

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.10463 OF 2015

- 1 The Chief Executive Officer,
Zilla Parishad, Nandurbar.
- 2 The Executive Engineer,
Rural Water Supply,
Zilla Parishad, Nandurbar.
- 3 The Panchayat Samiti,
Akkalkuwa, Dist. Nandurbar.
Through its Block Development Officer.
...Petitioners...

Versus

Shri Sukdeo S/o Keshav Kokani,
Age 53 years, Occu : Nil,
R/o. Akkalkuwa, Tq. Akkalkuwa,
District Nandurbar.
...Respondent...

WITH

WRIT PETITION NO.10464 OF 2015

- 1 The Chief Executive Officer,
Zilla Parishad, Nandurbar.
- 2 The Executive Engineer,
Rural Water Supply,
Zilla Parishad, Nandurbar.
- 3 The Panchayat Samiti,
Taloda, Dist. Nandurbar.
Through its Block Development Officer.
...Petitioners...

- 2 -

Versus

Shri Mahendra S/o Girdhar Bhoi,
Age 36 years, Occu : Nil,
R/o. Taloda, Tq. Taloda,
District Nandurbar.

...Respondent...

WITH

WRIT PETITION NO.10465 OF 2015

- 1 The Chief Executive Officer,
Zilla Parishad, Nandurbar.
- 2 The Executive Engineer,
Rural Water Supply,
Zilla Parishad, Nandurbar.
- 3 The Panchayat Samiti,
Taloda, Dist. Nandurbar.
Through its Block Development Officer.

...Petitioners...

Versus

Shri Kanhyyalal S/o Zinga Gavli,
Age 43 years, Occu : Nil,
R/o. Taloda, Tq. Taloda,
District Nandurbar.

...Respondent...

WITH

WRIT PETITION NO.10466 OF 2015

- 1 The Chief Executive Officer,
Zilla Parishad, Nandurbar.
- 2 The Executive Engineer,
Rural Water Supply,
Zilla Parishad, Nandurbar.

- 3 -

- 3 The Panchayat Samiti,
Akkalkuwa, Dist. Nandurbar.
Through its Block Development Officer.
...Petitioners...

Versus

Shri Abhay S/o Vijaysing Rajput,
Age 31 years, Occu : Nil,
R/o. Akkalkuwa, Tq. Akkalkuwa,
District Nandurbar. ...Respondent...

**WITH
WRIT PETITION NO.10467 OF 2015**

- 1 The Chief Executive Officer,
Zilla Parishad, Nandurbar.
- 2 The Executive Engineer,
Rural Water Supply,
Zilla Parishad, Nandurbar.
- 3 The Panchayat Samiti,
Dhadgaon, Dist. Nandurbar.
Through its Block Development Officer.
...Petitioners...

Versus

Shri Sitaram S/o Selya Pawra,
Age 43 years, Occu. Nil,
R/o. Dhadgaon, Tq. Dhadgaon,
District Nandurbar. ...Respondent...

**WITH
WRIT PETITION NO.10468 OF 2015**

- 1 The Chief Executive Officer,

- 4 -

Zilla Parishad, Nandurbar.

2 The Executive Engineer,
Rural Water Supply,
Zilla Parishad, Nandurbar.

3 The Panchayat Samiti,
Dhadgaon, Dist. Nandurbar.
Through its Block Development Officer.

...Petitioners...

Versus

Shri Veersing S/o Maharya Pawra,
Age 46 years, Occu : Nil,
R/o. Dhadgaon, Tq. Dhadgaon,
District Nandurbar.

...Respondent...

.....

Shri Pravin S. Patil, Advocate for petitioners.
Shri Shrikant S. Patil, Advocate for respondent.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 15.12.2015

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 same Zilla Parishad, Nandurbar. The respondent – employees in all these petitions are identically placed contractual employees, who are Hand Pump Technicians.

3] The respondents had preferred following

- 5 -

complaints before the Industrial Court, Dhule and by an identical judgment dated 25.8.2015, the said complaints have been allowed:-

Name of respondent	Since when working as contractual Technician	Complaint number (ULP)
Sukdeo Keshav Kokani	28.2.2011	25/2014
Mahendra Girdhar Bhoi	29.12.2011	22/2014
Kanhyyalal Zinga Gavli	6.5.2010	23/2014
Abhay Vijaysing Rajput	1.6.2011	24/2014
Sitaram Selya Pawra	12.4.2002	21/2014
Veersing Maharya Pawra	1.4.1998	20/2014

Considering the ready reference chart as above and since an identical issue is involved in these matters, I have taken up all these matters together for hearing and disposal.

4] The grievance of the petitioner – Zilla Parishad is that the respondent – employees based their complaints on the Government resolution dated 31.3.1978, by which the Zilla Parishads in the State were directed to create posts of Mechanics, Supervisors and Helpers. The said

- 6 -

Government resolution was at Exhibit U-27. The Industrial Court has based its entire judgment on Exhibit U-27.

5] Shri P.S. Patil, learned Advocate for the petitioner - Zilla Parishad draws my attention to the Government resolution dated 16.10.1998, which is tendered across the Bar and a copy is supplied to the learned Advocate for the respondents. Same is marked as Exhibit 'X' for identification.

6] He indicates from Sr.No.2 in the documents under reference, which is the Government resolution dated 31.3.1978. He then points out the decision taken in the said Government resolution (Exh.X) especially the first sentence, which establishes that all the Government resolutions / circulars at Sr.Nos.1 to 10 under reference including the Government resolution dated 31.3.1978, have been set aside by the Government resolution (Exh.X).

7] He then points out paragraph no.10 of the impugned judgment to contend that the Industrial Court had based its conclusion primarily on the Government resolution dated 31.3.1978, which has been set aside in the light of the Government resolution (Exh.X). He

- 7 -

submits that the respondent – employees did not produce the Government resolution (Exh.X) before the Industrial Court, inasmuch as the petitioner – Zilla Parishad also failed to produce the said Government resolution so as to inform the Industrial Court that the earlier Government resolution (Exh.U-27) has already been set aside.

8] Shri Patil, while referring to Exhibit X, submits that the categories A-2 and A-3 are the relevant categories applicable to the case in hand. All these respondent – employees have been working from the dates mentioned in the ready reference chart set out hereinabove. All these respondents were given remuneration at the rate of Rs.35/- per Hand-Pump for carrying out minor repairs. Of late, they are now being paid Rs.100/- per Hand-Pump.

9] Shri Patil, therefore, submits that if the Government resolution (Exh.X) would have been cited before the Industrial Court, there is a possibility that the Industrial Court would have come to a different conclusion. Since the Government resolution dated 31.3.1978 was cited, the Industrial Court carried an impression that every Zilla Parishad in the State was

- 8 -

under an obligation to create posts of Hand Pump Technicians and Hand Pump Mechanics.

10] Exhibit C-18, which is the information supplied by the Sub Engineer Technician, Zilla Parishad, Nandurbar, dated 1.11.2014, to the Industrial Court indicating vacant posts of Technicians at different Talukas, was considered by the Industrial Court in the light of the Government resolution dated 31.3.1978. Therefore, it concluded that all the respondents were entitled for regularization. He, therefore, prays that the impugned judgments be set aside and the complaints be remitted back to the Industrial Court. The petitioner – Zilla Parishad shall make a strong effort to assist the Industrial Court without delaying the matters in deciding the said complaints.

11] Shri S.S. Patil, learned Advocate appearing on behalf of the respondent – employees, has opposed the petitions and has strongly supported the impugned judgment. He submits that the Government resolution dated 31.3.1978 was placed before the Industrial Court as per the knowledge available with the respondents. They were not aware of the Government resolution dated

- 9 -

16.10.1998 (Exh.X). The petitioners have the entire infrastructure and the knowledge of all Government resolutions applicable. The Zilla Parishad could have brought to the notice of the Industrial that Exhibit U-27 has been set aside by Exhibit X.

12] He submits that due to the laxity on the part of the petitioners, the respondents will be compelled to suffer rigors of litigation if the matters are remanded.

13] He has taken this Court through the impugned judgment in details. He refers to paragraph nos.10, 11, 12, 13 and 14 of the impugned judgment to support his contention that the Industrial Court has considered every contentious issue while deciding the complaints. Exhibit C-18 indicated that two posts each at Akkalkuwa, Taloda, Dhadgaon and Nawapur were available for Hand Pump Mechanic. When 8 posts were available, the six complainants, who were working at Akkalkuwa, Taloda and Dhadgaon deserved to be regularized on the available vacant posts.

14] The petitioners did not put forth any satisfactory reason as to why the respondents could not be regularized. It is only for the first time before

- 10 -

this Court that the petitioners have tried to distinguish between Hand Pump Technicians (the respondent – employees) and Hand Pump Mechanics based on the Government resolution (Exh.X). He reiterates that the nature of work actually done by the respondents is the same as Hand Pump Mechanic and there is no distinction between the Hand Pump Mechanic and the Hand Pump Technician.

15] He relies upon the following judgments, which were cited before the Industrial Court :-

1] *Maharashtra State Electricity Board, Bombay v. Sunil More & others* (2002 (5) **Mh.L.J.**, 360).

2] *Gannon Dunkerley & Co.Ltd. v. G.S. Baj, Member, Industrial Court & another* (2006 – I – L L J, 886).

3] *Mahatma Phule Agricultural University & others v. Nashik Zilla Sheti Kamgar Union & others* (2001 (III) **C.L.R.**, 4).

4] *ONGC Ltd. v. Petroleum Coal Labour Union & others* (2015 (146) **F L R**, 443), and

5] *Durgapur Casual Workers Union & others v. Food Corporation of India & others* (2015 **I C L R**, 379).

16] He relies upon the order dated 20.7.1994 passed by the Chief Executive Officer, Zilla Parishad, Dhule, which was at Exhibit U-26, before the Industrial Court.

- 11 -

He points out that the Industrial Court, Nashik, by judgment dated 19.8.1993 had granted regularization to the Hand Pump Mechanics. Said judgment was upheld by this Court by its judgment dated 11.3.1994. All those Hand Pump Mechanics mentioned in Sr.Nos.1 to 16 were regularized in employment. Subsequently, Dhule District was bifurcated and Nandurbar District was created. Same analogy, therefore, would be applicable to the case of the respondents.

17] I have considered the submissions of the learned Advocates, as recorded hereinabove.

18] I have no hesitation in concluding that the judgment of the Industrial Court impugned in these petitions is primarily based on Exhibit U-27, which Government resolution dated 31.3.1978 has been set aside by the Government resolution (Exh.X). The Zilla Parishads in the State are, therefore, no longer under an obligation to create posts of Mechanics, Supervisors and Helpers.

19] Exhibit C-18, therefore, will have to be considered from the point of view of the Government resolution (Exh.X). Had it been brought to the notice of

- 12 -

the Industrial Court that the Government resolution (Exh.U-27) was no longer in operation and was substituted by the Government resolution (Exh.X), both the litigating sides could have put forth different or additional grounds in support of their cases.

20] Insofar as the judgments relied upon by the respondent – employees are concerned, I have no hesitation in respectfully agreeing with the ratio laid down by the Apex Court and by this Court in the said judgments. Temporary workers, who were performing the work perennially available on particular posts, were granted regularization to do the same work on the same posts.

21] In the instant case, the petitioner is making an effort in the light of the Government resolution (Exh.X) that there is a distinction between a Hand Pump Technician and a Hand Pump Mechanic. The petitioner concedes that there are posts of Hand Pump Mechanics available as can be seen by the document (Exh.C-18). If indeed such a distinction is available, the same will have to be canvassed before the Industrial Court and the litigating respondents must be afforded an opportunity to

- 13 -

deal with the said contention of the petitioner based on the Government resolution (Exh.X).

22] Insofar as the contention of the respondents that the Industrial Court, Nashik, by its judgment and this Court by its judgment dated 11.3.1994 has led to the regularization of 16 employees is concerned, I find from Exhibit U-26 that they were working as Hand Pump Mechanics and not as Hand Pump Technicians. It is not in dispute that the respondents are working as Hand Pump Technicians (Hand Pump Yantriki). Nevertheless, in the light of the order that I intend to pass, the respondents would be at liberty to lead additional evidence before the Industrial Court and make out a case for their regularization either on the post of Hand Pump Technician or on the post of Hand Pump Mechanic.

23] Amongst these petitions, I am inclined to deal with the last two petitions bearing Nos.10467/2015 and 10468/2015, differently in the light of the judgment of the Apex Court in the case of *Secretary, State of Karnataka v. Umadevi* (2006 (109) F.L.R., 826 (SC)). It is undisputed that these respondents namely Sitaram Selya Pawra and Veersing Maharya Pawra are working with the

petitioners from 12.4.2002 and 1.4.1998 respectively.

24] Paragraph no.44 of the judgment of the Apex Court in the case of *Umadevi* (supra) reads as under:-

"44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. NARAYANAPPA* (supra), *R.N. NANJUNDAPPA* (supra), and *B.N. NAGARAJAN* (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion

- 15 -

within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme. "

25] Both these respondents namely Sitaram Selya Pawra and Veersing Maharya Pawra are working for the past 13 and half years and 17 and half years respectively. Even if I have concluded as above that the judgment of the Industrial Court, which is based on the Government resolution dated 31.3.1978 is unsustainable as the said Government resolution is set aside, these two respondents will have to be looked at in the light of the ratio laid down by the Apex Court in paragraph no.44 reproduced as above.

26] It is in this backdrop that I am modifying the impugned judgment dated 25.8.2015 in the case of these two respondents as follows:-

Clause (3) of the judgment of the Industrial Court is modified and shall read as under:-

The respondents are directed to absorb the

- 16 -

complainants on vacant sanctioned permanent posts either of Hand Pump Technician or Hand Pump Mechanic from the date of this order. Both the petitions i.e. Writ Petition Nos.10467/2015 and 10468/2015 are, therefore, disposed of in terms of the modified Clause (3), as above.

27] Insofar as the first four petitions i.e. Writ Petition Nos.10463/2015, 10464/2015, 10465/2015 and 10466/2015 are concerned, the same are partly allowed as follows:-

a] The impugned judgment of the Industrial Court dated 25.8.2015 is quashed and set aside. The four complaints filed by these four respondents bearing Complaint (ULP) Nos.25/2014, 22/2014, 23/2014 and 24/2014 stand remitted to the Industrial Court.

b] The litigating sides shall appear before the Industrial Court on 4.1.2016 and formal notices need not be issued by the Court.

c] Both the litigating sides are at liberty to lead additional oral and documentary evidence.

d] The Industrial Court shall decide the said

- 17 -

complaints afresh considering the oral and documentary evidence already on record as well as the additional evidence.

e] The petitioners shall deposit an amount of Rs.15,000/- in each of these four complaints before the Industrial Court on or before 15.1.2016 as costs, which shall be withdrawn by the four respondent – employees without conditions. In the event such costs are not deposited, the right of the petitioner – Zilla Parishad to lead additional evidence shall stand forfeited and the judgment of the Industrial Court dated 25.8.2015 set aside by this Court, shall then stand restored.

f] Both the sides shall cooperate with the Industrial Court for the expeditious disposal of the four complaints and the Industrial Court shall decide these four complaints preferably on or before 31.12.2016.

g] Till the decision of the Industrial Court in these four complaints, the petitioners shall not dispense with the services of the four

- 18 -

respondents only on the ground that they are Hand Pump Technicians on contract basis or temporaries, as the case may be.

h] Needless to state that the Industrial Court shall consider the entire contentions of the Zilla Parishad as well as the complainant – employees inclusive of the contention of the employees that there is no distinction in the nature of work in between a Hand Pump Mechanic and a Hand Pump Technician.

i] Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)