

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**COMMON ORDER IN O.A. NOS. 593 AND 651 BOTH OF 2016**

**1. ORIGINAL APPLICATION NO. 593 OF 2016**

**DISTRICT: - AURANGABAD**

1. Shri Nemichand S/o TarachandChavan,  
Age : Major, Occu. Service  
Working at Social Forestry Range Kannad,  
R/o : At Post BrahmniGarada, Tq. Kannad,  
District Aurangabad.
2. Shri Bharat S/o TotaramKadam,  
Age : Major, Occu. Service  
Working at Social Forestry Range Soygaon,  
R/o : At Post Soygaon, Tq. Soygaon,  
District Aurangabad.
3. Shri Ashok S/o Dhonduchavan,  
Age : Major, Occu. Service  
Working at Social Forestry Range Soygaon,  
R/o : At Post at Nimbhora, Post Gadegaon,  
Tq. Soygaon, District Aurangabad.
4. Shri Shamrao S/o RaghoKarhale,  
Age : Major, Occu. Service  
Working at Social Forestry Range Soygaon,  
R/o : At Post Tidka, Tq. Soygaon,  
District Aurangabad.
5. Shri Baburao S/o RamraoKabade,  
Age : Major, Occu. Service  
Working at Social Forestry Range Paithan,  
R/o : At Katpur, Tq. Paithan,  
District Aurangabad.
6. Shri Vitthal S/o AsaramMahore,  
Age : Major, Occu. Service  
Working at Social Forestry Range Paithan,  
R/o : At Post KadimTikali, Tq. Paithan,  
District Aurangabad.

7. Shri Magan S/o RadhajiBrahmkar,  
Age : Major, Occu. Service  
Working at Social Forestry Range Gangapur,  
R/o : At Post Padegaon, Tq. and District Aurangabad.
8. Smt. FatimabiW/oBabu Patel,  
Age : Major, Occu. Service  
Working at Social Forestry Range Gangapur,  
R/o : At Post Chikalthana, Tq. & District Aurangabad.
9. Shri Bhaginath S/o AppaBorude,  
Age : Major, Occu. Service  
Working at Social Forestry Range Aurangabad,  
R/o :Chikalthana, Tq. & District Aurangabad.
10. Shri Sanduba S/o NatubaZond,  
Age : Major, Occu. Service  
Working at Social Forestry Range Sillod,  
R/o : At Post Golegaon, Tq. Sillod,  
District Aurangabad.
11. Smt. SumanbaiW/oTrimbakChoutmal,  
Age : Major, Occu. Service  
Working at Social Forestry Range Gangapur,  
R/o : At Post Chikalthana, Tq. & District Aurangabad.
12. Shri Vasant S/o HaribhauDoiphode,  
Age : Major, Occu. Service  
Working at Social Forestry Range Gangapur,  
R/o :Radhaswami Colony, Jatwada Road,  
Tq. & District Aurangabad.
13. Shri Hansraj S/o KachruDukre,  
Age : Major, Occu. Service  
Working at Social Forestry Range Vaijapur,  
R/o :Vaijapur, District Aurangabad.
14. Shri Sajan S/o MahaduPalhal,  
Age : Major, Occu. Service  
Working at Social Forestry Range Khultabad,  
R/o : At Pimpalgaon, Post Vanegaon,  
Tq. Phulambri, District Aurangabad.

15. Shri Magan S/o Nathaji Salve,  
Age : Major, Occu. Service  
Working at Social Forestry Range Aurangabad (Rural),  
R/o : At Post Tisgaon, Tq. Gangapur,  
District Aurangabad.
16. Shri Ramesh S/o BatiraoBhavan,  
Age : Major, Occu. Service  
Working at Social Forestry Range Aurangabad (Rural),  
R/o : At Bhambarda, Post Dudhad,  
Tq. & District Aurangabad.
17. Shri Vishnu S/o SahebraoChinchole,  
Age : Major, Occu. Service  
Working at Social Forestry Range Khultabad,  
R/o : At Mangrul, Post Karmad,  
Tq. & District Aurangabad.
18. Shri Sandu S/o BaburaoMankape,  
Age : Major, Occu. Service  
Working at Social Forestry Range Gangapur,  
R/o : At Post Jategaon, Tq. Phulambri,  
District Aurangabad.
19. Shri Shalikram S/o ManajiGavhad,  
Age : Major, Occu. Service  
Working at Social Forestry Range Aurangabad (Rural),  
R/o : At Waki, Post Nevpur, Tq. Kannad,  
District Aurangabad.
20. Shri Raju S/o SanduDehade,  
Age : Major, Occu. Service  
Working at Social Forestry Range Aurangabad (Rural),  
R/o : At Post Chikalthana, Tq. & District Aurangabad.
21. Shri Janardhan S/o PandurangBankar,  
Age : Major, Occu. Service  
Working at Social Forestry Range Sillod,  
R/o : At Post Karmad, Tq. & District Aurangabad.
22. Shri Vinayak S/o KarbhariWagh,  
Age : Major, Occu. Service  
Working at Social Forestry Range Sillod,  
R/o : At Khullod, Post Undangaon,  
Tq. Sillod, District Aurangabad.

23. Shri Appasaheb S/o PunjaramNajan,  
Age : Major, Occu. Service  
Working at Social Forestry Range Khultabad,  
R/o : At Post Kingaon, Tq. Phulambri,  
District Aurangabad.
24. Shri Ashok S/o DeoraoAutade,  
Age : Major, Occu. Service  
Working at Social Forestry Range Aurangabad City,  
R/o : At Post Harsul, Tq.& District Aurangabad.
25. Shri Sarangdhar S/o GangadharAher,  
Age : Major, Occu. Service  
Working at Social Forestry Range Sillod,  
R/o : At Post Nillod, Tq. Sillod,  
District Aurangabad.
26. Smt. ShobhabaiW/oBhagwatShinde,  
Age : Major, Occu. Service  
Working at Social Forestry Range Sillod,  
R/o : At Post Chikalhana, Tq. & District Aurangabad.
27. Smt. MherunissaW/oIsakShaikh,  
Age : Major, Occu. Service  
Working at Social Forestry Range Sillod,  
R/o : At Post Chikalhana, Tq. & District Aurangabad.
28. Smt. RafiyabiW/oShahanurPathan,  
Age : Major, Occu. Service  
Working at Social Forestry Range Kannad,  
R/o : At Post Chikalhana, Tq. & District Aurangabad.
29. Smt. HafijabaiW/oSherfoddin,  
Age : Major, Occu. Service  
Working at Social Forestry Range Kannad,  
R/o : At Post Chikalhana, Tq. & District Aurangabad.
30. Shri Nayarshah S/o SanduShaikh,  
Age : Major, Occu. Service  
Working at Social Forestry Range Gangapur,  
R/o : At Post Nachanel, Tq. Kannad,  
District Aurangabad.

31. Shri Sahebrao S/o RamraoPathade,  
Age : Major, Occu. Service  
Working at Social Forestry Range Paithan,  
R/o : At Bhambarda, Post Dudhad ,  
Tq. & District Aurangabad.
32. Shri Ambadas S/o BhimraoAutade,  
Age : Major, Occu. Service  
Working at Social Forestry Range Aurangabad Rural,  
R/o : At Post Harsul, Tq. & District Aurangabad.
33. Shri Hemrao S/o DevmanBakle,  
Age : Major, Occu. Service  
Working at Social Forestry Range Kannad,  
R/o : At Post Harsul, Tq. & District Aurangabad.
34. Sau. NirmalabaiW/oHemraoBakle,  
Age : Major, Occu. Service  
Working at Social Forestry Range Kannad,  
R/o : At Post Harsul, Tq. Kannad,  
District Aurangabad.
35. Smt. Anita W/oKadubaBankar,  
Age : Major, Occu. Service  
Working at Social Forestry Range Gangapur,  
R/o : At Post Chikalthana, Tq. & District Aurangabad.
36. Shri Jagan S/o Dada Perkar,  
Age : Major, Occu. Service  
Working at Social Forestry Range Gangapur,  
R/o : At Padegaon, Tq. & District Aurangabad.
37. Shri Ankush S/o BaburaoTonpe,  
Age : Major, Occu. Service  
Working at Social Forestry Range Aurangabad,  
R/o : At Zalta, Post Chikhalthana,  
Tq. & District Aurangabad.
38. Shri Shalikram S/o ManikKalyankar,  
Age : Major, Occu. Service  
Working at Social Forestry Range Sillod,  
R/o : At Post Balapur, Tq. Sillod,  
District Aurangabad.

39. Shri Shriram S/o Shankar Walke,  
Age : Major, Occu. Service  
Working at Social Forestry Range Kannad,  
R/o : At Post Andhaner, Tq. Kannad,  
District Aurangabad.
40. Shri Pandurang S/o DeoraoMokase,  
Age : Major, Occu. Service  
Working at Social Forestry Range Kannad,  
R/o : At Post Pishor, Tq. Kannad,  
District Aurangabad.
41. Shri Vishwas S/o GovindaMokase,  
Age : Major, Occu. Service  
Working at Social Forestry Range Kannad,  
R/o : At Post Pishor, Tq. Kannad,  
District Aurangabad.
42. Shri Dhanu S/o BudhaPhula,  
Age : Major, Occu. Service  
Working at Social Forestry Range Vaijapur,  
R/o : At Post Jadhavwadi, Tq. Aurangabad,  
District Aurangabad.
43. Shri Ashok S/o RambhauChandane,  
Age : Major, Occu. Service  
Working at Social Forestry Range Vaijapur,  
R/o : At Post Navnathnagar, HUDCO,  
Aurangabad, District Aurangabad.
44. Shri Anna S/o GovindaWagh,  
Age : Major, Occu. Service  
Working at Social Forestry Range Kannad,  
R/o : At Post Kannad, Tq. Kannad,  
District Aurangabad.

**.. APPLICANTS****V E R S U S**

- 1) The State of Maharashtra  
Through Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai-32
- 2) The Principal Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai-32.

- 3) The Principal Chief Conservator of Forests  
And Director General of Social Forestry,  
Maharashtra State, Central Building, Pune.
- 4) The Chief Conservator and Deputy Director General,  
Social Forestry Zone, Plot No. 3, Ramdas Tower,  
Kalpataru Housing Society, Garkheda,  
Aurangabad.
- 5) The Deputy Director,  
Social Forestry Division,  
N-3, CIDCO, Plot No. 243,  
Aurangabad.

**.. RESPONDENTS**

**W I T H**

**2. ORIGINAL APPLICATION NO. 651 OF 2016**

**DISTRICT: - JALNA**

1. Shri Sakharam S/o Sukhdeo Mule,  
Age : Major, Occu. Service  
Working at Social Forestry Range Jalna (East),  
R/o : At Post Borkhedi, Tq. Jalna,  
District- Jalna.
2. Shri Bhagaji S/o Shankar Kharat,  
Age : Major, Occu. Service  
Working at Social Forestry Range Jalna (East),  
R/o : At Post Ghanewadi, Tq. Jalna,  
District- Jalna.
3. Shri Laxman S/o GanpatShinde,  
Age : Major, Occu. Service  
Working at Social Forestry Range Jalna (East),  
R/o : At Post Mhasrul, Tq. & District Buldhana.
4. Shri Tulshiram S/o DeoraoBhalsingh,  
Age : Major, Occu. Service  
Working at Social Forestry Range Jalna (East),  
R/o : At Post Pirkalyan, Tq. Jalna,  
District- Jalna.
5. Shri Vishwas S/o BapuraoBachate,  
Age : Major, Occu. Service  
Working at Social Forestry Range Jalna (East),

R/o : At Post Golapangri, Tq. Jalna,  
District- Jalna.

6. Shri Ganpat S/o JagannathRathod,  
Age : Major, Occu. Service  
Working at Social Forestry Range Jalna (East),  
R/o : At Post BawanePangri, Tq. Badnapur,  
District- Jalna.
7. Smt. AmrutaBaburaoShinde,  
Age : Major, Occu. Service  
Working at Social Forestry Range Jalna (East),  
R/o : At Post Badnapur, Tq. Badnapur,  
District- Jalna.
8. Shri Sundar S/o DajibaKharabe,  
Age : Major, Occu. Service  
Working at Social Forestry Range Jalna (East),  
R/o : At Post Pimparkheda, Tq. Mantha,  
District- Jalna.

**.. 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, Jalna, Dist. Jalna. **.. RESPONDENTS**

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APPEARANCE : Shri A.S. Shelke, learned Advocate for the  
applicants in both the matters.



: Shri S.K. Shirse, learned Presenting Officer  
for the respondents in O.A. no. 593/2016.

: Shri D.R. Patil, learned Presenting Officer  
for respondents in O.A. no. 651/2016.

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**CORAM** : **Hon'ble Shri B.P. Patil, Member (J)**

**DATE** : **19<sup>th</sup> July, 2017**  
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### **C O M M O N - O R D E R**

1. The facts and issues involved in both the original applications are identical and one and the same and therefore the same are decided by this common order.

2. The applicants have filed these original applications to quash the impugned order dated 17.3.2016 issued by the Chief Conservator and Deputy Director General, Social Forestry Zone, Aurangabad and the order dated 7.5.2016 issued by the Deputy Director, Social Forestry Division, Aurangabad directing recovery of excess payment of wages made to them.

3. It is the contention of the applicants that, they were initially appointed as daily wages employees on the establishment of res. nos. 4 & 5. They had worked as daily wages employees for years together and had also completed 240 days of service in each of the years. On 19.10.1996, the Government of Maharashtra in Rural Development and Water Conservation Department issued G.R.

and decided to regularize the services of the daily wages employees working on Planned and Non-planned schemes under the department for a period of more than 5 years considering their long period of service. Accordingly 1416 supernumerary posts were created. As per the said G.R., an employee who has completed 5 years of continuous service as on 1.11.1994 is held eligible for regularization w.e.f. 1.11.1994. The supernumerary posts were created in Group - D having time scale of Rs. 750-940 and the employees were designated as 'Samajik Vanikaran Majoor'. Such employees were further granted relaxation of education, age limit and employment exchange. All those employees, who were found eligible for regularization as per G.R. dated 19.10.2016 were also given appointment orders with retrospective effect w.e.f. 1.11.1994 and the arrears of the wages for the period from 1.11.1994 till issuance of appointment orders were also paid to them. In view of the said G.R. number of employees working under the res. nos. 4 & 5 were regularized from 1.11.1994 and accordingly appointment orders were issued in their favour.

The applicants were not regularized in service as per the G.R. dated 19.10.1996, but they were continued in employment.

4. On 16.10.2012 the Government of Maharashtra in Revenue & Forest Department issued another G.R. and decided to confer the 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 of plants, transportation of forests produce and for maintenance of rest house, daily wages employees are working for years together. The Committee was constituted under the Chairmanship of the Additional Principal Chief Conservator of Forest. On the basis of the report of the said Committee the Government had sanctioned 5098 supernumerary posts for the Forest department, 451 supernumerary posts for Social Forestry department and 1006 supernumerary posts for Forest Development Corporation. As per the G.R. dated 16.10.2012 the daily wages employees, who have completed 5 years' service or intermittent service during the period from 1.11.1994 to 30.6.2004, their services were regularized w.e.f. 1.6.2012. As per the said G.R. the Rural Development and Water Conservation Department is required to take steps for creation of supernumerary posts under the Social Forestry Department. The said G.R. further directs the Forest Development Corporation to create 1006 posts and make provision for the payment of wages to the employees to be paid from 1.6.2012.

5. On the basis of G.R. dated 16.10.2012, the Rural Development and Water Conservation Department issued G.R. dated 31.10.2013 conferring the benefits of the G.R. dated 16.10.2012 to such daily wages employees under the Social Forestry Department. Accordingly 451 supernumerary posts of 'Samajik Vanikaran Major' under the Social Forestry department have been created. The budgetary provision was also made in the said G.R. for payment of arrears of wages.

6. All the applicants found eligible for the benefits as per G.R. dated 31.10.2013 as they have completed 5 years of service between 1.11.1994 to 30.6.2004. Accordingly the respondent no. 4 has issued appointment orders on 25.11.2013 and the applicants were appointed on the 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. Accordingly the applicants joined the services and since then they are working at various places. As per G.Rs. dated 16.10.2012 and 31.10.2013 all the applicants have been paid their salary and wages for the period from 1.6.2012 till 24.11.2013.

7. One Shri R.B. Chavan filed a complaint on 30.3.2015 in the office of res. no. 3 complaining that the employees, who were regularized in Osmanabad district as per G.R. dated 16.10.2012

have received wages for the period from 1.6.2012 to November, 2013 though they were not in service during the said period. It is alleged that the employees have received wages for the period of 18 months by misleading the Government and in connivance with the authorities. The res. no. 3 directed the res. no. 4 to make an enquiry in the matter and to submit the report in that regard. The res. no. 4 thereupon directed the Deputy Director of Social Forestry to conduct an enquiry in Marathwada region. On receipt of report, the res. no. 4 by the impugned order dated 17.3.2016 held that payment of wages made to 50 employees under the control and supervision of res. no. 5 is illegal and further directed res. no. 5 to recover the amount of excess payment forthwith. On the basis of the said order, the res. no. 4 issued order dated 7.5.2016 directing for recovery of wages paid to the applicants for the period from 1.6.2012 to 24.11.2013. The applicants collected the information and at that time they learnt that recovery has been order against them. Therefore they made representation to the res. nos. 4 & 5 through Sarva Shramik Sangh registered Trade Union, contending that they have been conferred with benefits of regularization with retrospective effect from 1.6.2012 in view of G.R. dtd. 16.10.2012 & 31.10.2013 and they are eligible to get the salary and wages paid to them. It is their contention that the impugned orders dates 17.3.2016 and 7.5.2016 were illegal and

therefore they prayed to quash the same and also prayed to quash the order of recovery issued against them.

8. The respondents resisted the claim of the applicants by filing affidavit in reply. They have admitted the fact that the applicants were working as 'Samajik Vanikaran Majoor' and they were initially appointed as daily wages worker. They have admitted that in the year 1996 i.e. on 19.10.1996 the Government of Maharashtra in its Rural Development and Water Conservation Department issued a G.R. for regularization of the services of the daily wages employees under the Social Forestry Department who have worked on Planned and Non-planned schemes and have completed 240 days' service in a year for 5 years as on 1.11.1994. They have also admitted the fact that, in view of the said G.R. appointment orders have been issued with retrospective effect from 1.11.1994. It is their further contention that the applicants were not entitled for regularization in service in view of G.R. dated 19.10.1996. They have contended that the applicants have made vague averments regarding continuation in service on daily wages basis. They have also admitted the fact that, as per the policy laid down in the G.R. dated 16.10.2012 the applicants have been regularized by the Social Forestry Department, as per the said G.R. out of those employees. 44 employees were considered

eligible for regularization from 1.6.2012. The payments were made to them wrongly without confirming their absence and non-working days. One Shri R.B. Chavan filed a complaint on 30.3.2015 in the office of res. no. 3 complaining that the employees, who were regularized in Osmanabad district as per G.R. dated 16.10.2012 have received wages for the period from 1.6.2012 to November, 2013 though they were not in service or they were absent during the said period and, therefore, enquiry was directed in the said matter. During the enquiry, it was revealed that the applicants and many more other employees received wrong payment i. e. payment of absence period / non-working days on the establishment of Social Forestry Department at the particular point of time and therefore recovery has been ordered against them. The applicants had given consent for recovery. It is their contention that the impugned orders issued by the respondents for recovery of excess payment of wages from the applicants is proper, justifiable as it has been passed in view of doctrine of "No work - No pay". Therefore the applicants cannot claim the relief as prayed by them. On these grounds they have prayed for rejection of the O.As.

9. The applicants filed rejoinders and contended that the doctrine of "No work - No pay" is not applicable in the present

cases and they had received salary in respect of the said period on the basis of the G.R. dated 31.10.1993.

10. I have heard Shri A.S. Shelke, learned Advocate for the applicants in both the matters, Shri S.K. Shirse, learned Presenting Officer for the respondents in O.A. no. 593/2016 and Shri D.R. Patil, learned Presenting Officer for respondents in O.A. no. 651/2016. I have perused the documents on record.

11. Most of the facts in both the original applications are admitted to either of the parties. Admittedly, the applicants are working under the res. nos. 4 & 5 at various places as 'Samajik Vanikaran Majoors'. Initially they were deployed as daily wages employees under the res. nos. 4 & 5. They worked as daily wager employees for years together and had also completed 240 days of service in each of the years. It is not much disputed that on 19.10.1996, the Government of Maharashtra in Rural Development and Water Conservation Department issued G.R. and decided to regularize the services of the daily wager employees worked on Planned and Non-planned schemes under the department and have completed 240 days in a year for 5 years considering their long period of service. Accordingly 1416 supernumerary posts were created. As per the said G.R., an employee who completed 5 years of continuous service as on



1.11.1994 is held eligible for regularization w.e.f. 1.11.1994. The supernumerary posts were created in Group – D having time scale of Rs. 750-940 and the employees were designated as ‘Samajik Vanikaran Majoor’. At that time the applicants were not regularized in service but they continued in service under the res. nos. 4 & 5 as daily wages workers.

12. On 16.10.2012 the Government of Maharashtra in Revenue & Forest Department had issued one more G.R. and decided to confer the 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 of plants, transportation of forests produce and for maintenance of rest house etc. Accordingly a Committee was constituted under the Chairmanship of the Additional Principal Chief Conservator of Forest and on the basis of the report from the said Committee 5098 supernumerary posts for the Forest department, 451 supernumerary posts for Social Forestry department and 1006 supernumerary posts for Forest Development Corporation were created. As per the G.R. dated 16.10.2012 the daily wages employees, who have completed 240 days service in a year for 5 years’ or intermittent service for 5 years during the period from 1.11.1994 to 30.6.2004 will have to be regularized in the service

w.e.f. 1.6.2012. On the basis of the said G.R. dated 16.10.2012 the Rural Development and Water Conservation Department issued another G.R. dated 31.10.2013 conferring the benefits of the G.R. dated 16.10.2012 to such daily wagger employees under the Social Forestry Department. Accordingly 451 supernumerary posts of 'Samajik Vanikaran Major' under the Social Forestry department were created by the said G.R. dated 31.10.2013. The budgetary provision was also made in the said G.R. for payment of arrears of wages to such employees. On the basis of the said G.R. the applicants were appointed on the supernumerary posts with effect from 1.6.2012 in Group – D category in the pay scale of Rs. 4440-7440 with Grade Pay of Rs. 1300. Accordingly the applicants joined the services on 23.11.2013 and since then they are working at various places. It is not much disputed that as per G.R. dated 16.10.2012 and 31.10.2013 all the applicants had been paid their salary and wages for the period from 1.6.2012 to November, 2013.

13. Admittedly, one Shri R.B. Chavan, Social Worker filed a complaint on 30.3.2015 in the office of res. no. 3 complaining that the employees, who were regularized in Osmanabad district in view of G.R. dated 16.10.2012 received wages for the period from 1.6.2012 to November, 2013 though they were not in service

during the said period. On receiving the said complaint the res. no. 2 by its letter dated 6.4.2015 directed the res. no. 3 to make enquiry in the matter and to submit the report in that regard. The res. no. 3 thereupon directed to the Deputy Directors of Social Forestry Department to conduct an enquiry. On receipt of report of Deputy Directors, the res. no. 4 by the impugned order dated 17.3.2016 held that payments of wages made to 50 employees under the supervision of res. nos. 4 & 5 were illegal and further directed the res. no. 5 to recover the amount of excess payment forthwith. On the basis of the said order dated 17.3.2016, the res. no. 4 issued order dated 7.5.2016 directing recovery of wages paid to the applicants for the period from 1.6.2012 to 24<sup>th</sup> November, 2013. The said order dated 17.3.2016 and 7.5.2016 are assailed by the applicants in the present original applications. Admittedly, the statement regarding excess amount of wages paid to the applicants and recovery of which is directed as per the statement attached by the respondents along with affidavit in reply.

14. The learned Advocate for the applicants have submitted that the services of the applicants have been regularized on the basis of G.Rs. dated 16.10.2012 and 31.10.2013 with effect from 1.6.2012 and accordingly they have been paid the salary and wages for the period from 1.6.2012 to 24.11.2013. They have

submitted that since the applicants have been regularized from 1.6.2012, they are entitled to get the salary for the said period and, therefore, the impugned orders directing recovery of that amount of salary is not legal.

15. He has further submitted that the applicants are Group – D employees and even if any excess payment is made, it cannot be recovered in view of the guidelines given by the Hon'ble Supreme Court in case of **STATE OF PUNJAB & ORS. VS. RAFIQ MASIH (WHITE WASHER) ETC. [2015 (1) ALL MR 957 (S.C.)**. He has submitted that in view of verdict of Hon'ble the Supreme Court, the recovery is impermissible as the applicants belong to Group – D services. He has submitted that some of the employees are due for retirement and, therefore, recovery is impermissible. He has submitted that the guidelines given by the Hon'ble Supreme Court in the above decision is applicable in the present cases and, therefore, he prayed to quash the impugned orders.

16. To this learned P.O. has replied that considering the facts in the cases, it is crystal clear that the excess salary has been paid to the applicants though they had not worked for so many days during the above period i. e. from 1.6.2012 to 24.11.2013. He has submitted that the applicants were aware about the fact that they had not worked during that period. In spite of that they received

the salary, which has been paid to them wrongly. He has attracted my attention towards the statements filed along with reply of the respondents regarding excess salary paid to the applicants (page 70 of O.A. no. 593/2016 and page 62 of O.A. no. 651/2016). He has submitted that the employees whose names appeared at sr. nos. 1, 3, 5, 7, 9, 10, 13 to 22, 26 to 29, 32, 36, 39, 40, 49, 50 in the statement at page 70 of O.A. no. 593/2016 and the employee at sr. no. 6 in the statement at page 62 of O.A. no. 651/2016 have not worked for a single day during that period and rest of the employees mentioned therein had worked for some days but they had received salary for the entire period. He has submitted that the salary has been paid to the employees for the days on which they had not rendered their service or discharged the work and therefore the enquiry was directed to res. no. 3 in the matter. He has submitted that the respondents have rightly held that the applicants were not entitled to get the salary for the days on which they had not worked and accordingly recovery was directed. He has submitted that the res. no. 4 has rightly relied on the principle of "No work – No pay" and therefore the present case does not fall under the categories mentioned in the judgment in the case of **STATE OF PUNJAB & ORS. VS. RAFIQ MASIH (WHITE WASHER) ETC.** (supra) and therefore he prayed to dismiss the original applications.

17. On considering the submissions advanced by both the sides, it is crystal clear that the material question involved in these matters whether the applicants can claim benefit of the guidelines of Hon'ble Supreme Court in the case of **STATE OF PUNJAB & ORS. VS. RAFIQ MASIH (WHITE WASHER) ETC.** (supra) and whether their cases fall under the categories mentioned in the above said decision of Hon'ble the Supreme Court. In this regard the judgment of Hon'ble Supreme Court is material. In the above said judgment of **STATE OF PUNJAB & ORS. VS. RAFIQ MASIH (WHITE WASHER) ETC.** (supra) the Hon'ble Apex Court has observed as under :-

“10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose

the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.”

18. It has been further observed by Hon'ble Supreme Court 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, summarise 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 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 employee, 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.”

19. In the above circumstances, I have to determine whether the cases of the present applicants can be covered by the guidelines given by Hon'ble Supreme Court in the case of **STATE OF PUNJAB & ORS. VS. RAFIQ MASIH (WHITE WASHER) ETC.** (supra). Admittedly, the applicants were regularized w.e.f. 1.6.2012 and they were paid salary of the period from 1.6.2012 to 24.11.2013. On perusing the record, it reveals that on receiving complaint from Shri R.B. Chavan the res. no. 3 initiated enquiry as regards unauthorized payment made to the employees of the salary during which they had not worked or discharged the duties. In enquiry it was disclosed that the applicants and other employees received salary during that period for the days on which they had not worked. It means that the payment of salary was made to the applicants though they had not worked on those days and they received the said amount of salary though they were not entitled to get the same. It is not the case of the applicants that they received excess payment of salary than the



entitlement. On the contrary it reveals that they received the salary of the period during which they had not worked. Documents at page 70 in O.A. no. 593/2016 & page 62 in O.A. no. 651/2016 show that some of the applicants had worked for a single day and remaining worked for few days but they received the salary for entire period from 1.6.2012 to 24.11.2013 though they were not entitled to get salary of that period. In these circumstances, principle of “No work – No pay” is applicable in this case. In these circumstances, in my opinion, the applicants do not fall under the categories mentioned by the Hon’ble Supreme Court in para 12 of the judgment of **STATE OF PUNJAB & ORS. VS. RAFIQ MASIH (WHITE WASHER) ETC.** (supra). Therefore, the applicants cannot claim the reliefs as prayed for against the recovery of excess amount of salary paid to them.

20. It is pertinent to note here that the applicants filed the applications (paper book page 56 in O.A. no. 593/2016 and pages 73 to 81 in O.A. 651/2016) with the respondents and admitted the fact that they received the excess payment of salary and they expressed their willingness to repay the amount in instalments. In these circumstances, in my opinion, the impugned orders cannot be said to be illegal. The res. nos. 4 & 5 have rightly passed the impugned orders to recover the amount of salary paid

to the applicants though they had not worked for those days on the principle 'No work, – No pay'. Therefore, I do not find any illegality in the said orders. There is no merit in the original applications. Consequently the original applications deserve to be dismissed. In view of above discussion, the original application no. 593/2016 and original application no. 651/2016 are dismissed without any order as to costs.

**MEMBER (J)**

ARJ-O.A. NOS. 593 WITH 651 BOTH OF 2016 BPP (RECOVERY)