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

WRIT PETITION NO. 1077 OF 2015

The State of Maharashtra.
Through,
The Divisional Forest Officer,
Khasbag, Lendi Road,
Taluka and District Beed.

...PETITIONER

-VERSUS-

Vimalbai Pandharinath Rajpure,
Age : Major, Occ : Nil,
R/o Mahendrawadi,
Post Dhas Pimpalgaon,
Taluka Patoda,
District Beed.

...RESPONDENT

WITH
WRIT PETITION NO. 1078 OF 2015

The State of Maharashtra.
Through,
The Divisional Forest Officer,
Khasbag, Lendi Road,
Taluka and District Beed.

...PETITIONER

-VERSUS-

Dattatraya Rambhau Yewale,
Age : Major, Occ : Nil,
R/o Dongarkini, Post Dongarkini,
Taluka Patoda,
District Beed.

...RESPONDENT

WITH
WRIT PETITION NO. 1080 OF 2015

The State of Maharashtra.
Through,
The Divisional Forest Officer,
Khasbag, Lendi Road,
Taluka and District Beed.

...PETITIONER

-VERSUS-

Balasaheb Motiram Bansode,
R/o at post Nagapur Parali,
Tq.Parli, District Beed.

...RESPONDENT

WITH
WRIT PETITION NO. 1081 OF 2015

The State of Maharashtra.
Through,
The Divisional Forest Officer,
Khasbag, Lendi Road,
Taluka and District Beed.

...PETITIONER

-VERSUS-

Kantabai Raosaheb Rajpure,
Age : Major, Occ : Nil,
R/o Mahendrawadi,
Post Dhas Pimpalgaon,
Taluka Patoda,
District Beed.

...RESPONDENT

WITH
WRIT PETITION NO. 1082 OF 2015
WITH
CIVIL APPLICATION NO.9807 OF 2015 IN WP/1082/2015

The State of Maharashtra.
Through,
The Divisional Forest Officer,
Khasbag, Lendi Road,
Taluka and District Beed.

...PETITIONER

-VERSUS-

Nivrutti Limbaji Yamgar,
R/o at post Sandas Chincholi,
Post Majrath, Tq.Majalgaon,
District Beed.

...RESPONDENT

WITH
WRIT PETITION NO. 1073 OF 2015

The State of Maharashtra.
Through,
The Divisional Forest Officer,
Khasbag, Lendi Road,
Taluka and District Beed.

...PETITIONER

-VERSUS-

Kerabai Limbaji Deokar,
Age : Major, Occ : Nil,
R/o Mahendrawadi,
Post Dhas Pimpalgaon,
Tq.Patoda, District Beed.

...RESPONDENT

WITH
WRIT PETITION NO. 3095 OF 2015

The State of Maharashtra.
Through,
The Sub-Divisional Forest Officer,
Nagar Road, Beed,
Taluka and District Beed.

...PETITIONER

-VERSUS-

Satish Mahadeo Garje,
Age : Major, Occ : Nil,
R/o Chambhuli, Post Rajuri Tamba,
Tq.Patoda, District Beed.

...RESPONDENT

...

Shri Umakant K. Patil and Shri A.N.Gaddime, Special Counsel a/w Shri D.R.Korde, AGP, for the Petitioner/ State.

Shri A.S.Shelke and Shri R.K.Khandelwal, for the Respondents.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd September, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner in all these petitions is the Divisional Forest Officer, Beed. All the Respondents in these petitions are similarly situated employees. For brevity, the parties shall be referred to as the Employer and the Employees.

3 Since the Employees are identically situated and a common issue has been raised by the Employer in the form of challenging the judgments and awards of the Labour Court in the reference cases, I am dealing with all these cases together.

4 In Writ Petition No.1078/2015 and Writ Petition

No.1080/2015, though the Employees have been served, none have caused an appearance on their behalf. However, Shri A.S.Shelke and Shri R.K.Khandelwal, learned Advocates appearing for the Respondents/ Employees in the rest of the matters, submit that all the Respondents are identically placed and the submissions of the learned Advocates on behalf of the Respondents/ Employees would also cover these two Respondents, who have not engaged any Advocate.

5 The Petitioner/ Employer is aggrieved by the judgments and awards delivered by the Labour Court, Aurangabad in Reference Cases pertaining to the Respondents as follows:-

Sr. No.	Writ Petition No.	Name of Employee	Reference (IDA) No.	Impugned Award date
1	1077/2015	Vimalbai Pandharinath Rajpure	38/2007	14.07.2014
2	1078/2015	Dattatraya Rambhau Yeole	43/2007	15.07.2014
3	1080/2015	Balasaheb Motiram Bansode	37/2007	07/07/14
4	1081/2015	Kantabai Raosaheb Rajpure	48/2007	17.07.2014
5	1082/2015	Nivrutti Limbaji Yamgar	40/2007	08/07/14
6	1073/2015	Kesharbai Limbaji Deokar	46/2007	16.07.2014
7	3095/2015	Satish Mahadeo Garje	39/2007	28.11.2014

6 Shri Patil, learned Special Counsel appearing on behalf of the Petitioner/ Employer, has canvassed a host of factors. He has made his submissions extensively and has criticized the impugned judgments and awards.

7 It is submitted that all the Respondents/ Employees had challenged their oral terminations by raising an industrial dispute before the competent authority under the Industrial Disputes Act, 1947. All of them claimed to be a part of about 200 or more daily wagers working at various nurseries and plantations of the Petitioner Establishment. Since the conciliation proceedings failed, the matters were referred to the Labour Court under Section 10(1) r/w Section 12(5) of the Industrial Disputes Act, 1947, by the Competent Authority.

8 In all these cases, the Employer had filed its Written Statements and had produced the National Forest Policy of 1988. The documents were filed to some extent and oral evidence was adduced. The Employees had set out their grievance in their statements of claims and had also adduced evidence. The Labour Court by its judgments and awards in all these matters, has allowed the reference proceedings.

9 The Petitioner/ Employer has raised a ground that all the

Respondents/ Employees were working on Employment Guarantee Scheme (EGS). None of them have a right to claim reinstatement, much less continuity and back-wages and also do not have a right to insist for being allotted work continuously. It is further stated that certain documents were produced before the Labour Court at Exhibit C/49, 50 and 51. Exhibit C/51 is the seniority list of the workers on EGS. Exhibit C/49 and C/50 are the seniority lists of daily wagers working on normal schemes.

10 Shri Patil, therefore, submits that the Labour Court has misdirected itself and has lost sight of the fact that the Employees, working on EGS which is launched by the State Government, have no right to continued employment since it is a benevolent act on the part of the State to provide work to such employees.

11 Shri Shelke and Shri Khandelwal have strenuously supported the impugned judgments and awards.

12 With the assistance of the learned Advocates for the respective sides, I have gone through the petition paper books. I find from the record available that muster rolls were produced by the Employer from Exhibit C/10 to C/47. However, the entire record for the period

September, 1994 till December, 2002 was not produced before the Labour Court. Nevertheless, on the basis of the record available, it clearly appeared that though the Respondents/ Employees were intermittently working on EGS, they had also worked on normal schemes of the Petitioner/ Employer.

13 This Court (Coram : Sunil P. Deshmukh, J.) has decided a similar controversy in the matter of *State of Maharashtra through Sub-Divisional Forest Officer, Beed v/s Shamrao Limbaji Deokar*, **Writ Petition No.144/2014** vide it's oral judgment dated 21.04.2014.

14 In the instant case, the cross-examination of the Range Forest Officer, Patoda who was also party to the proceedings in Shamrao Limbaji Deokar (supra) becomes decisive. Though he tried to assert in the examination-in-chief that the Employees were not working on normal schemes, he has admitted that they were working in Mahendrawadi nursery, Tale-Pimpalgaon nursery and C.C.T. Raimoha. He stated that the Employees were working on EGS. However, the seniority list produced on record was maintained by the Sub-Divisional Forest Officer, Beed. Exhibit C/49 and C/50 indicated that these Respondents were working on normal schemes. A common seniority list of all daily wagers was also maintained.

15 The Labour Court, in the light of the failure on the part of the Petitioner/ Employer to produce the muster rolls and cash books for the period September, 1994 till December, 2002, concluded that the Petitioner had selectively produced certain muster rolls and cash books despite the order of the Court dated 07.03.2012.

16 Mr.Shivaji Kale, witness of the Petitioner/ Employer, has stated that if a daily wager worked on a normal scheme, his wages were paid by the Ranger Forest Officer. He admitted that the muster roll indicates that the Second Parties (Employees herein) were paid the wages by the Ranger Forest Officer. Though the Respondents/ Employees had worked intermittently on EGS, it was established that they were working on normal schemes as well and were paid their wages by the Range Forest Officer.

17 Insofar as the continuity of service is concerned, the Labour Court has granted the same on the ground that it was only to the extent of maintaining the seniority of the workmen. The back-wages were, however, denied to the Respondents/ Employees. The Respondents/ Employees are still not reinstated.

18 Considering the oral and documentary evidence on record, I

am of the view that the direction of the Labour Court to reinstate the Respondents/ Employees as daily-wagers cannot be said to be perverse and erroneous. The impugned judgments and awards call for no interference.

19 In a somewhat similar situation in the matter of the *State of Maharashtra through the Deputy Conservator of Forest v/s Kalabai Vitthal Ghuge* in **Writ Petition No.504/2014** and connected matters, this Court has dismissed the petitions preferred by the Petitioner/ Employer by it's judgment dated 21.08.2015 and had directed the Petitioner to maintain a seniority list of all daily wagers in their respective categories, if not already prepared. The work was directed to be allotted to the Respondents/ Employees based on the seniority list.

20 In the result, all these petitions are dismissed. The Petitioner/ Employer is directed to scrupulously maintain the seniority list of the Respondents/ Employees and follow the said seniority list scrupulously while allotting daily work to the Respondents/ Employees herein.

21 Since the back-wages have not been granted by the Labour Court in all these matters and since they have not claimed the benefits of Section 17(B) of the Industrial Disputes Act, 1947 in this Court, the

amount of Rs.21,840/- deposited by the Petitioner/ Employer in this Court in each of these cases, shall be withdrawn by each of the Respondents/ Employees, respectively, with accrued interest, without conditions, by producing tangible proof of identity and residence. The said amount shall be adjusted against the wages payable to these Respondents/ Employees from 15.09.2014 which is the date on which the Respondents/ Employees were to be reinstated as per the directions of the Labour Court. Rest of the unpaid wages shall be calculated by the Petitioner/ Employer and shall be paid to the Respondents/ Employees expeditiously and preferably in 16 (sixteen) weeks from today.

22 Rule is, therefore, discharged.

23 The pending Civil Application, if any, does not survive and the same is also disposed of.

(RAVINDRA V. GHUGE, J.)