
Director General,** Social Forestry Zone,  
Plot No. 3, Ramdas Tower,  
Kalpataru Housing Society, Garkheda,  
Aurangabad.
4. **The Deputy Director,**  
Social Forestry Division,  
Hingoli, District Hingoli.
5. **The Plantation Officer,**  
Social Forestry Zone, Kalamnuri,  
District Hingoli.

**.. RESPONDENTS.**

**W I T H**

**02. ORIGINAL APPLICATION NO. 209 OF 2017**

**DISTRICT: - HINGOLI.**

1. **Marathwada Sarva Shramik  
Sanghatana,** Registration No. AWB-121,  
Branch office at Trade Union Centre,  
Ghashiram Bungalow, Parbhani,  
District: Parbhani,  
Through its Joint Secretary,  
Shri Uddhav S/o. Namdeo Shinde,  
Age : 59 years, Occu.: Service

R/o : Trade Union Centre, Ghashiram  
Bungalow, Parbhani,  
District : Parbhani.

**(Deleted as per the order dated 30.03.2017)**

2. **Shri Ashroba Uttamrao Dinde,**  
Age: Major, Occu.: Service.
3. **Smt. Shantabai Ashroba Dinde,**  
Age: Major, Occu.: Service.
4. **Shri Sitaram Rupsing Rathod,**  
Age: Major, Occu.: Service.
5. **Shri Dattarao Sakharam Jadhav,**  
Age: Major, Occu.: Service.
6. **Shri Bhima Devba Dhavase,**  
Age: Major, Occu.: Service.
7. **Shri Dilip Sahadu Lonkar,**  
Age: Major, Occu.: Service.
8. **Shri Suresh Kanbarao Shinde,**  
Age: Major, Occu.: Service,  
All R/o : Hingoli, District Hingoli. **.. APPLICANTS.**

**V E R S U S**

1. **The State of Maharashtra,**  
Through the Principal Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai – 32.
2. **The Principal Chief Conservator of Forests  
And Director General of Social Forestry,**  
Maharashtra State, Central Building, Pune.
3. **The Chief Conservator and Deputy  
Director General,** Social Forestry Zone,  
Plot No. 3, Ramdas Tower,  
Kalpataru Housing Society, Garkheda,  
Aurangabad.

4. **The Deputy Director,**  
Social Forestry Division,  
Hingoli, District Hingoli.
5. **The Plantation Officer,**  
Social Forestry Zone, Hingoli,  
District Hingoli.

.. **RESPONDENTS.**

**W I T H**

**03. ORIGINAL APPLICATION NO. 364 OF 2017**

**DISTRICT: - NANDED.**

1. **Shri Hari S/o. Pralhad Panchal,**  
Age: 47 years, Occu.: Service,  
Working at Social Forestry Range  
Mukhed, R/o : At Pimpaldari,  
Post Kapshi, Tq. Loha,  
District: - Nanded.
2. **Shri Devidas S/o Baliram Betkar,**  
Age: 50 years, Occu.: Service,  
Working at Social Forestry Range  
Mukhed, R/o : At Walki (B),  
Post Martala, Tq. Loha,  
District: - Nanded.
3. **Shri Bhagwan S/o Nivrutti Tigote,**  
Age: 50 years, Occu.: Service,  
Working at Social Forestry Range  
Mukhed, R/o : At Post Risangaon,  
Tq. Loha, District: - Nanded.
4. **Shri Trimbak S/o Vaijinath Wadje,**  
Age: 56 years, Occu.: Service,  
Working at Social Forestry Range  
Kandhar, R/o : At Haldav, Post Loha,  
Tq. Loha, District: - Nanded.
5. **Shri Tukaram S/o Bhujanga Waghmare,**  
Age: 55 years, Occu.: Service,  
Working at Social Forestry Range Kandhar,  
R/o : At Post Karegaon, Tq. Loha,  
District: - Nanded.

- 6. Shri Vishwnath S/o Kishan Waghmare,**  
Age: 51 years, Occu.: Service,  
Working at Social Forestry Range Kandhar,  
R/o : At Ambesawangi, Post Sonkhed,  
Tq. Loha, District: - Nanded. **.. APPLICANTS.**

**V E R S U S**

- 1. The State of Maharashtra,**  
Through the Principal Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai – 32.
- 2. The Principal Chief Conservator of Forests  
And Director General of Social Forestry,**  
Maharashtra State, Central Building, Pune.
- 3. The Chief Conservator and Deputy  
Director General,** Social Forestry Zone,  
Plot No. 3, Ramdas Tower,  
Kalpataru Housing Society, Garkheda,  
Aurangabad.
- 4. The Deputy Director,**  
Social Forestry Division,  
Raj Building, Nanded,  
District Nanded.
- 5. The Plantation Officer,**  
Social Forestry Range Mukhed,  
Tq. Mukhed, Dist. Nanded.
- 6. The Plantation Officer,**  
Social Forestry Range Kandhar,  
Tq. Kandhar, Dist. Nanded. **.. RESPONDENTS.**

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**APPEARANCE** : Shri Ganesh Jadhav, learned Advocate holding for Shri A.S. Shelke, learned Advocate for the applicants in all these cases.

: Shri S.K. Shirse, learned Presenting Officer for the respondents in all these cases.

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**CORAM** : **B.P. PATIL, MEMBER (J)**

**DATE** : **25.03.2019**  
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### **COMMON - JUDGMENT**

1. The facts and issues involved in all the Original Applications are similar and identical, therefore they are decided by the common order.

2. The applicants are working under the res. nos. 4 & 5 in O.A. nos. 208 & 209/2017 and under the res. nos. 5 & 6 in O.A. no. 364/2017 at various places on the post of "Samajik Vanikaran Majoor". All the applicants were initially appointed as daily wage workers under the res. nos. 4 & 5 in O.A. nos. 208 /2017 & 209/2017 and 5 & 6 in O.A. No. 364/2017. They worked as daily wage employees for years together and had completed 240 days of service in each of the years. The Government of Maharashtra in its Rural Development & Water Conservation Department issued Government Resolution dtd. 19.10.1996 and regularized the services of the daily wage employees working on plan / non-plan schemes under the department for a period of 5 years and more. Accordingly 1416 supernumerary posts were created. As per the said G.R. the employees who completed 5 years of continuous

service as on 1.11.1994 are held eligible for regularization w.e.f. 1.11.1994. Supernumerary posts were created in Group – D in the time scale of Rs. 750-940 and they were designated as “Samajik Vanikaran Major”. Such employees were further granted relaxation of education, age limit and Employment Exchange. All those employees who were found eligible as per G.R. dtd. 19.10.1996 were given appointment with retrospective effect w.e.f. 1.11.1994 and arrears of salary / wages from the said date till issuance of appointment orders were paid to them. The applicants were not regularized in service as per G.R. dtd. 19.10.1996 but were continued in the employment on daily wages.

3. On 16.10.2012 the Government of Maharashtra in its Revenue & Forest Department issued one more G.R. and decided to confer benefits of regularization in favour of the employees, who have been deployed on daily wages for carrying out the function of the Forests Conservation and Protection such as plantation, protection of plants, transportation of forests produce and for maintenance of rest house. Accordingly a committee under chairmanship of Additional Principal Chief Conservator of Forest has been constituted. On the basis of the report of the said committee the Government sanctioned 5089 supernumerary posts for Forest Department, 451 posts for Social Forestry Department

and 1006 posts for Forest Development Corporation. As per G.R. dated 16.10.2012 daily wage employees, who have completed 5 years of service or intermittent service for the period from 1.11.1994 to 30.6.2004 are held eligible for regularization of service w.e.f. 1.6.2012. On the basis of G.R. dated 16.10.2012 the Rural Development & Water Conservation Department issued G.R. dated 31.10.2013 conferring the benefits of the G.R. dated 16.10.2012 to such daily wage employees working in Social Forestry Department. The Government issued G.R. dtd. 31.10.2013 and created 451 supernumerary posts of Samajik Vaniokaran Majoor under the Social Forestry Department. The applicants were found eligible for conferring benefits of G.R. dtd. 31.10.2013 as they have completed 5 years of service between 1.11.1994 and 30.6.2004. Accordingly res. no. 4 issued orders of appointment to all the applicants. The applicants were appointed on supernumerary posts w.e.f. 1.6.2012 in Group – D category in the pay scale of Rs. 4440-7440 with Grade pay of Rs. 1300/-. The applicants joined on regularized posts and since then they are working on the said posts at the various places. All the applicants have been paid their salary and wages for the period from 1.6.2012 till 4.12.2013.

4. On 17.3.2015 one Shri R.B. Chavan claiming to be a social worker filed a complaint with the respondents alleging that



employees, who were regularized as per G.R. dt. 16.12.2012 have received the wages for the period from 1.6.2012 to November, 2013 though they were not in service. It is alleged that the employees were paid for 16 months by misleading the Government and in connivance with the authorities. On receiving the said complaint the res. no. 2 the Principal Chief Conservator of Forest & Director General of Social Forestry, Maharashtra State directed the res. no. 3 the Chief Conservator & Deputy Director General, Social Forestry Zone, Aurangabad to make an enquiry and submit the report. On the basis of the same the res. no. 3 directed all the Deputy Directors of Social Forestry Department in Marathwada Region to conduct an enquiry. On receipt of the reports from the Deputy Director of Social Forestry of all the regions, the res. no. 3 passed the impugned order dtd. 17.3.2016 and held that the payment of wages made to the employees under the control and supervision of res. no. 4 is illegal and further directed the res. no. 4 to recover the mount of excess payment made to them forthwith. Pursuant to the order passed by the res. no. 4, the res. no. 5 issued impugned orders dtd. 31.8.2016 in O.A. nos. 208 & 209/2017 and res. no. 5 issued the order dtd. 19.5.2017 in O.A. no. 364/2017 directing recovery of excess payment made to the applicants for the period from 1.6.2012 till November, 2013. The res. no. 5 in O.A. no. 207 & 208/2017 issued impugned order on

22.2.2017 directing recovery of 18 months' salary paid to the applicants and the res. no. 6 in O.A. no. 364/2017 issued order dtd. 14.3.2018 directing applicant to deposit the amount of excess payment made to them.

5. It is contention of the applicants that thereafter respondents started deduction from their salary. The applicants made representations to the res. no. 3 individually and through Marathwada Sarva Shramik Sangh, registered Trade Union and pointed that they have been conferred benefit of regularization w.e.f. 1.6.2012. It is further pointed out by the applicants that they are continuously working w.e.f. 1.6.2012. They worked on various schemes from 1.6.2012 onwards till the date of regularization and therefore they received wages of said period. They submitted that the order of recovery is contrary to the law and provisions of the G.Rs. issued by the Government. It is their contention that they were working with the respondents on daily wages for years together and being eligible, the benefit of regularization has been granted to them. It is their contention that the impugned orders directing recovery from their salary is illegal and against the guidelines given by the Hon'ble Supreme Court in the case of **State Of Punjab & Ors Vs Rafiq Masih (White Washer) reported in AIR 2015 SC 696.** Therefore the

applicants filed the present Original Applications and prayed to quash the impugned orders issued by the respondents.

6. The res. nos. 1 to 5 have filed their affidavit in reply and resisted the contentions. They have denied that the applicants have completed 240 days during each year and they are eligible for getting the benefit of regularization. They have not denied about G.Rs. issued by the Government from time to time regularizing the services of daily wage employees, who were in service at least for 240 days in a year during 5 years and conferring the benefit of regularization on them. They have not disputed the fact that the applicants have been regularized w.e.f. 1.6.2012 and the arrears of salary has been paid to them w.e.f. 1.6.2012. They have admitted the fact that one Shri R.B. Chavan filed complaint regarding payment made to the daily wage employees, who have not actually worked during that period. They have admitted that the enquiry has been made and as per report in the enquiry the impugned orders directing the recovery from the applicants have been issued. It is their contention that during the enquiry it was revealed that the applicants and many more daily wage employees got wrong payment for the absentee period and non working days. It is their contention that the res. no. 3 has issued the order directing recovery regarding payment

made to the applicants on the ground that they were not entitled to receive the same as they have not rendered service to the respondents during that period. It is their contention that the applicants had not worked during the period specified in the order and therefore they are not entitled to get wages of that period. Therefore on the basis of doctrine of 'No Work - No Pay' they ordered recovery from the applicants. It is their contention that applicants have given undertaking for depositing excess payment made to them and therefore principle laid down by Hon'ble Supreme Court in the case of **State Of Punjab & Ors Vs Rafiq Masih (White Washer)** (supra) are not applicable in the present cases. It is their contention that recovery was directed on the principle of 'No Work - No Pay', the applicants are not entitled to get wages for the period they had not worked and therefore the impugned orders are legal one. On these grounds they supported the impugned orders and prayed for dismissal of the O.As.

7. I have heard Shri Ganesh Jadhav, learned Advocate holding for Shri A.S. Shelke, learned Advocate for the applicants and Shri S.K. Shirse, learned Presenting Officer for the respondents. I have also gone through various documents placed on record.

8. Admittedly the applicants were working on daily wages with the respondents. There is no dispute about the fact that the Rural

Development & Water Conservation Department issued Government Resolution dtd. 19.10.1996 and decided to regularize services of the daily wage employees working in plan / non-plan schemes under the department for more than 5 years and accordingly 1416 supernumerary posts were created in Group – D category having pay scale of Rs. 750-940 designating those employees as Samajik Vanikaran Majoor. Accordingly eligible daily wage workers have been regularized w.e.f. 1.11.1994. Admittedly applicants were not regularized in service on the basis of G.R. dtd. 19.10.1996, however, they have been continued in employment on daily wages. On 16.10.2012 the Revenue & Forest Department issued one more G.R. and decided to regularize services of daily wage workers deployed for carrying out function of the Forests Conservation and Protection such as plantation, protection of plants, transportation of forests produce and for maintenance of rest house and accordingly a committee under chairmanship of Additional Principal Chief Conservator of Forest has been constituted. On the basis of the report of the said committee, 5089 supernumerary posts for Forest Department, 451 posts for Social Forestry Department and 1006 posts for Forest Development Corporation have been created by the Government. On the basis of G.R. dtd. 16.10.2012 the Rural Development & Water Conservation Department issued G.R. dtd.

31.10.2013 conferring the benefits of G.R. dtd. 16.10.2012 to such daily wage employees in Social Forestry Department. Admittedly, the applicants were found eligible for conferring the benefit of G.R. dtd. 31.10.2013 as they rendered 5 years service between 1.11.1994 and 30.6.2004 and accordingly the respondents issued orders of appointment to them and accordingly they joined their services. Admittedly, the applicants received arrears of salary for the period from 1.6.2012 to 3.12.2013. On the basis of complaint filed by Social Worker Shri R.B. Chavan an enquiry had been conducted by the respondents and during enquiry it is found that the salary has been paid to the applicants for the period from 16.2012 to 3.12.2013, though they had not rendered services and therefore impugned orders directing recovery had been issued.

9. Learned Advocate for the applicants submitted that the applicants have been regularized on the basis of G.Rs. dtd. 16.10.2012 and 31.10.2013, as they found eligible to confer benefits of the said G.R. He has submitted that as the applicants have completed necessary criteria as per the decision of the Government, they have been regularized w.e.f. 1.6.2012 and arrears of salary had been paid to them w.e.f. 1.6.2012. He has submitted that the applicants cannot be blamed for the payment

made to them as payment has been made to them as per the clauses in the G.R. He has submitted that the applicants are Group – D employees and they never misrepresented to the respondents to get the payment. Therefore the impugned order directing recovery is against the law laid down by the Hon'ble Supreme Court in the case of **State Of Punjab & Ors Vs Rafiq Masih (White Washer)** (supra). Learned Advocate for the applicants has further submitted that as per the clauses in the G.R. salary with retrospective effect has been paid to the applicants and therefore the impugned orders directing recovery are illegal.

10. Learned Advocate for the applicants has further submitted that after issuance of the recovery orders the respondents obtained consent from the applicants for recovery but the same is not binding on them. He has further submitted that similarly situated employees had filed O.A. nos. 593 and 651/2016 before this Tribunal claiming similar relief challenging similar orders passed by the respondents, but the said O.As. came to be dismissed on 19.7.2017. He has argued that applicants in those O.As. have filed writ petition Nos. 10149 & 10180/2017 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad and Hon'ble High Court decided those writ petitions

on 27.4.2018 and thereby quashed the impugned orders holding that the petitioners therein will be entitled to receive pay for the period they have worked. It has further held that for the period for which the petitioners have not been allotted work, they shall be paid 50% of the salary and remaining 50% amount shall be recovered in installments from the petitioners. He has produced copy of order of Hon'ble High Court in the said writ petitions wherein it has been observed as follows :-

*“19. It is difficult to set down any hard and fast rule with regard to monetary benefit from retrospective effect. It is trite that principle of no work no pay is not accepted as a rule of thumb. The situation with regard to monetary benefits from retrospective effect would depend upon case to case. The provisions of the Maharashtra Civil Services Rules are made applicable to all the petitioners from 1<sup>st</sup> June, 2012. If an employee is prevented by the employer from performing his duties, the employee cannot be blamed for not having worked and the abstract principle of no pay no work shall not be applicable to such an employee in toto. In the present case, undisputedly the petitioners are regularized with effect from 1<sup>st</sup> June, 2012. It is not the fault of employee that they were not provided the work for the entire period. From 01.06.2012 for the days the petitioners have worked the respondents have paid them the emoluments as per the scale applicable to a regular employee but only for the number of days they have worked in a particular month and not for the whole month. Upon regularization, the petitioner is entitled for the monthly salary as per the pay scale. It is not the case of respondents that the respondents had allotted work to the petitioners but the petitioners refused to do. As and when work was allotted to the petitioners, the petitioners have performed their work and the salary is paid to them.*”



11. Learned Advocate for the applicants has further submitted that the cases of the present applicants are covered by above said decision of Hon'ble High Court and therefore in view of said decision it is just to hold that the applicants are entitled to get salary w.e.f. 1.6.2012 and therefore he prayed to allow the O.As.

12. Learned P.O. has submitted that applicants have not done work from 1.6.2012 till November, 2013 and therefore on the principle of 'No Work – No Pay' the impugned orders have been issued. He has submitted that there is no mala-fide on the part of the respondents in issuing the impugned orders.

13. Learned P.O. has submitted that the Government is thinking about challenging the above order of Hon'ble High Court before the Hon'ble Supreme Court and proposal in that regard is pending with the Government. Therefore the principles laid down by the Hon'ble High Court are not applicable in the present O.As. and therefore he prayed to reject the O.As.

14. On perusal of record & documents, it reveals that the applicants found eligible for conferring benefits of G.Rs. dtd. 16.10.2012 and 31.10.2013 and therefore they were regularized w.e.f. 1.6.2012. Arrears of salary / wages had been paid to them w.e.f. 1.6.2012 till their date of appointments. No role has been

played by the applicants in getting the salary and arrears of salary paid to them in view of clauses of the G.R., but during enquiry conducted by the respondents on the application of one Shri R.B. Chavan it is revealed that applicants had not worked during that period but salary has been paid to them, therefore impugned orders of recovery had been issued. Similar issue in case of the similarly situated employees has been dealt with by Hon'ble High Court in writ petition Nos. 10149 & 10180/2017 and Hon'ble High Court decided those writ petitions on 27.4.2018 and thereby quashed the impugned orders holding that the petitioners therein will be entitled to get pay w.e.f. 1.6.2012 till the date of issuance of appointment orders. It has been further held by the Hon'ble High Court that for the period during which the petitioners have not been allotted work, they shall be paid 50% of the salary and remaining 50% amount shall be recovered in installments from them. Since the said issue has been dealt with & decided by the Hon'ble High Court therefore the decision of the Hon'ble High Court is binding on this Tribunal. Therefore there is no need to enter to the same arena. In view of this, in my view, the applicants are entitled to get pay w.e.f. 1.6.2012 till issuance of appointment orders in view of G.Rs. dtd. 16.10.2012 and 31.10.2013. Therefore in my view, the impugned orders directing recovery of the amount from the applicants are not in accordance

with G.Rs. and therefore same require to be set aside by allowing the O.As.

15. In view of discussion in the foregoing paragraphs, I pass the following order :-

**ORDER**

- (i) The present O.A. nos. 208/2017, 209/2017 & 364/2017 are allowed and impugned orders directing recovery from the applicants are hereby quashed & set aside.
- (ii) For the period the applicants have worked they will be entitled to pay as per the pay scale from 01.06.2012 till the issuance of appointment orders. For the period applicants have not been allotted work they shall be paid 50% of salary. The remaining 50% amount shall be recovered in installments from the applicants.

There shall be no order as to costs.

**Place : Aurangabad**  
**Date : 25.03.2019**

**(B.P. PATIL)**  
**MEMBER (J)**