

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.1004 OF 2015
WITH
ORIGINAL APPLICATION NOS.194, 410, 1173 OF 2016
WITH
MISC. APPLICATION NO.77 OF 2017
IN
ORIGINAL APPLICATION NO.1173 OF 2016
WITH
ORIGINAL APPLICATION NOS.74 & 75 OF 2017**

ORIGINAL APPLICATION NO.1004 OF 2015

**DISTRICT : RAIGAD/
/SATARA/PALGHAR/
SINDHUDURG**

1. Mr. Shrirang L. Devare.)
Occu.: Forester, R/at : At Chikani,)
Post : Patansae, Tal.: Roha, Dist : Raigad.)
2. Mr. Shashikant G. Kharkar.)
Occu.: Forester, R/at : At Bhagwadi,)
Post : Sudkoli, Tal.: Alibaug, Dist : Raigad.)
3. Mr. Ramesh B. Patil.)
Occu.: Forester, R/at : At Khidaki,)
Post : Kamarli, Tal.: Alibaug, Dist : Raigad.)
4. Mr. Maruti N. Patil.)
Occu.: Forester, R/at : At Kandle,)



Post : Kandle, Tal.: Pen, Dist : Raigad.)

5. Mr. Vilas L. Patil.)
Occu.: Forester, R/at : At Mule,)
Post : Thal, Tal.: Alibaug, Dist : Raigad.)

6. Mr. Tukaram N. Waghmasre.)
Occu.: Forester, R/at : At Post : Kamarli,)
Tal.: Pen, Dist : Raigad.)

7. Mr. Sharad A. Rane.)
Occu.: Forester, R/at : At Post : Karle,)
Post : Khandala, Tal.: Alibaug, Dist : Raigad.)

8. Mr. Dattatraya G. Patil.)
Occu.: Forester, R/at : At Pawele,)
Post : Khandala, Tal.: Alibaug, Dist : Raigad.)

9. Mr. Anant G. Patil.)
Occu.: Forest Guard, R/at : At Mule,)
Post : Thal, Tal.: Alibaug, Dist : Raigad.)

10. Mr. Prabhakar K. Mhatre.)
Occu.: Forester, R/at : At Ramvadi,)
Samarth Nagar, Post & Tal. Pen,)
Dist : Raigad.)

11. Mr. Ashok K. Thakur.)
Occu.: Forester, R/at : At Maleghar,)
Post : Kandlepada, Tal.: Pen, Dist : Raigad.)

12. Mr. Jagdish G. Mhatre.)
Occu.: Forester, R/at : At Post Karjat,)
Kotwal Nagar, Tal.: Karjat, Dist : Raigad.)

13. Mr. Vasant R. Kamble.)
Occu.: Forester, R/at : At Savle,)
Post : Rasayani, Tal.: Panvel, Dist : Raigad.)

14. Mr. Premnath K. Dadve.)
Occu.: Forester, R/at : At Kavade,)



Post : Hashiware, Tal.: Alibaug, Dist : Raigad.)

15. Mr. Sudhir S. Patil.)
Occu.: Forester, R/at : At Dhakate)
Shahapur, Post : Shahapur, Tal.: Alibaug,))
Dist : Raigad.)

16. Mr. Keshav M. Mhatre.)
Occu.: Forester, R/at : At Patnoli,)
Post : Pen, Tal.: Pen, Dist : Raigad.)

17. Mr. Suresh H. Mhatre.)
Occu.: Forester, R/at : At Pavale,)
Post : Kandala, Tal.: Alibaug, Dist : Raigad.)

18. Mr. Nishikant S. Gavand.)
Occu.: Forester, R/at : At Sutarpada,)
Post : Kamarli, Tal.: Alibaug, Dist : Raigad.)

19. Mr. Kashinath G. Patil.)
Occu.: Forester, R/at : At Pezhati,)
Post : Poyawad, Tal.: Alibaug, Dist : Raigad.)

20. Mr. Vikas B. Jadhav.)
Occu.: Forester, R/at : At Post Nagothane,))
Tal.: Roha, Dist : Raigad.)

21. Mr. Ravindra V. Natothkar.)
Occu.: Forester, R/at : At Post Pali,)
Tal.: Sudhagad, Dist : Raigad.)

22. Mr. Yadav B. Lokhande.)
Occu.: Forester, R/at : At Post Karjat,)
Dist : Raigad.)

23. Mr. Ashok S. Rayrashi.)
Occu.: Forester, R/at : At Varathi,)
Post Tambdi, Tal.: Roha, Dist : Raigad.)

24. Mr. Pradeep S. Jadhav.)
Occu.: Forester, R/at : At Surae,)
Post : Borli Mandala, Tal.: Murud,)



Dist : Raigad.)

25. Mr. Bharat J. Tandel.)
 Occu.: Forest Guard, R/at : At Post)
 Rajaram, Tal.: Alibaug, Dist : Raigad.)

26. Mrs. Rashmi R. Mhatre.)
 Occu.: Forest Guard, R/at : At Post Kurul,))
 Tal.: Alibaug, Dist : Raigad.)

27. Mr. Gautam G. Torane.)
 Occu.: Forester, R/at : At Jambhulani,)
 Post : Polakori, Tal.: Man, Dist : Satara.)

28. Mr. Vikas Y. Patil.)
 Occu.: Forester, R/at : At Post Kurul,)
 Tal.: Alibaug, Dist : Raigad.)

20. Mr. Vikas B. Jadhav.)
 Occu.: Forester, R/at : At Post Nagothane,))
 Tal.: Roha, Dist : Raigad.)

29. Mr. Abhimanyu H. Patil.)
 Occu.: Forester, R/at : At Post Chincholi,))
 Tal.: Alibaug, Dist : Raigad.)

30. Mr. Deepak S. Shinde.)
 Occu.: Forester, R/at : Krupa Building,)
 C Wing, Room No.2, At Post Palspe,)
 Tal.: Roha, Dist : Raigad.)

31. Mr. Ravindra H. Pawar.)
 Occu.: Forester, R/at : At Post Kadav,)
 Tal.: Karjat, Dist.: Raigad.)

32. Mr. Rajaram S. Patil.)
 Occu.: Forester, R/at : At Varedi,)
 Tal.: Pen, Dist : Raigad.)

33. Mr. Ravindra G. Juvale.)
 Occu.: Forester, R/at : At Chendre,)



Post : Alibaug, Tal.: Alibaug, Dist : Raigad.)

34. Mr. Sudam G. Adavale.)
Occu.: Forester, R/at : At Murambi,)
Post Sugon, Tal.: Chakuraji, Dist : Latur.)

35. Mr. Balu D. Harpude.)
Occu.: Forester, R/at : At Post Kashele,)
Tal.: Karjat, Dist : Raigad.)

36. Mr. Sudhakar B. Sawant.)
Occu.: Forester, R/at : Prajakta Building)
No.2, Room No.2, Prem Nagar, Chinchpada)
Tal. : Pen, Dist : Raigad.)

37. Mr. Subhash A. Bhoir.)
Occu.: Forester, R/at : At Dhandapada,)
Post : Koproli, Tal.: Pen, Dist : Raigad.)

38. Mr. Laxman P. Kumbhar.)
Occu.: Forester, R/at : At Post Pen,)
Kumbhar Ali, Tal.: Pen, Dist : Raigad.)

39. Mr. Namdev T. Ambaji.)
Occu.: Forester, R/at : At Post Palaspe,)
Police Colony, Tal.: Panvel, Dist : Raigad.)

40. Mr. Bhagwan B. Kamble.)
Occu.: Forester, R/at : At Umbarde,)
Post : Koproli, Tal.: Pen, Dist : Raigad.)

41. Mr. Vidyadhar S. Patil.)
Occu.: Forester, R/at : At Post Pali,)
Tal. : Sudhagar, Dist : Raigad.)

42. Mr. Ramesh C. Palavkar.)
Occu.: Forester, R/at : At Post : Ladkur,)
Tal.: Sudhagar, Dist : Raigad.)

43. Mr. Gurunath M. Patil.)
Occu.: Retired, R/at : At Moronde,)

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Post : Ramraj, Tal.: Alibaug, Dist : Raigad.)

44. Mr. Suryakant G. Patil.)
Occu.: Retired, R/at : At Lonare,)
Post : Thal, Tal.: Alibaug, Dist : Raigad.)

45. Mr. Pradeep S. Patil.)
Occu.: Retired, R/at : At Dhakate)
Shahapur, Post : Shahapur, Tal.: Alibaug,)
Dist : Raigad.)

46. Mr. Chandrakant H. Mhatre.)
Occu.: Retired, R/at : At Parneshwar,)
Post : Koproli, Tal.: Pen, Dist : Raigad.)

47. Mr. Bhagoji B. Shirke.)
Occu.: Retired, R/at : At post Mahad,)
Tal.: Mahad, Dist : Raigad.)

48. Mr. Harichandra T. Ahire.)
Occu.: Retired, R/at : At Siddheshwar)
Nagar, Bharwadi, Ghatkopar (W),)
Mumbai - 84.)

49. Mr. Sudhakar U. Mane.)
Occu.: Forester, R/at : At Akle, Post)
Birwadi, Tal. Mahad, Dist : Thane.)

50. Mr. Satyawan P. Patil.)
Occu.: Forester, R/at : At Malade,)
Post : Ramraj, Tal.: Alibaug, Dist : Raigad.)

51. Mr. Balkrushna K. Gornak.)
Occu.: Forester, R/at : At Post Shrivardhan,)
Tal.: Shrivardhan.)

52. Mr. Vithoba D. Mhatre.)
Occu.: Forester, R/at : At Bidwagle,)
Post : Kurdas, Tal.: Alibaug, Dist : Raigad.)

53. Mr. Sudhir G. Mhatre.)



Occu.: Forester, R/at : At Mandvarwar,)
Post : Nangri, Tal.: Alibaug, Dist : Raigad.)

54. Mr. Leeladhar R. Bhoir.)
Occu.: Forester, R/at : At Malade,)
Post : Ramraj, Tal.: Alibaug, Dist : Raigad.)

55. Mr. Ananta B. Zhaware.)
Occu.: Forester, R/at : At Malade,)
Post : Ramraj, Tal.: Alibaug, Dist : Raigad.)

56. Mr. Tukaram Ganu Mhatre.)
Occu.: Forester, R/at : At Vashinaka,)
Post : Kandalpada, Tal.: Pen, Dist : Raigad.)

57. Mr. Sunil T. Mohite.)
Occu.: Forester, R/at : At Dhamansai,)
Post : Dhamansai, Tal.: Roha, Dist : Raigad.)

58. Mr. Madhukar M. Shinde.)
Occu.: Forester, R/at : At Post Tal. : Murud,)
Dist : Raigad.)

59. Mr. Namdev V. Shirke.)
Occu.: Forester, R/at : At Post Kable,)
Tal.: Mahad, Dist : Raigad.)

60. Mr. Dilip M. Patil.)
Occu.: Forester, R/at : At Belkade,)
Tal.: Alibaug, Dist : Raigad.)

61. Mr. Gajanan K. Davare.)
Occu.: Forester, R/at : At Post Vihur,)
Tal.: Murud, Dist : Raigad.)

62. Mr. Vilas C. Pande.)
Occu.: Forester, R/at : At Post Virar,)
Tal.: Vasai, Dist : Thane.)

63. Mr. Manohar S. Pande.)
Occu.: Forester, R/at : At Post Nate,)

- Tal.: Mahad, Dist : Raigad.)
64. Mr. Deepak T. Khaire.)
Occu.: Forester, R/at : At Post Tal. :)
Mangaon, Dist : Raigad.)
65. Mr. Anna S. Chavan.)
Occu.: Forester, R/at : At Post Khanapur,)
Tal.: Vai, Dist : Satara.)
66. Mr. Mohan V. Sawant.)
Occu.: Forester, R/at : At Post Tal.:)
Shrivardhan, Dist : Raigad.)
67. Mr. Laxman B. Pawar.)
Occu.: Forest Guard, R/at : At Karambali,)
Post : varsai, Tal.: Pen, Dist : Raigad.)
68. Mr. Chanru K. Zhavare.)
Occu.: Retired, R/at : At Umate,)
Post : Ramraj, Tal.: Alibaug, Dist : Raigad.)
69. Mr. Ravindra G. Patil.)
Occu.: Retired, R/at : At Dhavar,)
Post : Kurul, Tal.: Alibaug, Dist : Raigad.)
70. Mr. Mohan G. Kilje.)
Occu.: Retired, R/at : At Savar,)
Tal.: Mhasal, Dist : Raigad.)
71. Mr. Vasant H. Sable.)
Occu.: Retired, R/at : At Ambewadi,)
Ganesh Nagar, Post : Kolad, Tal.: Roha,)
Dist : Raigad.)
72. Mr. Bhaskar S. Patil.)
Occu.: Retired, R/at : At Malade,)
Post : Ramraj, Tal.: Alibaug, Dist : Raigad.)
73. Mr. Gajanan B. Jamadar.)
Occu.: Retired, R/at : At Post : Roha,)

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Astami, Tal.: Roha, Dist : Raigad.

)...**Applicants**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai - 400 032.)
2. The Principal Chief Conservator of)
Forest, M.S, Van Bhavan, Semi Nari)
Hill, Ram Giri Road, Nagpur - 1.)
3. The Chief Conservator of Forest)
(Territorial), Thane Forest Circle,)
Microwave Tower, Bara Bunglow)
Area, Kopri, Thane (E)- 603.)
4. The Secretary.)
Finance Department, Mantralaya,)
Mumbai 400 032.)
5. The Secretary.)
General Administrative Department,)
Mantralaya, Mumbai - 32.)
6. The Divisional Forest Officer.)
Roha, District Raigad.)
7. The Divisional Forest Officer.)
Alibaug, District Raigad.)

)...**Respondents**


WITH

ORIGINAL APPLICATION NO.194 OF 2016

1. Mr. Chandrakant J. Kamble.)
Occu.: Forester, R/at : At Bhimnagar,)



- Post : Assagaon (Vadhth), Tal.: Koregaon,)
Dist : Satara.)
2. Mr. Ashok D. Kuchekar.)
Occu.: Forester, R/at : At Surure,)
Tal.: Wai, Dist : Satara.)
3. Mr. Bhiva S. Khude.)
Occu.: Forester, R/at : At Post Pachawad,)
Near Paramento Hospital, Tal.: Wai,)
Dist : Satara.)
4. Mr. Shankar K. Shinde.)
Occu.: Forester, R/at : At Pali,)
Post : Topake, Tal.: Mahabaleshwar,)
Dist : Sastara.)
5. Mr. Suresh M. Shinde.)
Occu.: Forester, R/at : At Post : Gogave,)
Tal.: Mahabaleshwar, Dist : Satara.)
6. Mr. Sunil T. Chavan.)
Occu.: Forester, R/at : At Post : Ojerde,)
Tal.: Wai, Dist : Satara.)
7. Mr. Dattatraya M. Gite.)
Occu.: Forester, R/at : 77, Raviwar Peth,)
Lonar Galli, Satara.)
8. Mr. Dilip D. Jagdale.)
Occu.: Forester, R/at : At Post Padli,)
Satara Road, Tal.: Koregaon, Dist : Satara.)
9. Mr. Prakash D. Shinde.)
Occu.: Forest Guard, R/at : At Post)
Dare Bhimnagar, Assagaon (Vadhth),)
Tal.: Koregaon, Dist : Satara.)
10. Mr. Sham V. Sukate.)
Occu.: Forester, R/at : At Mangalwar Peth)
C/o. Adv. Anil Sukate, Vallabh Apt.,)

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- Satara.)
11. Mr. Chandrakant S. Dhotre.)
Occu.: Forester, R/at : At Post Nele,)
Tal. & Dist : Satara.)
12. Mr. Baliram K. Bhosale.)
Occu.: Forester, R/at : At Post Munavale,)
Tal.: Jawali, Dist : Satara.)
13. Mr. Dattatraya A. Chorage.)
Occu.: Forester, R/at : Polt No.41,)
Kesakar Colony, Mahadare Road, Satara.)
14. Mr. Narayan W. Bankar.)
Occu.: Forester, R/at : At Post Buinse,)
Tal.: Wai, Dist : Satara.)
15. Mr. Shankar V. Bichukale.)
Occu.: Forester, R/at : Virat Nagar,)
Tal.: Wai, Dist : Satara.)
16. Mr. Raju B. Waghmare.)
Occu.: Forester, R/at : 102/203,)
Venkatesh Apartment, Dist : Satara.)
17. Mr. Bhimrao D. Lokhande.)
Occu.: Forester, R/at : At Post Panchashil)
Arunavan Karmachari Society, Godoly,)
Satara.)
18. Mr. Chandrakant K. Gejage.)
Occu.: Forester, R/at : At Post Narsoba)
Nagar, Kolaki, Tal.: Phaltan, Dist : Satara.)
19. Mr. Ratnakant S. Shinde.)
Occu.: Forester, R/at : At Post Pande,)
Bopegaon, Tal.: Wai, Dist : Satara.)
20. Mr. Dilip J. Khandjoge.)
Occu.: Forester, R/at : 131 A, 1/4,)



Kesarkar Peth, Tal. & Dist : Satara.)

21. Mr. Tukaram A. Bhilare.)
Occu.: Forester, R/at : Lohare post,)
Bopardi, Tal.: Wai, Dist : Satara.)

22. Mr. Vasant S. Chorage.)
Occu.: Forester, R/at : Sahyadri Soc.,)
Sahyadri Nagar, Tal.: Wai, Dist : Satara.)

23. Mr. Abdul Gani Ibrahim Khan.)
Occu.: Forester, R/at : AP Wadhe,)
Tal. & Dist : Satara.)

24. Mr. Hanamant C. Kumbhar.)
Occu.: Forester, R/at : AP Vechale,)
Tal. & District : Satara.)

25. Mr. Gajanan M. Bhosale.)
Occu.: Forester, R/at : 123 A,)
Shukrawar Peth, Near Aryangla Hospital,)
Satara.)

26. Mr. Gulab M. Dange.)
Occu.: Forester, R/at : AP Tasgaon,)
Tal. & Dist : Satara.)


27. Mr. Dattatraya S. Ubale.)
Occu.: Forester, R/at : 177/9, Parale)
Sankulan, Flat No. F-1, Budhwar Peth,)
Satara.)

28. Mr. Eknath G. Jadhav.)
Occu.: Forester, R/at : Shrinagar Colony,)
Sangam Nagar, 'Ved Bhavan', Wedding)
Hall Area, Plot No.6, Tal.: Khed,)
Dist : Satara.)

29. Mr. Pandurang V. Bhosale.)
Occu.: Forester, R/at : At Post Varye,)
Tal. & Dist : Satara.)



30. Mr. Rashid I. Inamdar.)
 Occu.: Forester, R/at : At Post Peth)
 Kinhai, Tal.: Koregaon, Dist : Satara.)
31. Mr. Shivaji B. Bhandare.)
 Occu.: Forester, R/at : Plot No.4,)
 Tamajai Nagar, Karanje, Tal. & Dist :)
 Satara.)
32. Mr. Balkrishna M. Pawar.)
 Occu.: Forester, R/at : Plot No.6/2,)
 Maruti Niwas, Girivihar Hsg.Soc., Godoli,)
 Satara.)
33. Mr. Macchindranath S. Swami.)
 Occu.: Forester, R/at : At Post Rampur,)
 Patan, Tal.: Patan, Dist : Satara.)
34. Mr. Ananda P. Jadhav.)
 Occu.: Forester, R/at : At Post Rammala,)
 Tal.: Patan, Dist : Satara.)
35. Mr. Shivaji A. Shelar.)
 Occu.: Forester, R/at : New Civil Hospital,)
 Office Staff Quarter No.4, Sadar Bazar,)
 Satara.)
36. Mr. Salim A. Bagwan.)
 Occu.: Forester, R/at : Ajij manzil,)
 Sadar Bazar, Satara.)
37. Mr. Janardan D. Pawar.)
 Occu.: Forester, R/at : Plot No.39,)
 Sainagar, Jadhavwadi, Tal.: Phaltan,)
 Dist : Satara.)
38. Mr. Vinayak H. Gaikwad.)
 Occu.: Forester, R/at : At Post Kondve,)
 Tal. & Dist : Satara.)
39. Mr. Shrirang G. Kadam.)



- Occu.: Forester, R/at : At Post Apati,)
Tal.: Jawali, Dist : Satara.)
40. Mr. Suryakant Y. Pol.)
Occu.: Forester, R/at : At Post Dahiwadi,)
Mayani Road, Tal.: Man, Dist : Satara.)
41. Mr. Kondiba V. Kadam.)
Occu.: Forester, R/at : At Post Munavale,)
Tal. : Jawali, Dist : Satara.)
42. Mr. Tukaram K. Bhosale.)
Occu.: Forester, R/at : At Post : Munavale,)
Tal.: Jawali, Dist : Satara.)
43. Mr. Mukund B. Deshmukh.)
Occu.: Forester, R/at : 622, mangalwar)
Peth, Satara.)
44. Mr. Mansingh T. Shinde.)
Occu.: Forester, R/at : At Post Akambe,)
Tal.: Koregaon, Dist : Satara.)
45. Mr. Subhash B. Patil.)
Occu.: Forester, R/at : At Post Atke,)
Tal.: Korad, Dist : Satara.)
-)...Applicants**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai - 400 032.)
2. The Principal Chief Conservator of)
Forest, M.S, Van Bhavan, Semi Nari)
Hill, Ram Giri Road, Nagpur - 1.)
3. The Chief Conservator of Forest)
(Territorial), Thane Forest Circle,)



- Microwave Tower, Bara Bunglow)
Area, Kopri, Thane (E)- 603.)
4. The Secretary.)
Finance Department, Mantralaya,)
Mumbai 400 032.)
5. The Secretary.)
General Administrative Department,)
Mantralaya, Mumbai - 32.)
6. The Deputy Conservator of Forest.)
Van Bhavan, Near Godoli Forest)
Nursery, Tal. & District Satara.)
7. The Chief Warden (Wildlife),)
2nd Floor Vanwardhan Tarabai Park,)
Near Head Post Office, Kolhapur - 3.)
8. The Divisional Forest Officer)
(Wildlife), 2nd Floor, Vanwardhan)
Tarabai Park, Near Head Post Office,)
Kolhapur - 416 003.)
9. The Divisional Forest Officer)
(Wildlife), Near Shivaji Stadium,)
Tal.: Karad, Dist.: Satara.)
10. The Deputy Director of Social)
Forestry, At Satara, Near Vanbhavan))
Godoli Forest Nursery,)
Tal. & Dist.: Satara.)
11. The Chief Conservator of Forest &)
Silviculturist, Bhamburda, Gokhale)
Nagar, Pune.)
12. The Deputy Director of Social)
Forestry, Kupwad, Tal.: Miraj,)
District : Sangli.)
-)...Respondents**



WITH**ORIGINAL APPLICATION NO. 410 OF 2016**

Mr. Nivrutti M. Jagtap.)
 Occu.: Retired as Forester, R/at : Yashas)
 Sadan, Room No.45, Nirmalya Soc.,)
 Indraprastha Nagar, Post : Makmalabad,)
 Peth Road, Nasik.)...**Applicant**

Versus

1. The State of Maharashtra.)
 Through the Secretary,)
 Revenue & Forest Department,)
 Mantralaya, Mumbai - 400 032.)
2. The Principal Chief Conservator of)
 Forest, M.S, Van Bhavan, Semi Nari)
 Hill, Ram Giri Road, Nagpur - 1.)
3. The Chief Conservator of Forest)
 (Territorial), Thane Forest Circle,)
 Microwave Tower, Bara Bunglow)
 Area, Kopri, Thane (E)- 603.)
4. The Deputy Conservator of Forests.)
 Jawhar Forest Division, Opp. Rajiv)
 Gandhi Stadium, Jawhar,)
 District Palghar.)
5. The Secretary.)
 Finance Department,)
 Mantralaya, Mumbai - 32.)



6. Assistant Accountant General.)
 Senior Accounts Officer,)
 Indian Audit & Accounts Department))
 Pratistha Bhaan, 101, Maharshi)
 Karve Road, Mumbai 400 020.)...Respondents

With

ORIGINAL APPLICATION NO. 1173 OF 2016

1. Mr. Devanand Y. Keluskar.)
 Occu.: Retired as Forester (Assistant)
 Plantation Officer), R/at : Social)
 Forestry Range, Talere, At Post Talere,)
 Tal.: Kankavali, Dist. : Sindhudurg.)
2. Mr. Baban R. Mithbavkar.)
 Occu.: Forester, R/at : At Post Jabhvade,)
 Tal.: Kudal, Sawantwadi Division,)
 Dist. : Sindhudurg.)
3. Mr. Appa S. Raul.)
 Occu.: Forester, R/at : Forest Division)
 Sawantwadi, Kudal Range Forest Office,)
 Foresster Vasoli, At Post : Vasoli,)
 Tal.: Kudal, Dist. : Sindhudurg.)
4. Mr. Udaybhan D. Dabholkar.)
 Age: 57 years, Occ. Forester,)
 R/at. At post Janawali Range Office,)
 Kankawali, Tal. Kankawali, Sindhudurg)
5. Mr. Narayan Nagoji Tavade)
 Age: 57 years, Occ. Forester,)
 R/at. At post Fonda, Tal. Kankavali.)
6. Mr. Gabriel Ished Dsouza.)
 Age: 56 years, Occ. Forester,)
 R/at. Kankavali Range Forest Officer,)



- Tal. Devgad, Dist. Sindhudurg.)
7. Mr. Sahadev V. Sawant)
 Age: 57 years, Occ. Forester)
 R/at. Sawantwadi Forest Division,)
 Kudal Forest Range, At Hilok Kudal,)
 Dist. Sindhudurg.)
8. Mr. Chandrakant L. Khadapkar.)
 Age: 55 years, Occ. Forester,)
 R/at. Forester Maneri, Range Dodamarg,)
 Tal. Dodamarg, Dist. Sindhudurg.)
9. Mr. Vijay V. Parab.)
 Age: 56 years, Occ. Forester,)
 R/at. Digwade,)
 Forest Range Office Kankavali, Forester,)
 Dist. Sindhudurg.)
10. Mr. Shivaji V. Maral,)
 Age: 55 years, Occ. Forester,)
 R/at. At post Kasal,)
 Tal. Kudal, Dist. Sindhudurg.)
11. Mr. Shankar S. Shirgaonkar)
 Age: 55 years, Occ. Forester,)
 R/at. Forester Banda,)
 Sawantwadi Forest Range,)
 Forest Division, Tal. Sawantwadi)
12. Mr. Pradeep P. Rane)
 Age: 56 years, Occ. Forester,)
 R/at. Social Forestry Division)
 Sindhurg, Dist. Sindhudurg.)
13. Mr. Jockey B. Aapos)
 Age: 55 years,)
 Occ.: Assistant Plantation Officer,)
 R/at. Social Forestry Division)
 Sindhudurg, Sawantwadi Range)
 Office, Dist. Sindhudurg.)



14. Mr. Chandrakant K Raul.)
 Age: 55 years,)
 Occ.: Assistant Plantation Officer,)
 R/at. At post Malwan,)
 Kudal Orest Range Office,)
 Dist. Sindhudurg.)
15. Mr. Vishwas Anant Masurkar.)
 Age: 54 years, Occ.: Forester,)
 R/at. Forester Malvan, Tal. Malvan,)
 Kudal Forest Range Officer,)
 Dist. Sindhudurg.)
16. Mr. Dattaram B. Desai.)
 Age: 55 years, Occ.: Forester)
 R/at. Sawantwadi Forest Division)
 Dodamarg Forest Range, at Post Konal,)
 Tal. Dodamarg, Dist. Sindhudurg.)
17. Mr. Dilip K. Parsekar.)
 Age: 54 years, Occ.: Forester,)
 R/at. Kankavali Range Forest,)
 At post Janvali, Tal. Kankavali.)
18. Mr. Siddharth R. More.)
 Age. 49 years, Occ.: Forester,)
 R/at. Sindhudurg Social Forestry Dept.)
 At post Kankavali, Tal. Kankavali,)
 Dist. Sindhudurg.)
19. Mr. Anna S. Chavan)
 Age: 52 years, Occ.: Forester,)
 R/at. At post Kadaval, Tal. Kudal,)
 Sawantwadi Division, Dist. Sindhudurg.)...**Applicants**

Versus

1. The State of Maharashtra.)
 Through the Secretary,)

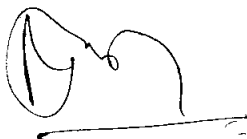


- Revenue & Forest Department,)
Mantralaya, Mumbai - 400 032.)
2. The Principal Chief Conservator of)
Forest, M.S, Van Bhavan, Semi Nari)
Hill, Ram Giri Road, Nagpur - 1.)
3. The Chief Conservator of Forest)
(Territorial), Thane Forest Circle,)
Microwave Tower, Bara Bunglow)
Area, Kopri, Thane (E) - 603.)
4. The Deputy Conservator of Forests.)
Jawhar Forest Division, Opp. Rajiv)
Gandhi Stadium, Jawhar,)
District Palghar.)
5. The Deputy Director of Social)
Forestry Division, Sindhudurg,)
Administrative Blds., C Block,)
2nd Floor, Sindhudurg Nagari.)
6. The Secretary.)
Finance Department,)
Mantralaya, Mumbai - 32.)
7. The Secretary.)
General Admn. Department,)
Mantralaya, Mumbai - 32.)...Respondents

WITH

MISC. APPLICATION NO.77 OF 2017
IN
ORIGINAL APPLICATION NO. 1173 OF 2016

1. The State of Maharashtra.)
Through the Secretary,)
Revenue & Forest Department,)



- Mantralaya, Mumbai - 400 032.)
2. The Principal Chief Conservator of)
Forest, M.S, Van Bhavan, Semi Nari)
Hill, Ram Giri Road, Nagpur - 1.)
3. The Chief Conservator of Forest)
(Territorial), Thane Forest Circle,)
Microwave Tower, Bara Bunglow)
Area, Kopri, Thane (E) - 603.)
4. The Deputy Conservator of Forests.)
Jawhar Forest Division, Opp. Rajiv)
Gandhi Stadium, Jawhar,)
District Palghar.)
5. The Deputy Director of Social)
Forestry Division, Sindhudurg,)
Administrative Blds., C Block,)
2nd Floor, Sindhudurg Nagari.)
6. The Secretary.)
Finance Department,)
Mantralaya, Mumbai - 32.)
7. The Secretary.)
General Admn. Department,)
Mantralaya, Mumbai - 32.)
-)...Applicants**
(Ori. Respondents)

Versus

1. Mr. Devanand Y. Keluskar.)
Occu.: Retired as Forester (Assistant)
Plantation Officer), R/at : Social)
Forestry Range, Talere, At Post Talere,)
Tal.: Kankavali, Dist. : Sindhudurg.)
2. Mr. Baban R. Mithbavkar.)
Occu.: Forester, R/at : At Post Jabhvade,)
Tal.: Kudal, Sawantwadi Division,)

~


Dist. : Sindhudurg.)

3. Mr. Appa S. Raul.)
 Occu.: Forester, R/at : Forest Division)
 Sawantwadi, Kudar Range Forest Office,)
 Foresster Vasoli, At Post : Vasoli,)
 Tal.: Kudal, Dist. : Sindhudurg.)

4. Mr. Udaybhan D. Dabholkar.)
 Age: 57 years, Occ. Forester,)
 R/at. At post Janawali Range Office,)
 Kankawali, Tal. Kankawali, Sindhudurg)

5. Mr. Narayan Nagoji Tavade)
 Age: 57 years, Occ. Forester,)
 R/at. At post Fonda, Tal. Kankavali.)

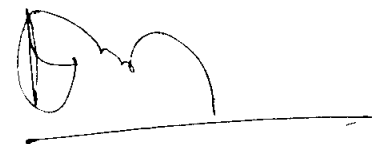
6. Mr. Gabriel Ished Dsouza.)
 Age: 56 years, Occ. Forester,)
 R/at. Kankavali Range Forest Officer,)
 Tal. Devgad, Dist. Sindhudurg.)

7. Mr. Sahadev V. Sawant)
 Age: 57 years, Occ. Forester)
 R/at. Sawantwadi Forest Division,)
 Kudal Forest Range, At Hilok Kudal,)
 Dist. Sindhudurg.)

8. Mr. Chandrakant L. Khadapkar.)
 Age:55 years, Occ. Forester,)
 R/at. Forester Maneri, Range Dodamarg,)
 Tal. Dodamarg, Dist. Sindhudurg.)

9. Mr. Vijay V. Parab.)
 Age: 56 years, Occ. Forester,)
 R/at. Digwade,)
 Forest Range Office Kankavali, Forester,)
 Dist. Sindhudurg.)

10. Mr. Shivaji V. Maral,)
 Age: 55 years, Occ. Forester,)



R/at. At post Kasal,)
Tal. Kudal, Dist. Sindhudurg.)

11. Mr. Shankar S. Shirgaonkar)
Age: 55 years, Occ. Forester,)
R/at. Forester Banda,)
Sawantwadi Forest Range,)
Forest Division, Tal. Sawantwadi)

12. Mr. Pradeep P. Rane)
Age: 56 years, Occ. Forester,)
R/at. Social Forestry Division)
Sindhurg, Dist. Sindhudurg.)

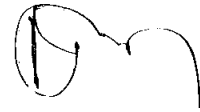
13. Mr. Jockey B. Aapos)
Age: 55 years,)
Occ. Assistant Plantation Officer,)
R/at. Social Forestry Division)
Sindhudurg, Sawantwadi Range)
Office, Dist. Sindhudurg.)

14. Mr. Chandrakant K Raul.)
Age: 55 years,)
Occ. Assistant Plantation Officer,)
R/at. At post Malwan,)
Kudal Orest Range Office,)
Dist. Sindhudurg.)

15. Mr. Vishwas Anant Masurkar.)
Age: 54 years, Occ. Forester,)
R/at. Forester Malvan, Tal. Malvan,)
Kudal Forest Range Officer,)
Dist. Sindhudurg.)

16. Mr. Dattaram B. Desai.)
Age: 55 years, Occ. Forester)
R/at. Sawantwadi Forest Division)
Dodamarg Forest Range, at Post Konal,)
Tal. Dodamarg, Dist. Sindhudurg.)

17. Mr. Dilip K. Parsekar.)



Age: 54 years, Occ. Forester,)
 R/at. Kankavali Range Forest,)
 At post Janvali, Tal. Kankavali.)

18. Mr. Siddharth R. More.)
 Age. 49 years, Occ. Forester,)
 R/at. Sindhudurg Social Forestry Dept.)
 At post Kankavali, Tal. Kankavali,)
 Dist. Sindhudurg.)

19. Mr. Anna S. Chavan)
 Age: 52 years, Occ. Forester,)
 R/at. At post Kadaval, Tal. Kudal,)
 Sawantwadi Division, Dist. Sindhudurg.)...Respondents
 (Ori. Applicants)

WITH

ORIGINAL APPLICATION NO.74 OF 2017

Mr. Suresh B. Lingawat.)
 Occu.: Retired as Forester from the)
 Office of Range Forest Officer (Research),)
 Dodamarg, Dist : Sindhudurg,)
 R/at : Post Kariwade, Tal.: Sawantwadi,)
 Dist. : Sindhudurg.)

Versus

1. The State of Maharashtra.)
 Through the Secretary,)
 Revenue & Forest Department,)
 Mantralaya, Mumbai - 400 032.)
2. The Principal Chief Conservator of)
 Forest, M.S, Van Bhavan, Semi Nari)
 Hill, Ram Giri Road, Nagpur - 1.)



3. The Chief Conservator of Forest)
 (Territorial), Vanwardhan Tarabai)
 Park, Near Head Post Office,)
 Kolhapur 414 003.)
4. The Chief Conservator of Forest &)
 Forest Conservator Expert, Pune)
 Van Bhawan, Bhamburda,)
 Van Vihara, Gokhale Nagar,)
 Pune 411 016.)
5. The Secretary.)
 Finance Department,)
 Mantralaya, Mumbai - 32.)
6. The Secretary.)
 General Admn. Department,)
 Mantralaya, Mumbai - 32.)
-)...Respondents**

WITH

ORIGINAL APPLICATION NO.75 OF 2017

Mr. Krushna C. Pendurkar.)
 Occu.: Forester at Range Kadaval,)
 Tal. Kudal, Division Sawantwadi,)
 Forest Range, Kadaval, Tal. Kudal,)
 Dist. : Sindhudurg.)

Versus

1. The State of Maharashtra & 5 Ors.)...Respondents



Mr. K.R. Jagdale, Advocate for Applicants.

Mr. D.B. Khaire, Special Counsel with Mr. N.K. Rajpurohit, Chief Presenting Officer with Mrs. K.S. Gaikwad, Ms. N.G. Gohad, Mrs. A.B. Kololgi and Ms. S.T. Suryawanshi, Presenting Officers for Respondents.

P.C. : R.B. MALIK (VICE-CHAIRMAN)

DATE : 18.09.2017

JUDGMENT

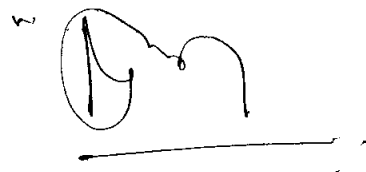
1. These seven Original Applications (OAs) are presented by the Foresters/Forest Guards calling into question an order whereby the benefits of the Assured Career Progression Scheme (Time Bound Promotion) are being sought to be withdrawn and recovery of the amounts paid is being sought to be made.

2. The Applicants in all these matters numbering 140 came to be appointed on different dates in the Department of Forest as Forest Guards. The facts are such that all these OAs can be disposed of by this common Judgment because the matters of details pertaining to each Respondent is not going to affect the core issue which remains the same viz. the validity of the impugned orders whereby as already mentioned above, the benefit earlier given is being sought to be withdrawn and the reason is



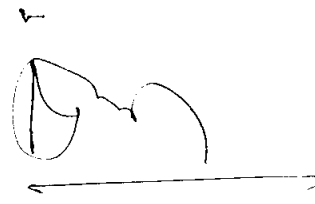
that, at the time relevant hereto, when the benefits were given, the Applicants did not have the educational qualification of SCC. It is, however, clearly an admitted position that, at the time these Applicants came to be initially appointed, the eligibility educational criteria was 7th standard pass and all these Applicants were qualified on that anvil. I shall take up OA 1004 of 2015 as the representative OA although I must reiterate that the issue in substance is the same in all the matters. In the representative OA, the impugned order is at Exh. 'H' (Page 77 of the Paper Book (PB)) thereof.

3. I have perused the record and proceedings of all these matters and heard Mr. K.R. Jagdale, the learned Advocate for the Applicants, Mr. D.B. Khaire, the learned Special Counsel with Mr. N.K. Rajpurohit, the learned Chief Presenting Officer and Mrs. K.S. Gaikwad, Ms. N.G. Gohad, Mrs. A.B. Kololgi and Ms. S.T. Suryawanshi, the learned Presenting Officers for the Respondents. The Respondent No.1 is the State in Revenue and Forest Department, the Respondent No.2 is the Principal Chief Conservator of Forest, the Respondent No.3 is the Chief Conservator of Forest (Territorial), Thane Forest Circle, the Respondent No.4 is the State in Finance Department, the Respondent No.5 is the State in General Administration

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Department and the Respondent Nos.6 & 7 are the Divisional Forest Officers, Roha, District Raigad and Alibaug, District Raigad respectively.

4. The representative OA at Exh. 'A' has given out the details of the Applicants with regard to the dates of birth, dates of appointments, qualifications, 1st Time Bound Promotions, 2nd Time Bound Promotions, Promoted as and the dates of retirement. The learned Special Counsel Mr. D.B. Khaire for the Respondents has also furnished on record at the fag end of the hearing such details in respect of each of the Applicants. It is not necessary or even germane hereto to set out in great detail the said facts. It would suffice to mention that w.e.f. various dates, the last of which became effective from the year 2010 though issued in 2012, the Applicants came to be given the benefits of the 2nd Time Bound Promotions. As the discussion progresses, I shall have an occasion to extensively deal with the Judgment of the Hon'ble Supreme Court in the matter of **State of Punjab and others Vs. Rafiq Masih (White Washer) : (2015) 4 SCC 334**. It would be found that the issue as to whether the period of five years elapsed after the said benefit which is now being sought to be withdrawn was held to be a



sufficient enough ground not to withdraw it by **Rafiq Masih** (supra).

5. At this stage itself, I think I should consider an argument of the learned Special Counsel Mr. Khaire. His contention was that the instrument whereby the said benefit was extended to the Applicants was issued in the year 2012 and it is a matter of record that it was sought to be withdrawn w.e.f.30.9.2015. He, therefore, contended that it was hardly within a matter of three years that the withdrawal was sought to be made. It is not possible for me to agree with him because in my opinion, the crucial date would not be the date of issuance of the instrument in 2012 but the crucial and the decisive date would be the date from which the benefit became extendable which at the latest was 2010, and therefore, a period of five years had elapsed. Other dates are even before 2010.

6. Much as Mr. Khaire, the learned Special Counsel would contend that such retrospective effect could not be given to the effective date and the date must be 2012 only. Apart from what I have already mentioned above, there is an intrinsic material to suggest that it is always possible to issue an instrument on a particular date and make it applicable from an anterior date and this is exemplified in


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no uncertain and a better way than by the GR granting first Time Bound Promotion. It was issued on 8.6.1995 and became effective from 1st November, 1994.

7. It is a fact which is irrefutable and incontrovertible that the Applicants cannot be held guilty of having indulged in any sharp practice or employment of any dishonourable means to secure the benefit. They accepted it because they were given the same though they may have made representations to the Government. After-all, the Government decided to grant to them the benefits and they accepted it. They did not for instance hide anything or made any incorrect statement. The only reason why they are now being subjected to face music is that, at the time relevant hereto, when the said benefit was given, they did not hold the qualification of SCC. There are documents to the effect that there were recommendations in their favour but it is not necessary for me to closely refer thereto. The fact remains that this condition of the qualification of matriculation was admittedly not there when they were initially employed and it is again indisputable that when they were employed, they held the qualification of 7th Standard which was provided therefor. Therefore, at this stage itself, I must mention that a very severe jolt would be suffered by the Respondents in the

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matter of sustaining their action, once it is made clear that the entire career of the Applicants would have to be considered in the context of the terms and conditions such as they obtained at the time of their initial appointment. If any condition was introduced when they were already in service that cannot be held against them and the relevant GR, in this case was dated 1st April, 2010. The first benefit being pursuant to the GR of 8th June, 1995, the Applicants cannot be made to suffer. Despite the contention which was vociferously advanced at the Bar by Mr. Khaire, the learned Counsel, I am unable to agree with him that the said instrument is not prospective. In fact, just like any other enactment or instrument and going by the normal tools and principles of interpretation, the same will have to be held prospective unless it is made retrospective by way of a clear and express language or by implication or inference which quite clearly is not there. I cannot accept the argument that the said instrument would become applicable against the applicants from the date of its issuance (2010) because it was after-all issued on that day. The crux of the matter, in my opinion, is that, it affects favourably the service conditions of the employees, and therefore, if an employee appointed legally in accordance with the then prevailing Rules and Regulations continued to serve the Government when this instrument was



enforced, he will surely be entitled to the benefit thereof and he cannot be made to suffer, if ex-facie the condition which is sought to be used against the Applicant is more onerous than it was when he initially joined the service viz. SSC and VIIth Standard e'tal.

8. Having held as above, I may now turn to the other aspect of the matter. As a matter of fact, it can never be disputed that a plain reading of **Rafiq Masih** (supra) would make it very clear that the recovery itself cannot be made, regardless of whether, and that discussion is in store, the revision could be made. Relying on **Rafiq Masih** (supra), in a number of matters, even this Tribunal has held that the recovery cannot be made. However, there again a point was raised in this behalf by Mr. Khaire, the learned Special Counsel for the Respondents. His submission was that it should be held that **Rafiq Masih** (supra) was rendered by the Hon'ble Supreme Court in exercise of its plenary powers to do substantial justice under Article 142 of the Constitution of India and it was not under Article 141 of the Constitution of India in which case, it would become the law of the land. In this connection, Mr. Khaire relied upon **State of Punjab and others Vs. Rafiq Masih (White Washer) : (2014) 8 SCC 883** which is a Judgment rendered by a Bench of three



Hon'ble Judges of the Supreme Court. I have carefully perused the said three Judge Bench Judgment and I find that it was perceived that there was a conflict of opinion in two sets of Judgments rendered by the two Judge benches of the Hon'ble Supreme Court. Therefore, the matter was placed before the three Judge Bench. It was, however, held by the 3 Judge Bench that there was no conflict at all and the reference was really not necessary. It was further held that in some cases, directions came to be given in exercise of powers under Article 142 of the Constitution and it appears to me that the principles laid down by the Hon'ble Supreme Court are that, each Judgment has to be read in order to find as to whether it is a law laid down under Article 141 of the Constitution or it is a Judgment to do substantial justice in that particular matter under Article 142 of the Constitution of India.


9. In the above background, when I read the Judgment of **Rafiq Masih** (supra)(two Judge Bench), I find that the observations of Their Lordships are clear that in the matter of recovery, the directions were of universal application of course within the territory of this country. In Para 18 of Supreme Court Cases, Their Lordships have laid down the principles which are relevant and in fact, in

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the manner of speaking decisive for this matter and I would, therefore, reproduce them.

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments mistakenly been made by the employer, in excess of their entitlements. 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 retired 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

ws


arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

It would become very clear from the propositions I and II of the above principles laid down by the Hon'ble Supreme Court that there should be no recovery from the Applicants herein.

10. In my opinion, it is very clear that Their Lordships laid down the principles above referred to, not just to resolve the controversy in the matter before them and to do substantial justice only in those matters but because they wanted to lay down the principles to be followed by all under Article 141 of the Constitution of India. There are other observations of Their Lordships which would reinforce the conclusion that the two Judge Bench decision in **Rafiq Masih** (supra) is rendered not under Article 142 of the Constitution but under Article 141 thereof. It would, therefore, become very clear that, in the context of these facts, the actual recovery from the Applicants cannot be made and even if the recovery has been already made from the Applicants, some of them or anyone of them of whatever amount, the same will have to be refunded to the Applicants.

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11. In a fasciculus of five OAs led by **OA 144/2017 and others (Shri Mahadev N. Jagdale Vs. Government of Maharashtra and 2 others and other OAs)** decided on 7.9.2017 by me, the same issue came up for consideration. Those were the matters pertaining to the Police Personnel. Their pay fixation was earlier made and they got the first Time Bound Promotion after the completion of 12 years of their initial appointment. However, upon an objection by the Pay Verification Unit, there was a downward revision or an attempt at that in respect of the salary and recovery was sought to be made whereagainst those Applicants moved this Tribunal. I relied upon the two Judge Bench Judgment of Rafiq Masih (supra) as well as a few Judgments of his Tribunal including the one rendered by the then Hon'ble Vice-Chairman in OA **923/2015 (Shri Balkrishna B. Nikam Vs. Government of Maharashtra and 3 others, dated 18.2.2016)** which was confirmed by the Hon'ble Bombay High Court in **Writ Petition No.7404/2016 (State of Maharashtra and others Vs. Balkrishna B. Nikam, dated 3rd October, 2016)** and another Judgment rendered by me in **Revision Application No.8 of 2017 in OA 342 of 2016 (The Joint Director of Vocational Education & Training and one another Vs. Prakash L. Hotkar and 3 others, dated 28.6.2017)** filed against the order in **OA 342 of 2016**



(Shri Prakash L. Hotkar Vs. Principal, Industrial Training Institute and 4 others, dated 9.3.2017). It was observed in **Mahadeo Jagdale** (supra) that there also the overpayment had nothing to do with any sharp practice by the Applicants. There was none. The overpayment was on account of the official move. One of the Judgments rendered in the matter of **OA 331/2016 (Shri Tanaji S. Nemane Vs. State of Maharashtra and one another, dated 22nd September, 2016)** on the selfsame issue was in fact implemented by the State. In Para 8, the observations from **Rafiq Masih** (supra) in Para 18 fully quoted above were reproduced. **Balkrishna Nikam** as already mentioned above was carried to the Hon'ble High Court and a passage from **Mahadeo Jagdale** (supra) reproducing three Paragraphs from the Judgment of the Hon'ble High Court can best be reproduced for guidance.

“2. Learned Counsel appearing for petitioner-State submits that State is not recovering any amount from the respondent but re-fixing the emoluments of respondent which he received for the purposes of benefit of services.

3. The State has taken 25 years to realize that some mistake occurred in counting 12 years period of giving time bound promotion to



respondent, that also when the pay verification unit raised this issue.

4. The Maharashtra Administrative Tribunal after perusing the record and considering the submissions formed its opinion. The view opted by the Tribunal cannot be termed as unreasonable or perverse. In the facts we are not inclined to interfere into the view adopted by the Tribunal in exercise of our writ jurisdiction. There is no merit in the petition. It is dismissed.

Sd/-
(Prakash D. Naik, J.)

Sd/-
(Naresh H. Patil, J.)”

It is, therefore, absolutely clear that the present Applicants falling in Group ‘C’ category were fully entitled to the benediction enshrined in **Rafiq Masih** (supra) and **Balkrishna Nikam** (supra). The same principles will apply hereto.

12. These Judgments were brought to the notice of Mr. Khaire, the learned Special Counsel. Although he sought to distinguish them, but I am afraid the attempt was clearly futile and it must, therefore, follow that not only can the recovery not be made, but even a revision of



pay scale in the context of the present facts at least is not possible to be permitted. That is the import of the order of the Hon'ble High Court just noted.

13. The Respondents relied upon undertakings given by the Applicants which are almost similar in all the matters and I can take one of them at Page 121 from the representative OA. I must repeat that they are exactly similar in all cases. Some submissions were made as to whether all the Applicants gave such an undertaking but I proceed on the assumption that all of them did because in the ultimate analysis, it would not make any difference at all. The said undertaking described as 'Bandhpatra' in Marathi can be reproduced.

“बंधपत्र

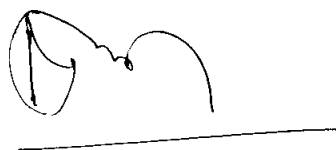
सामान्य प्रशासन विभागाकडील शासन निर्णय क्रमांक एसआरव्ही-१०९५/प्र.क्र.१/९५/बारा, दिनांक ८.६.१९९५ अन्वये गट क व ड (वर्ग ३ व वर्ग ४) मधील कर्मचा-यांना पदोन्नतीच्या संधी उपलब्ध नसल्याने असलेली कुठीतता घालविणेसंबंधिच्या योजनेनुसार / राज्यशासकिय कर्मचा-याना आश्वासित प्रगती योजना / सेवा अंतर्गत सुधारीत आश्वासित सेवा योजना नुसार शा.नि.क्र. वेतन-११०९/प्र.क्र.४४ सेवा ३ दि.१/४/२०१०, शा.नि.क्र.वेतन-११०९/प्र.क्र.४९ सेवा ३ दि.५/६/२०१० तसेच महसुल व वनविभाग प्र.क्र.एफएसटी ०९/११/प्र.क्र. ४६५ फ-४ दि.१७/११/२०११ अन्वये मला दिनांक पासून पदोन्नतीच्या पदाची वेतनश्रेणी बॅंडक्रमांक पी.बी.२९३००-३४८०० ग्रेड वेतन रु.४४००/- मंजूर करण्यात आली आहे. तथापि नियमित पदोन्नतीच्या वेळी मी अपात्र ठरल्यास अगर पदोन्नती नाकारल्यास या पदोन्नतीचा लाभ मिळू शकणार नाही व मला माझ्या मुळच्या पदाच्या वेतनश्रेणीत पदावतत केले जाईल हे मला मान्य असून या अटीवर मी सध्याच्या पदोन्नतीची वेतनश्रेणी स्विकारलेली आहे.”

14. According to the Respondents, the above undertaking should be so construed as to mean that the




Applicants in the circumstances such as the present one undertook to refund the amount if it was found not due. Now, in the first place, I find that whatever be the undertaking, etc., it can quite certainly not override the legal principles to which a reference has been made above including the case of the Applicants to be considered in accordance with the obtaining circumstances at the time of their initial appointment and the principles laid down under Article 141 of the Constitution of India by **Rafiq Masih** (supra). Mr. Jagdale, the learned Advocate for the Applicants relied upon several Judgments in support of his contention that the Applicants were weaker of the two parties and they had no other-go but to sign on dotted lines. He referred me to some other Judgments also wherein, some kind of self-implicating documents came to be executed in the circumstances which could be called coercive. The said principles have no direct application hereto and, therefore, I need not examine the factual details thereof. The principles enunciated in criminal matters may but need not necessary apply in all non-criminal matters.

15. Returning to the above quoted "Bandhpatra", I find that there was no real occasion for any of the Applicants who have been found what can be described as



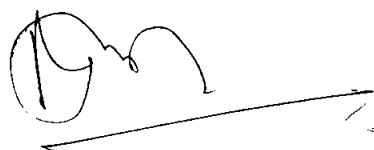
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“unfit” for promotion and the only circumstance urged on behalf of the Respondents viz. the qualification aspect of the matter holds no water. There can be no reversion in the matter of considering the entitlement to the Time Bound Promotion as per the relevant GRs whereas in the said undertaking, there is that reference. Therefore, the undertaking in the set of present circumstances in fact cannot sail the Respondents through but even then I shall complete the discussion based on the Judgment cited on behalf of the Respondents in the matter of **Civil Appeal No.3500/2006 (High Court of Punjab and Haryana and others Vs. Jagdev Singh, dated 29th July, 2016)**. That was a matter where a compulsorily retired Civil Judge who is Super Class-I Officer from the State of Punjab was faced with a similar circumstance of recovery, etc. Here, the Applicants are Group ‘C’ employees. In fact, all of them are Group ‘C’ employees and going by Para 18 of **Rafiq Masih** (supra), as to the first point, the recovery could not be made from them for which a reference could be made to the said extract hereinabove. In Para 10 of **Jagdev Singh** (supra), Their Lordships relied on **Rafiq Masih** (supra) and in fact reproduced the Para above quoted therefrom. The proposition (II) only was discussed in the context of the undertaking which was unequivocal in that case, unlike the present one. The said proposition was regarding

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recovery from retired employee or the employees who were due to retire within one year from the order of recovery. However, in so far as the recovery from the Group 'C' and Group 'D' employees are concerned, **Rafiq Masih** still Rules the matter. Further, the general trend of **Rafiq Masih** is that the Court must make sure that the move of the employer is not iniquitous. Here, it quite surely is because when the Applicants were appointed, they were fully qualified to be appointed by virtue of having passed 7th Standard and if now they are to be punished for having not cleared 10th Standard examination, in my opinion, it is in complete violation of the principles of equity. The learned Special Counsel relied upon **Sahib Ram Vs. State of Haryana and others : 1995 Supp (1) SCC 18** and **Shyam Babu Verma and others Vs. Union of India and others : (1994) 2 SCC 521**. Both these Judgments have been discussed in **Rafiq Masih** and there inter-alia in Paras 14 and 17, these two Judgments have been dealt with. Ultimately, there is no conflict in **Rafiq Masih** (supra) and these two Judgments as such.

16. Further, it appears that if the provisions of Rule 18 of the Maharashtra Civil Services (Pay) Rules, 1981 are considered, the Government is still empowered to, in the manner of speaking regularize the so called error that has

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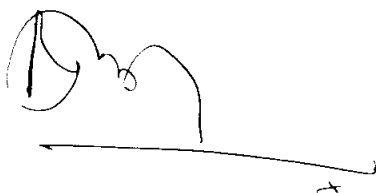
crept in, in this particular matter involving these Applicants. Rule 18 reads as follows :

“18. Pay when promotion or appointment found to be erroneous.-

Notwithstanding the provisions contained in these rules, the pay of a Government servant whose promotion or appointment to a post is found to be or to have been erroneous, shall be regulated in accordance with any general or special orders issued by Government in this behalf.”

17. The Respondents relied upon the Judgment of the then Hon'ble Vice-Chairman in OA 882/2012 (Maharashtra Van Rakshak Vanpal Sanghatana, Nagpur and 164 others Vs. The State of Maharashtra and 2 others, dated 14.10.2013). With due deference, it is not necessary for me to closely examine the factual aspect such as it obtained there and it would suffice to mention that Rafiq Masih (supra) is a Judgment of the Hon'ble Supreme Court rendered after the said Judgment of this Tribunal. Nothing more needs to be said thereabout.

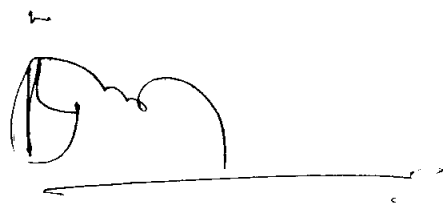
18. In OA 820/2016 (Shri Dilip M. Diwane Vs. The Accounts Officer, Pay Verification Unit, Nashik and 3 others, dated 13.6.2017) dealing with the case of a Group 'C' employee, this Tribunal presided over by me granted



relief to the said Applicant relying on Rafiq Masih (supra) and therein also, I had dealt with other Judgments in the field.

19. In so far as the M.A. No.77 of 2017 in O.A.1173 of 2016 is concerned, it pertains to the order dated 16.01.2017 whereby the cost was imposed and subject thereto, the Affidavit-in-reply was taken on record. In view of the fact that the OA was a group matter, I am of the opinion that the stand of the Respondents appears to be believable, and therefore, the order of imposing the cost is recalled. The cost deposited, be paid back to the Respondents within a period of four weeks from today. The Misc. Application is allowed in these terms with no order as to costs.

20. The upshot, therefore, is that the actions herein impugned manifested by the impugned orders are unsustainable and they are liable to be and are hereby quashed and set aside. It is directed that the Respondents shall proceed on the basis as if the impugned orders were never made and the Applicants were always entitled to what they got. The recovery, if any, made be refunded to the Applicants and for all other service purposes, it would be taken as if the impugned orders were never made. All corrective measures will be taken within a period of three

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months from today. These Original Applications are allowed in these terms with no order as to costs. The Misc. Application No.77 of 2017 in Original Application No.1173 of 2016 is also allowed with no order as to costs.

Sd/-

(R.B. Malik)
VICE-CHAIRMAN
18.09.2017

18.9.17

Mumbai

Date : 18.09.2017

Dictation taken by :

S.K. Wamanse.

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