

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI****BENCH AT AURANGABAD****ORIGINAL APPLICATION NO. 83 OF 2021**

DIST. : JALNA

- 1) Ashok S/o Raghunath Tonde,  
Age. 43 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Jalna, Tal. & Dist. Jalna.
- 2) Brahmanand Bhimrao Tayade,  
Age. 44 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Jalna, Tal. & Dist. Jalna.
- 3) Vijaykumar Devrao Punde,  
Age. 38 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Ahmednagar, Tal. & Dist. Ahmednagar.
- 4) Sandip Ramdas Mulay,  
Age. 35 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Ahmednagar, District Ahmednagar.
- 5) Santosh Bhimraj Landage,  
Age. 38 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Ahmednagar, District Ahmednagar.
- 6) Dnyanoba Namdeo Aankade,  
Age. 37 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Nanded, District Nanded.

- 7) Shweta Suresh Salunke,  
Age. 35 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Jalgaon, District Jalgaon.
- 8) Satish Nanabhau Dongre,  
Age. 41 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Nanded, District Nanded.
- 9) Anilkumar Prabhakarrao Shelke,  
Age. 44 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Beed, District Beed.
- 10) Narayan Dattatray Tambe,  
Age. 38 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Ahmednagar, District Ahmednagar.
- 11) Hemant Navnath Kekan,  
Age. 36 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Ahmednagar, District Ahmednagar.
- 12) Seema Keshavrao Lad,  
Age. 37 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Latur, District Latur.
- 13) Ashok Pralhad Shordole,  
Age. 37 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Latur, District Latur.

- 14) Dinesh Eknath Gawale,  
Age. 36 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Dhule, District Dhule.
- 15) Sandeep Hanumant Yadav,  
Age. 38 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Pune, District Pune.
- 16) Pravin Murlidhar Ghadmode,  
Age. 38 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Malegaon, District Nashik.
- 17) Madhav Narsing Chappalwar,  
Age. 35 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Malegaon, District Nashik.
- 18) Tarachand Popat Jare,  
Age. 42 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Malegaon, District Nashik.
- 19) Vinod Pralhadrao Wirghat,  
Age. 43 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Kalyan, District Thane.
- 20) Kishor Shankar Durge,  
Age. 42 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Chandrapur, District Chandrapur.

- 21) Mangesh Balaji Jumnahe,  
Age. 39 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Chandrapur, District Chandrapur.
- 22) Yashil Dadaji Bhadke,  
Age. 38 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Chandrapur, District Chandrapur.
- 23) Renuka Vinayakrao Gabbhane,  
Age. 40 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Chandrapur, District Chandrapur.
- 24) Mohan Bhikanrao Jadhao,  
Age. 41 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Nagpur, District Nagpur.
- 25) Nitin Rameshrao Tijare,  
Age. 38 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Yeotmal, District Yeotmal.
- 26) Vaishali Bhagwan Awachat,  
Age. 38 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Akola, District Akola.
- 27) Bholu Chhotusing Tomkar,  
Age. 34 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Akola, District Akola.

- 28) Samadhan Sadashiv Arakh,  
Age. 38 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Akola, District Akola.
- 29) Gopal Subhash Jaiswal,  
Age. 40 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Khamgaon, District Buldhana.
- 30) Uddhav Sudhakar Deshmukh,  
Age. 40 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Khamgaon, District Buldhana.
- 31) Sachin Namdev Kadam,  
Age. 39 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Satara, District Satara.
- 32) Anil Dhondiram Kalel,  
Age. 36 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Pune, District Pune.
- 33) Nandkumar Babanrao Palande,  
Age. 38 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Pune, District Pune.
- 34) Sanjay Kalu Bhamare,  
Age. 37 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Malegaon, District Nashik.

- 35) Pandurang Arun Bondar,  
Age. 42 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Barshi, District Solapur.
- 36) Annasaheb Mahadev Pawar,  
Age. 40 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Solapur, District Solapur.
- 37) Vishvanath Nilkanth Shiral,  
Age. 36 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Barshi, District Solapur.
- 38) Meenal Bhimrao Vidhate,  
Age. 32 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Raigad, District Raigad.
- 39) Siddheshwar Narayan Darade,  
Age. 40 years, Occ. Service as  
State Tax Inspector,  
GST Bhavan (State Tax),  
Pune, District Pune.

-- **APPLICANTS**

VERSUS

- 1) The State of Maharashtra,  
Through its Principal Secretary,  
State Tax Department,  
Mantralaya, Mumbai – 400 032.
- 2) The Principal Secretary,  
Finance Department,  
Maharashtra State, Mantralaya,  
Mumbai – 32.

- 3) The Principal Secretary,  
General Administration Department,  
Maharashtra State, Mumbai – 32.
- 4) The Special State Tax Commissioner,  
323, 3<sup>rd</sup> floor,  
Goods and Service Tax Bhavan,  
Mazgaon, Mumbai – 400 010.
- 5) The Assistant Commissioner of  
State Tax, 323, 3<sup>rd</sup> floor,  
Goods and Service Tax Bhavan,  
Mazgaon, Mumbai – 400 010.

-- **RESPONDENTS**

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APPEARANCE :- Shri Gajanan K. Kshirsagar, learned  
Advocate for the applicant.  
: Shri I.S. Thorat, learned Presenting  
Officer for the respondents.

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**CORAM : Hon'ble Shri V.D. Dongre, Member (J)  
and  
Hon'ble Shri Bijay Kumar, Member (A)**

**RESERVED ON : 25.04.2023**  
**PRONOUNCED ON: 08.06.2023**

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**ORDER**

*(Per :- Shri V.D. Dongre, Member (J))*

1. This Original Application is filed to challenge the impugned order dated 21.12.2020 (Annexure A-6) issued by respondent no. 5 i.e. the Assistant Commissioner of State Tax, Mazgaon, Mumbai on behalf of and in concurrence with

respondent no. 4 i.e. the Special State Tax Commissioner, Mazgaon, Mumbai thereby refusing to consider the services rendered by the applicants with Zilla Parishads as Government service and consequently seeking pay protection already granted to them.

2. Facts in brief giving rise to the Original Application can be summarized as follows :-

All the applicants were initially appointed on the post of Primary Teachers. Thereafter during their service tenure they obtained the requisite permission from the competent authorities and appeared for M.P.S.C. examination and got selected for the posts of State Tax Inspector. After their selection and issuance of appointment orders they joined their respective posts and are presently serving with the State Government on the respective posts. Annexure A-1 collectively are the appointment orders of some of the applicants.

3. This Tribunal at principal seat at Mumbai in Original Application No. 327/2013 in its order dated 17.9.2014 (Annexure A-2) has held that the services rendered by the employees with Zilla Parishads cannot be considered as Government services, and therefore, such employees are not

entitled for continuity in service and it was observed that “if the State Government in the past has extended benefit of continuity in service to some other employees, who were working in Zilla Parishad, we are sure the steps will be taken to correct such mistakes.”

4. In view of the abovesaid order of the Tribunal, the State Government has started to take corrective steps and as a part of it the respondent no. 3 i.e. the Principal Secretary, General Administration Department issued a communication dated 17.11.2014 (Annexure A-3) thereby directing all the Additional Chief Secretaries / Principal secretaries / Secretaries of all the departments of the State of Maharashtra to act in accordance with the decision of this Tribunal for taking the corrective steps.

5. Pursuant to the abovesaid communication dated 17.11.2014 the respondent no. 2 i.e. the Principal Secretary, Finance Department also issued directions to the respondent no. 4 i.e. the Special State Tax Commissioner by communication dated 31.7.2018 (Annexure ‘A-4’) thereby stating that in view of the decision of the Tribunal, if the benefits of continuity in service and pay protection are granted to the employees, who have initially worked with respective Zilla Parishadas and thereafter entered into the Government service,

such benefit should be withdrawn and recovery shall be initiated against such employees.

6. Thereafter, the Finance Department issued letter dated 2.3.2019 (Annexure 'A-5') to respondent No. 4 thereby stating that self-explanatory report in respect of action taken by respondent No. 4 in view of the communication dated 31.7.2018 may be submitted.

7. Pursuant to all abovesaid communications respondent No. 5 issued impugned order dated 21.12.2020 (Annexure 'A-6'), thereby holding that as service rendered with Zilla Parishad cannot be considered as Government Service, no continuity in service can be granted and service rendered with Zilla Parishad cannot be considered for pay fixation and necessary action of recovery be taken.

8. It is the contention of the applicants that in view of Sections 242-A, 242-B and 242-C of Maharashtra Zilla Parishad and Panchayat Samities Act, 1961 (Annexure 'A-7' Collectively) any service rendered by any employee under Zilla Parishad is deemed to be service rendered under the State Government, when Zilla Parishad employee is made eligible for appointment on State service. Moreover, in view of powers conferred under

Section 374 of the Maharashtra Zilla Parishad and Panchayat Samities Act, 1961 the State Government has amended the Maharashtra Zilla Parishad District Services Rules 1968, whereby the Maharashtra Civil Services Rules as amended from time to time are made applicable to Zilla Parishad employees by issuing Notification dated 4.5.1984 (Annexure 'A-8'). In fact, the said Notification dated 4.5.1984 (Annexure 'A-8') is given effect and acted upon by the State Government thereby issuing G.R. dated 31.8.2018 (Annexure 'A-9') whereby it was specifically stated that the Maharashtra Civil Services (Leave) Rules, 1981, the Maharashtra Civil Services (Joining Time, Foreign Service and Payment During Suspension, Dismissal and Removal) Rules, 1981, the Maharashtra Civil Services (General Conditions of Service) Rules, 1981, the Maharashtra Civil Services (Pay) Rules, 1981 and the Maharashtra Civil Services (Pension) Rules, 1982 are made applicable to the employees of the Zilla Parishad from 1984.

9. In view of the provisions of Rule 11 of the Maharashtra Civil Services (Pay) Rules, 1981 the applicants are entitled for pay protection, but since this Tribunal has passed order the authorities are not considering these aspects and now recovery is being claimed from the present applicants.

10. It is stated that issue raised before this Tribunal in O.A. No. 327/2013 was in respect of seniority and this Tribunal has not at all touched the issue of pay protection. The respondent authorities are misreading and misinterpreting the order of this Tribunal. Therefore, the detail representation dated 7.1.2021 along with G.Rs. dated 6.2.1990 and 23.3.1994 (Annexure 'A-10' colly) was submitted by some of the applicants to the Hon'ble Finance Minister, however, said authority did not consider the same. Hence, this application.

11. Original Application is resisted by filing affidavit in reply on behalf of respondent nos. 1 to 5 by one Shri Sanjeev Ramrao Nagargoje, Assistant Commissioner of State Tax (Legal), Aurangabad Division, Aurangabad thereby he denied all the adverse contentions raised in the present Original Application. It is specifically submitted that no case is made out by the applicants for pay protection. The applicants have heavily relied upon amendment in Maharashtra Zilla Parishad Service Rules, 1968. The said amendments are made applicable only for the purposes of Leave, Pay fixation, General Conditions of Service etc. Nowhere it is mentioned that Zilla Parishad employees are Government employees. Moreover, decision in O.A. No. 327/2013 dated 17.9.2014 lays down that Zilla Parishad

employee is not a Government servant. In view of the same there is no merit in the Original Application and it is liable to be dismissed.

12. The applicants have filed rejoinder affidavit denying the adverse contentions raised in the affidavit in reply filed on behalf of respondent nos. 1 to 5 and reiterating the contentions raised in the Original Application. The applicants have placed on record the instances of pay protection of the Government servants, who were earlier working as Zilla Parishad employees. Additional affidavit of rejoinder is also filed on behalf of the applicants placing reliance on the Government Resolution dated 2.2.2017.

13. We have heard the arguments of Shri Gajanan K. Kshirsagar, learned counsel for the applicants on one hand and Shri I.S. Thorat, learned Presenting Officer for the respondents on the other hand. We have also perused the documents placed on record.

14. After having considered the rival pleadings, documents and submissions on record, it is evident that the applicants are seeking pay protection in view of and on the basis of Notification dated 4.5.1984 (Annexure A-8), whereby M.C.S (Leave) Rules,

1981, M.C.S. (Joining Time, Foreign Service and Payment During Suspension, Dismissal and Removal) Rules, 1981, M.C.S. (General Conditions of Service) Rules, 1981, M.C.S. (Pay) Rules, 1981 and M.C.S.. (Pension) Rules, 1982 are made applicable to the Zilla Parishad employees.

15. The applicants have themselves referred to order dated 17.9.2014 passed in **O.A. No. 327/2013** (Annexure A-2) in the matter of **Shri Ismail Rahim Modi Vs. Joint Secretary, Public Works Department and Others** to state that the decision in the said O.A. is not applicable to the applicants in the present Original Application as issue involved in O.A. No. 327/2013 was altogether different. In paragraph nos. 5 to 7 of the decision in O.A. No. 327/2013 it is observed as follows :-

*“5. We find that the Applicant was appointed as Extension Officer (Construction) by the Chief Executive Officer, (C.E.O), Zilla Parishad, Satara by order dated 2.10.1979 in Dist. Technical Services (class-III) Engineering). He joined the service on 10.10.1979. The order dated 2.10.1979 of the Chief Executive Officer is at page 105 of the paper book. This Tribunal in a number of cases has held that a Zilla Parishad employee is not a Govt. Servant. When the Applicant was appointed as Extension Officer in Z.P. Satara, he was obviously not governed by the Bombay Civil Services Rules or the Maharashtra Civil Services Rules, which were applicable to him only when he joined as Junior Engineer (Civil) in the State P.W.D. on 14.2.1980. The Applicant is relying on letter dated 19.3.2012 from the Respondent No.1 to the Respondent No.2. It reads in para 2 as follows:*

“२. श्री. मोदी हे शासन सेवेत कनिष्ठ अभियंता पदावर रुजू झाले असून, तत्कालीन कालावधीची त्यांची सेवा जोडून देण्यास नियुक्ती अधिकारी म्हणून आपण सक्षम प्राधिकारी असल्यामुळे आपल्या स्तरावर या बाबतचे शासनाचे नियम, शासन निर्णयाच्या आधारे पुढील उचित कार्यवाही करावी.”

The Respondent No.2 was asked to take appropriate action as per Rules and G.R as competent authority. This in no way can be construed to mean that the Govt. had approved proposal of the Respondent No.2 to count the service of the Applicant in Z.P. for seniority in the Government service. The Respondent No. 2 passed order dated 29.3.2012, accepting the request of the Applicant to count his service in Z.P., Satara. The order is passed in terms of Rule 250(c) of the Bombay Civil Service Rules and Govt. Circulars dated 2.2.1972 and 5.7.1972. The Applicant is seeking continuity in service based on Rule 250(c) of the B.C.S.R. which was not at all applicable to him, while he was in Z.P. service. Similarly, Circulars dated 2.2.1972 and 5.7.1972 are regarding services under the Government. If a Govt. Servant resigns from Government, he is entitled to be given benefit of continuity. This continuity is also for the purpose of pension etc. Such service cannot be counted for seniority in all cases. Hypothetically, let us take the case of a Talathi, who on being selected as a Dy. Collector, resigns the post of Talathi and joins as Dy. Collector. Can he be allowed seniority in the cadre of Dy. Collector, on the basis of length of his service as Talathi? Answer is an emphatic no. The Applicant has stated that he is eligible to get the benefit of continuous service as per Rule 3(c) of the M.C.S. (Regulation of Seniority) Rules, 1982. It is seen that Rule 3(c) defines 'continuous service' in relation to any post, cadre or service. This definition is applicable to service in a post or cadre or service. The Applicant was working as, Extension Officer in Z.P. in Dist. Technical Service (Class-III). The recruitment rules, service conditions of that post are different from recruitment rules, service condition etc. of a Junior Engineer (Civil) in State P.W.D. The service as Extension officer in Z.P cannot be counted as continuous service in the post of J.E. in State P.W.D under Rule 3(c) *ibid*.

We find that the State Government, i.e. Respondent No.1 has rightly decided to ignore the order dated 29.3.2012 passed by the Respondent No.2. As neither the B.C.S.R. Rules nor Government Circular mentioned in the aforesaid

*order will cover the service under Zilla Parishad, the said order is void ab initio and is non-est and the Applicant cannot derive any benefit on the basis of such an order. If the State Government in the past has extended benefit of continuity in service to some other employee, who were working in Zilla Parihad, we are sure steps will be taken to correct such mistakes. Such wrong orders will not help the case of the present Applicant.*

*7. Having regard to the aforesaid facts and circumstances of the case, the Original Application stands dismissed with no order as to costs.”*

16. We have carefully gone through the contentions raised by the applicants for deviating from the findings recorded by the Tribunal while passing order in O.A. No. 327/2013. In the decision in O.A. No. 327/2013 it was specifically held that services of Zilla Parishad employee cannot be counted as continuous service in the post subsequently held by such employee in the Government service.

17. It is evident from record that the applicants are seeking pay protection only on the basis of amendment in Zilla Parishad Service Rules to the effect of making applicable M.C.S. (Leave) Rules, 1981, M.C.S. (Joining Time, Foreign Service and Payment During Suspension, Dismissal and Removal) Rules, 1981, M.C.S. (General Conditions of Service) Rules, 1981, M.C.S (Pay) Rules, 1981 and M.C.S. (Pension) Rules, 1982. By any stretch of imagination, it cannot be said that only because the said M.C.S. Rules are made applicable to the Zilla Parishad

employees, it can be said that Z.P. employees can be treated as Government employees retrospectively. In these circumstances, when the impugned order dated 22.12.2020 is issued by respondent nos. 4 & 5 in implementation of decision of the Tribunal dated 17.9.2014 passed in O.A. No. 317/2013, it cannot be said that the said order is baseless and illegal as sought to be contended by the applicants. No case is made out by the applicants for deviating from the view taken by the Tribunal on 17.9.2014 in O.A. No. 317/2013 in the matter of Shri Ismail Rahim Modi Vs. Joint Secretary, Public Works Department and Others. The decision of the Tribunal dated 17.9.2014 in O.A. No. 317/2013 has already achieved the finality.

18. So far as recovery of excess amount is concerned, the learned Advocate for the applicants has placed reliance on the copy of common order passed by the Principal Seat of this Tribunal at Mumbai on 22.4.2022 in O.A. Nos. 475/2019 and 894/2021. In paragraph nos. 28 & 29 of the said order it is held as follows :-

*“28. Insofar as recovery sought to be issued by order dated 29.09.2021 in view of re-fixation of pay is concerned, the recovery will have to be held impermissible in view of decision of Hon’ble Supreme Court in (2015) 2 SCC (L & S) 33 [State of Punjab and Ors. Vs. Rafiq*

**Masih (White Washer) & Ors.]** The pay was wrongly fixed by the Department and there was no such misrepresentation or fraud attributable to the Applicants. As such, Applicants' case in O.A. No. 894/2021 squarely falls within the parameters laid down by Hon'ble Supreme Court in **Rafiq Masih's** case. In para No. 12, Hon'ble Supreme Court culled out the situations and held as under: -

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employees, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

*29. Indisputably, Applicants fall in Group 'C' and payment has been made for a period in excess of 5 years before the recovery order is issued. As such, it squarely falls in Clause (i), (iii) and (v) of Para No. 12 of the Judgment. Thus, in my considered opinion, recovery if made from the Applicants, it would be iniquitous to such an extent as would far outweigh the equitable balance of the employers right to recover."*

19. The applicants in the case in hand also belong to category – C and therefore view by the Tribunal in order dated 22.4.2022 in O.A. Nos. 475/2019 and 894/2021 about recovery is applicable in this case. Hence, we proceed to pass the following order :-

### **ORDER**

Original Application No. 83/2021 stands dismissed, however, there shall not be recovery of the payments already made to the applicants. There shall be no order as to costs.

**MEMBER (A)**

**MEMBER (J)**

**Place : Aurangabad**

**Date : 08.06.2023.**