

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7164/2013

- 1] Sharad s/o Sambhaji Gaikwad
Age 42 yrs, occu-service, r/o Maheshnagar,
Nagar-Pathardi Road, Barababhali post
Nimbhodi, Tq. & Dist.Ahmadnagar
- 2] Smt.Sunita wd/o Sharad Gaikwad
Age 38 years, Occu-Household
- 3] Manasi d/o Sharad Gaikwad
Age 16 years, Minor Occu-Education
- 4] Sourabh s/o Sharad Gaikwad
Age 13 years, Minor, Occu-Education

[No.2 & 3 are under guardianship of
their real mother Smt.Sunita w/o Sharad Gaikwad]

All R/o Barababhali Mahesh Nagar
Ahmednagar District Ahmednagar .. PETITIONERS

Versus

- 1] The State of Maharashtra through
The Secretary, Department of Revenue
and Forest, Mantralaya, Mumbai-32
(Notice be served to G.P. High Court Bench
at Aurangabad)
- 2] The Conservator of Forest, Nasik
Division, Nasik.
- 3] The Dy. Conservator of Forest
Ahmednagar.

„RESPONDENTS

**CORAM : S. V. GANGAPURWALA &
V. L.ACHLIYA, JJ.
DATED : 12th MARCH, 2015**

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ORAL JUDGMENT :- [PER S.V.GANGAPURWALA,J.]

Rule. Rule made returnable forthwith. With consent of parties, petition is heard finally.

2] Learned counsel for the petitioner states that the father of the deceased petitioner retired from Government service on 17/12/1992. As per circular dated 14/4/1981, the deceased petitioner was given appointment in Class-IV category on 19/3/2013. The deceased petitioner was also given promotional pay scale on 14/11/2005. The learned counsel submits that the deceased petitioner was abruptly terminated on 27/8/2013. The deceased has assailed the said termination order and during the pendency of this Writ Petition, the deceased petitioner expired on 26/9/2014. The present Petition is thereafter prosecuted by his legal heirs. According to the learned counsel no notice was given to the petitioner prior to issuance of the termination order. The learned counsel submits that only on the basis of the judgment delivered by this Court in Writ Petition No.1860/11 the respondent employer took action. The same is illegal and does not stand to any reason.

3] Mr.Patil, learned counsel for respondent nos.2 and 3 submits that the petitioner was not enrolled with the employment exchange. The circular dated 14/4/1981 was not applicable to the deceased petitioner. The said circular was applicable to those persons who had retired prior to the said Government Circular i.e. 14/4/1981. Father of the deceased petitioner had retired on 17/12/1992. The deceased petitioner was given benefit by mistake. This Court vide order passed in Writ Petition No.1860/11 dated 13/12/2011, had directed the respondent to take action in respect of persons appointed on the basis of the said circular which would not be applicable. In pursuance to the said judgment the action has been rightly taken. No illegality has been committed.

4] We have considered submissions canvassed by the learned counsel for respective parties. We had sought clarification from the respondent vide order dated 19/12/2014 on following aspects.

A] Whether the appointment of deceased petitioner Sharad was on substantive post?

B] From which funds the payment was made to the deceased petitioner Sharad i.e. either Contingency or other funds?

5] Respondent nos.2 and 3 have filed additional affidavit clarifying that the appointment of deceased Sharad was on regular basis meaning thereby that it was on a substantive post. Deceased Sharad was also given yearly increment from 1/3/1994 to 1/7/2013 alongwith consequential benefits. It is also clarified that the deceased petitioner was paid all the service benefits alongwith medical leave as was paid on regular post and not from contingency funds.

6] It would be seen that the petitioner was appointed on Class-IV post by respondent. Assuming that it was a mistake on the part of respondent in appointing the petitioner while taking coercive action, principles of natural justice are required to be adhered. Even order of this Court on the basis of which action has been taken lays down that appropriate steps shall be taken by respondents by following principles of natural justice. Principles of natural justice do not seem to have been complied. It is not pointed out that before taking such action even notice was issued to the deceased petitioner. Such an action cannot be sustained. Moreover, the petitioner had rendered service of almost 20 years. He expired on 26/9/2014.

7] It is not the case that the deceased petitioner had sought employment by playing fraud upon the respondents. Probably the respondents under misinterpretation of the circular had given him

appointment and the deceased petitioner rendered the service. Even principles of natural justice are not adhered while passing the termination order such order cannot be sustained.

8] In light of above, we pass following order :

a] The impugned order dated 27/8/2013 is quashed and set aside.

9] Writ Petition accordingly stands partly allowed. No costs.

V.L.ACHLIYA, J.

S. V. GANGAPURWALA, J.

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