

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

WRIT PETITION NO. 2043 OF 2013

MURLIDHAR TUKARAM WAGHMARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for petitioners : Mr. Y. R. Marlapalle
AGP for respondent No. 1 : Mr. K. G. Patil
Advocate for respondent No. 2 : Mr. P. R. Tandale

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CORAM : S.V.GANGAPURWALA & V.K.JADHAV, JJ.

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Date of Reserving the Order : 30.07.2015
Date of Pronouncing the Order : 14.08.2015

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PER COURT :- (Per S.V.Gangapurwala, J.)

1. The petitioners are assailing the inaction on the part of the respondent in absorbing them in the District Services of respondent No. 2. Mr. Marlapalle, the learned counsel for the petitioners strenuously contends that the petitioners have put in more than 25 years of service with respondent No. 2. They are not being absorbed. The petitioners were selected under the scheme of Training Rural Youth for Self Employment (TRYSEM). The petitioners underwent training of only 15 days. Thereafter, respondent No. 1 orally appointed them as hand pump mechanics. The petitioners were also made to sign an agreement wherein it was mandated that the petitioners have to serve with respondent No. 2 for at-least two years from the date of their respective oral appointments. The said agreements are in custody of respondent

No. 2. The nature of the duty is such that the relationship of employer-employee is created. The petitioners are required to report daily for hand pump/ electric pump repairing/maintenance work on mobile service vehicle. The petitioners are paid as per the work done. The nature of the work includes repairing and maintenance work of hand pump/electric pump. Villages are allotted to the petitioners. Initially, they were paid Rs. 15/- per pump. Now they are paid Rs. 90/- per pump. The timings of the duties are also fixed. The petitioners have to report on duty from 10 a.m. To 6 p.m. Daily. The learned counsel submits that the respondent, being the instrumentality of the State, has to act as a model employer. For 25 years, the petitioners are working. However, the respondents are not absorbing the petitioners. The persons who were working under three-tier system have been absorbed by the respondent and are now treated as regular employees. The nature of the work of employees under three-tier system and the employees under the TRYSEM is similar. Different villages are distributed. Initially, the Executive Engineer had informed that the committee has been constituted to decide upon the absorption of the petitioners and the similarly situated employees on vacant posts in Class-IV category of respondent No. 2. The same was to be done on receipt of sanction. The learned counsel submits that the petitioners had filed ULP before the Industrial Court claiming permanency. However, the same is

dismissed. The Industrial Court did not have jurisdiction to entertain the same. Rejection of the said ULP would not be an impediment to entertain the writ petition. The learned counsel further submits that earlier, writ petition was filed bearing No. 2556 of 2007 by the State level union of all the hand pump repairing workers claiming retiral benefits. The Zilla Parishad, Akola, contended that it has regularized services of employees and pensionary benefits were paid to them. It was the stand of the State Government that the policy decisions are required to be taken for regularization of such workers. The State Government, on 07.04.2008, passed a resolution and the employees working on repairing/maintenance work under three-tier scheme were absorbed. However, no such resolution was passed in respect of the workers working under the TRYSEM scheme. The same amounts to discrimination on the part of the respondent. The learned counsel relies on the judgment of the Apex Court in the case of **State of Haryana and others vs. Piara Singh and others reported in AIR 1992 SC 2130.** The learned counsel submits that in such case, the Court should step in and protect the workers like the petitioners.

2. Mr. Tandale, the learned counsel for respondent No. 2 submits that the petitioners are not the employees of Zilla Parishad. They are self employed persons. They are not paid on

daily or monthly basis, but are paid as per piece work done by them. The learned counsel submits that it is for the State to sanction the posts. There are no sanctioned posts available. The writ petition bearing No. 3691 of 2013 was filed by the similarly situated workers i.e. those who were under TRYSEM scheme and this Court had dismissed the writ petition. The learned counsel further submits that even ULP filed before the Industrial Court is dismissed and the writ petition against the said order is withdrawn. The learned counsel further submits that recruitment of mechanics under the three-tier scheme is introduced by the Government of Maharashtra. The persons working under three tier scheme were employees of Zilla Parishad and they are absorbed as the present respondent No. 2 had persuaded the demand of the petitioners. The Government stated that no grant-in-aid would be provided for their payment and allowances. For absorption of the workers working under the TRYSEM, prior sanction of the Government is required. The Government is the only competent authority for the same. The Government has expressed inability to absorb such persons. The petitioners are under TRYSEM scheme i.e. Training of the Rural Youth for Self Employment. The scheme itself also makes it clear that the petitioners are not ad-hoc or temporary employees of the Zilla Parishad but are the self employed persons.

3. We have considered the submissions canvassed by the learned counsel for the respective parties.

4. The petitioners are seeking regularization of service. The petitioners were selected under the scheme of Training Rural Youth for Self Employment (TRYSEM). The title of the scheme itself suggests that they are selected for self employment. The petitioners herein, who are selected under the scheme of TRYSEM, are not paid any remuneration or wages, but they are paid as per piece work, i.e. if they repair a hand pump, they are paid for the repair of the said hand pump. If in a day, the petitioner repairs five hand pumps, he will be paid for five hand pumps. If he repairs two hand pumps, he is paid for two hand pumps.

5. The relationship of employer and employee does not exist. The petitioners have to draw similarity between themselves and recruitment of mechanics under three-tier scheme. Persons working under the three-tier scheme were employees of the Zilla Parishad and they are absorbed subsequently, whereas the petitioners are the self employed persons. Work is made available to them by the Zilla Parishad, however, they are not on the roll of the Zilla Parishad as employees, nor are governed by any service

rules. If they commit dereliction, there is no provision for conducting any Departmental Inquiry against them. As such, relationship of an employer employee, in strict sense, does not exist in between the petitioners and the respondent.

6. The Court, while giving directions for regularization of services, has to act with due care and caution as is held by the Apex Court in a case of State of Haryana (*supra*) and relied by the petitioners. It has to be cognizant of the several situations and eventualities that may arise on account of such directions. Only because the persons working under the three-tier system have been absorbed, that would not be *ipso facto* sufficient to issue directions to absorb the hand pump mechanics like the petitioners. Mechanics under three-tier system were the employees of the Zilla Parishad whereas, the petitioners herein are self employed. Work is being made available by the Zilla Parishad to them. Though the petitioners are working for many years as hand pump mechanics as per work allotted by the Zilla Parishad to them, still they cannot be equated with either casual, adhoc or temporary employees of the Zilla Parishad. In absence thereof, plea of regularization cannot be considered. The Government has also expressed its inability to absorb such persons.

7. Considering the aforesaid conspectus of the matter, prayer of the petitioners cannot be considered. Writ Petition as such stands dismissed however with no order as to costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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