

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 4591 OF 2011
WITH CA/13615/2013 IN WP/4591/2011DEEPAK GANPATRAO DONGARE
VERSUS
THE STATE OF MAH AND ORS

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Advocate for Petitioner : Mr. Kabade Vivek V
AGP for Respondents State: Mrs. S. A. Dhumal
Advocate for Respondent 3 : Mr. S. S. Bora
Advocate for respondent No.6: Mr. Pratik P. Kothari

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**CORAM : S. V. GANGAPURWALA &
V. K. JADHAV, JJ.****DATE : 7th August, 2015****PER COURT :**

1. Mr. Kabade, the learned counsel for the petitioner submits that as after filing of the petition, the petitioner has crossed 58 years of age, the petitioner is seeking leave to amend and in stead of absorption/regularization, the petitioner is claiming payment from the respondents.

2. Learned counsel submits that the petitioner is working with the respondent since 1994. By giving technical break, the petitioner was continued in service. The petitioner was appointed by the following due selection process. According to learned counsel for the petitioner, the petitioner is not paid salary from January, 2006 to November, 2006 so also persons who were appointed subsequent to the petitioner have been regularized in service. The petitioner has been discriminated. Learned counsel submits that now as the petitioner has attained the age of superannuation, the petitioner is required to be paid all the emolument

and benefits as are given to the permanent employees. Seniority list which is prepared states that the petitioner was appointed after following due process of law and the petitioner has crossed maximum age limit for appointment when he was appointed. As such, the said prayer is not considered.

3. According to the learned counsel, the Apex Court has held that daily wages or casual worker and ad-hoc appointees can be given benefit of regularization and it is not appropriate to keep them on contract basis for such a long time. Learned counsel relied on the judgment of the Supreme Court in the case of **State of Karnataka & others Vs. M.L. Kesari and others, reported in 2010 (9) SCC 247.**

4. Mr. Bora, the learned learned counsel for respondent No.3 states that in fact, for the period from January, 2006 to November, 2006, the petitioner was not issued any appointment order and has not worked. As such, respondent is not liable to pay any amount to the petitioner. In fact the petitioner had crossed 40 years age in the year 1994 on the date of his initial appointment itself. He was only appointed on contract basis. As such, the petitioner cannot have been considered for regularization.

5. Learned counsel further submits that the petitioner was appointed purely on temporary basis on a particular project and once the work of project has come to an end, the petitioner's services are not further required.

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

7. There is nothing on record to show that the petitioner was appointed pursuant to advertisement and after following due procedure. Be that as it may, the petitioner was given orders from time to time and has worked. Only because from January, 2006 to November, 2006 there is no appointment orders, salary is not paid to the petitioner. There are letters on record of the Assistant Registrar stating that the petitioner has worked during the said period. The petitioner was appointed on contractual basis from time to time. The respondents have extracted work from the petitioner as is evident from the letter issued by the Assistant Registrar. Only because appointment orders were not issued for the said period, the respondents cannot not turn around and say that petitioner cannot be paid any salary for the said period. Even the principles of *quantum meruit* can be made applicable, the respondents have extracted work from the petitioner for the said period. The amount which was paid to the petitioner till then and immediately thereafter can be considered for payment to the petitioner for a period from January to November, 2006.

8. As there is nothing on record to show that the petitioner was appointed after following due process of law pursuant to advertisement, the prayer of the petitioner cannot be considered with regard to giving benefits of permanent employee.

9. In the result, the writ petition is partly allowed. The respondents shall pay salary to the petitioner for the period from January, 2006 to November, 2006, at the rate, the petitioner was paid in the month of December, 2006. The said payment shall be made within a period of three months from today alongwith interest @ 10 % per annum from November, 2006 till the date of payment of amount.

10. Writ petition is accordingly disposed of. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

JPC