

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

WRIT PETITION NO.835 OF 2014

1. Bandu S/o Vaijnath Sakhalakar,
Age 47 years, Occ. Van Majoor,
R/o. Dhobi Galli, Jinture,
Tal. Jintur, Dist. Parbhani.
2. Babulal S/o Dhansingh Chavan,
Age 53 years, Occ. Van Majur,
R/o. Forest Quarter at Parbhani
Tal. & Dist. Parbhani.
3. Sahebrao S/o Bhimrao Gudade,
Age 53 years, Occ. Van Majur,
R/o. Yeldari, Tal. Jintur,
Dist. Parbhani.
4. Yashodabai W/o Dattarao Mane,
Age 50 years, Occ. Van Majur,
R/o. Hiwarkhede, Tal. Jintur,
Dist. Parbhani.
5. Shankar S/o Sakharam Jadhav,
Age 50 years, Occ. Van Majur,
R/o. Forest Quarter at Parbhani
Tal. & Dist. Parbhani.
6. Chandrabhagabai Keshav Kokate,
Age 53 years, Occ. Van Majur,
R/o. Hiwarkhede, Tal. Jintur,
Dist. Parbhani.
7. Rukhminbai Narayan Ghansavat,
Age 49 years, Occ. Van Majur,
R/o. As above.
8. Madan S/o Mansing Chavan,
Age 48 years, Occ. Van Majur,
R/o. Jintur, Tal. Jintur,
Dist. Parbhani.
9. Panchabai Rohidas Watole,
Age 50 years, Occ. Van Majur,
R/o. Hiwarkhede, Tal. Jintur,

Dist. Parbhani.

10. Chandrabhagabai Pandurang Karale,
Age 53 years, Occ. Van Majur,
R/o. Hiwarkhede, Tal. Jintur,
Dist. Parbhani.
11. Punjabai Parsaram Karale,
Age 51 years, Occ. Van Majur,
R/o. as above.
12. Mohan S/o Ganpati Tilkari,
Age 53 years, Occ. Van Majur,
R/o. Itoli, Tal. Jintur,
Dist. Parbhani.
13. Vaslabai Gyanoji Karale,
Age 53 years, Occ. Van Majur,
R/o. C/o R.F.O. Karegaon Road,
Parbhani, Dist. Parbhani.
14. Rajabhau S/o Yashwant Kavatekar,
Age 49 years, Occ. Van Majur,
R/o. as above.
15. Pralhad S/o Marutrao Kale,
Age 39 years, Occ. Van Majur,
R/o. Shimpi Galli, Aundha,
Tq. Aundha, Dist. Hingoli.
16. Chandrakala Shrirang Mane,
Age 50 years, Occ. Van Majur,
R/o. Hiwarkhede, Tal. Jintur,
Dist. Parbhani.
17. Yenubai Machnindra Sarkate,
Age 49 years, Occ. Van Majur,
R/o. Hiwarkhede, Tal. Jintur,
Dist. Parbhani.
18. Shankar S/o Sambhaji Magar,
Age 52 years, Occ. Van Majur,
R/o. Shindgi, Tal. Kalamnuri,
Dist. Hingoli..
19. Tulsabai W/o Fakirrao Terve,
Age 55 years, Occ. Van Majur,

R/o. Hiwarkhede, Tal. Jintur,
Dist. Parbhani.

...Petitioners.

Versus

1. The State of Maharashtra,
Through its Secretary,
Forest Department,
Mantralaya, Mumbai.
2. The Chief Conservator of Forest,
Aurangabad, Tal. & Dist. Aurangabad.
3. The Deputy Conservator of Forest,
Parbhani, Tal. & Dist. Parbhani.

... Respondents.

...

Mr. S.S.Thombre, Advocate for Petitioners;
Mr. A.V.Deshmukh, AGP for Respondent No.1 / State;
Mr. A.N.Gadime, Special Counsel for Respondents No. 2
and 3.

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WITH

WRIT PETITION NO. 569 OF 2014

Gous Khan s/o Chand Khan,
Age : 55 years, Occ. Nil,
R/o. Roshan Khan Mohalla,
Gol Ghumat, Near Rashid Kirana,
Parbhani.

... Petitioner.

Versus

1. The State of Maharashtra,
Through the Additional Chief Secretary
Revenue & Forest Department,
Mantralaya, Mumbai 400 032.
2. Deputy Conservator of Forest,
Parbhani.
3. Chief Conservator of Forest,
Territorial, Aurangabad.
4. Bandu Vaijnath Sakhalkar,

Age : Major, Occ. Nil,
R/o. Dhobi Galli, Jintur,
Tq. Jintur, Dist. Parbhani.

5. Madan Mansing Chavhan,
Age : Major, Occ. Nil,
R/o C/o Range Forest Officer (T),
Karegaon Road, Parbhani.
6. Syed Turabali Mahboobali,
Age : Major, Occ. Nil,
R/o Shivajinagar, Behind Court,
Hingoli, Tq. & Dist. Hingoli.
7. Chandrakala Shrirang Mane,
Age : Major, Occ. Nil,
R/o C/o Range Forest Officer (T),
Hingoli, Near Khatkali Gate,
Hingoli.
8. Rajabhav yashwant Kauthekar,
Age : Major, Occ. Nil,
Age : Major, Occ. Nil,
R/o C/o Range Forest Officer (T),
Hingoli, Near Khatkali Gate,
Hingoli.
9. Sabebrao Bhisnaji Gudde,
Age : Major, Occ. Nil,
R/o C/o Range Forest Officer (T),
Hingoli, Near Khatkali Gate,
Hingoli.
10. Babulal Dhansingh Chavhan,
Age : Major, Occ. Nil,
R/o C/o Range Forest Officer (T),
Hingoli, Near Khatkali Gate,
Hingoli.
11. Yashodabai Dattarao Mane,
Age : Major, Occ. Nil,
R/o C/o Range Forest Officer (T),
Hingoli, Near Khatkali Gate,
Hingoli.
12. Panchabai Rohidas Watole,
Age : Major, Occ. Nil,

R/o C/o Range Forest Officer (T),
Hingoli, Near Khatkali Gate,
Hingoli.

13. Pralhad Maroti Kale,
Age : Major, Occ. Nil,
R/o C/o Range Forest Officer (W),
Main Road, Aundha, Dist.Hingoli.
14. Gangadhar Jairam Chaurange,
Age : Major, Occ. Nil,
R/o Bitergaon, Tq. Umarched,
Dist. Yewatmal.
15. Shankar Sambhaji Magar,
Age : Major, Occ. Nil,
R/o C/o Range Forest Officer (Egs),
Mondha Road, Basmat,
16. Chandrabhagabai Keshav Kokate,
Age : Major, Occ. Nil,
R/o Hiwarkheda, Tq. Jintur,
Dist. Parbhani.
17. Tulsabai Fakirrao Terve,
Age Major, Occ. Nil,
R/o. Hiwarkheda, Tq. Jintur,
Dist. Parbhani.
18. Venubai Machindra Kakate,
R/o C/o Range Forest Officer (T),
Karegaon Road, Parbhani,
Tq. & Dist. Parbhani.
19. Chandrabhagabai Pandurang Karhale,
R/o C/o Range Forest Officer (T),
Karegaon Road, Parbhani,
Tq. & Dist. Parbhani.
20. Punjabai Parasram Karhale,
R/o Hiwarkheda, Tq. Jintur,
Dist. Parbhani.
21. Mohan Ganpati Tilkari,
R/o Hiwarkheda, Tq. Jintur,

Dist. Parbhani.

22. Watsala Giyanoji Karhale,
R/o Hiwarkheda, Tq. Jintur,
Dist. Parbhani.

23. Rukhminibai Narayan Ghansawant,
R/o Hiwarkheda, Tq. Jintur,
Dist. Parbhani.

24. Shankar Sakharam Jadhav,
Age : Major, Occ. Nil,
R/o C/o Range Forest Officer
(Special Duty),
Karegaon Road, Parbhani.

... Respondents.

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Mr. Ajay Deshpande, Advocate for Petitioner;
Mr. A.V.Deshmukh, AGP for Respondent No.1-State;
Mr. A.N.Gadime, Special Counsel for Respondents No.2
and 3.

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WITH

WRIT PETITION NO.1674 OF 2014

Syed Turabali Mahboobali,
Age 49 years, Occ. Nil,
R/o. Shivaji Nagar,
Behind Court, Hingoli,
Tq. & Dist. Hingoli.

... Petitioner.

Versus

1. The State of Maharashtra,
Through the Secretary,
Forest Department,
Mantralaya, Mumbai.
2. The Chief Conservator of Forest,
Aurangabad, Tal. & Dist. Aurangabad.
3. The Deputy Conservator of Forest,
Parbhani, Tal. & Dist. Parbhani.

... Respondents.

...

Mr. Prakash M. Shinde, Advocate for Petitioner;
Mr. A.V.Deshmukh, AGP for Respondent No.1-State;
Mr. A.N.Gadime, Special Counsel for Respondents No.2
& 3.

**CORAM : S.S.SHINDE &
P.R.BORA, JJ.**

DATE OF RESERVING JUDGMENT : 15th September, 2015.

DATE OF PRONOUNCING JUDGMENT: 05th October, 2015.

JUDGMENT (PER:-P.R.BORA, J.)

1) Heard. Rule. Rule returnable forthwith with the consent of learned Counsel appearing for the parties. Since all these petitions arise out of order dated 1st August, 2013, passed by Aurangabad Bench of Maharashtra Administrative Tribunal (for short, the Tribunal) and since the issues involves in these petitions are common, we deem it appropriate to decide all these petitions by a common order.

2) Petitioners in all these petitions were working as Forest Labour (Van Majur) on

daily wages on the establishment of Deputy Conservator of Forest, Parbhani. In Writ Petition No.569/2014 there is only one petitioner, by name Gauskhan Chandkhan. In Writ Petition No.835/2014, there are total 19 petitioners; whereas in Writ Petition No. 1674/2014 again there is only one petitioner. There are thus total 21 petitioners before this Court.

3) All these petitioners started working with the Forest Department prior to 1990. On 31st January, 1996, the Government took a policy decision to regularize the services of as many as 10,160 forest labours in the State, who have rendered minimum 240 days service in every year preceding 1.11.1994 for the continuous period of five years. The regularization was given w.e.f. 1.11.1994 and the orders in that regard were issued in

favour of all the eligible employees. The 21 petitioners before this court were held eligible to be extended with the benefit of the said Government Resolution dated 31.1.1996 and appointment orders were issued in their favour during the period between November 1996 to July 1998.

4) On 7.8.2007, the Deputy Conservator of Forest, Parbhani issued notices to all these 21 petitioners and other similarly placed incumbents, inter alia, claiming that the orders of regularization issued in their favour were wrongly issued on an assumption that all of them have completed 240 days' service every year in the preceding five years w.e.f. 1.11.1994, however, none of them, had in fact, put in 240 days service within the said period and the petitioners were, therefore, called upon to show cause as to why

action should not be taken against them.

5) In challenge to the said show cause notice dated 7.8.2007, total four Applications were filed before the Tribunal. The said Original Applications were disposed of by the Tribunal by common order passed on 24.02.2012 with the directions to the Forest Department to decide the representations filed by the petitioners in response to the show cause notices served upon them and to take decision on merit. It was also directed that since the petitioners had continued in service from the date of notice i.e. 7.8.2007, not to cancel their regularization as Vanmajur till the decision is taken by the Deputy Conservator of Forest, Parbhani on the representations submitted by the petitioners.

6) Thereafter the petitioners were

required to approach this Court by filing Writ Petition No.5403/2012 and the said writ petition was disposed of by this Court by directing the respondents therein to permit the petitioners to inspect the record and thereafter to pass a reasoned order considering their representations. It is the contention of the petitioners that complete record was never made available to them despite their persistent demand.

7) The Deputy Conservator of Forest, Parbhani, vide order dated 27th August, 2012, terminated the appointments of the petitioners on the post of Vanmajur made in pursuance of the Government Resolution dated 31st January, 1996. Though each of the petitioners is served with a separate order of termination, the reason cited for termination is the same in all these termination orders. The Deputy

Conservator of Forest, Parbhani, terminated the appointments of the petitioners on the post of Vanmajur on the ground that none of them did work for 240 days in every year in the period between 1.11.1989 to 31.10.1994.

8) Aggrieved by the aforesaid order, the petitioners again approached the Tribunal by commonly filing Original Application No. 812/2012. the Original Application so filed by the petitioners was contested by the respondents. The learned Tribunal, vide order passed on 1.8.2013, dismissed the said Original Application against which, the applicants are before this court in the present writ petitions.

9) The respective counsel appearing for the petitioners in these petitions assailed the order passed by the Tribunal as well as the order dated 27.8.2012 passed by the Deputy

Conservator of Forest, Parbhani on various grounds. The learned counsel submitted that the the learned Tribunal, instead of addressing the core issue involved in the matter, whether the impugned order of termination passed almost after ten years of conferment of the regular appointment on the petitioners, that too without any fault on their part, can be justified for any reason, much less the reasons cited in the said order, dismissed the original application by adopting a too technical approach that if the petitioners were not satisfied with the record made available by the respondents, they should have again approached the High court and must have sought further directions from the High court and since the petitioners did not adopt the said course, they have lost right to challenge the impugned order and seek the consequential relief.

10) The learned counsel further submitted that in so far as the record of the period between 1989 to 1994 is concerned, the same was with the respondents and on the basis of the said record, the earlier orders were issued in favour of the petitioners, providing them appointment on the post of Vanmajur on regular basis in compliance of the Government Resolution dated 31st January, 1996. The learned counsel further argued that in view of the order passed by the High court in Writ Petition No. 5403/2012 though some record was made available to the petitioners for their inspection, it was incomplete record and despite repeated demands by the petitioners, the whole record was never made available to them for their inspection. The learned counsel further submitted that while cancelling the appointment orders issued to the petitioners in the year 1996 and 1997 in

compliance of the Government Resolution dated 31.1.1996, the respondents could not have put an end to the employment of the petitioners and rendered them unemployed. At the most, the respondents could have withdrawn the benefit of regular appointment on the post of Vanmajur conferred on the petitioners and the petitioners should have been relegated to their original post, i.e. Daily Wager. But, in any case, there could not have been termination of services of the petitioners, that too without following the principles of natural justice and the procedure prescribed under the law for such termination. The learned Counsel further argued that the respondents themselves do not possess correct record in respect of the period of service rendered by the petitioners. The learned counsel, by way of an example, brought to our notice that in so far as the case of

petitioner in Writ Petition No. 569/2012 is concerned, there are three different versions on record as regards to the working days of the said petitioner during the period between 1.11.1989 to 31.10.1994. The learned Counsel submitted that in respect of other petitioners also, the position is the same.

11) The learned counsel further argued that subsequently the Government has passed one more resolution for regularization of the daily wagers working in the forest department and has thereby resolved to regularize their services. The learned counsel brought to our notice that vide the said Resolution the Government has resolved to regularize the services of the daily wagers working in the forest Department during the period between 1.11.1994 to 30.06.2004 and who have worked in the aforesaid period of ten years either continuously or with breaks and have worked

for minimum 240 days in at least five years of the aforesaid ten years. The learned counsel further submitted that accordingly, the Government has resolved to regularize the services of around 6546 daily wagers w.e.f. 11.6.2012. The learned Counsel further brought to our notice that in pursuance of the aforesaid decision, the Government has created 5089 posts of Vanmajur, so as to absorb the daily wagers.

12) The learned Counsel further argued that had the services of the present petitioners not regularized in pursuance of the Government Resolution dated 31.1.1996, perhaps they would not have suffered the order dated 27.8.2012 whereby their employment has been put to an end and they are rendered unemployed and would have been certainly considered for regularization in view of the subsequent Government Resolution dated 16th

October, 2012. The learned Counsel further argued that on the strength of GR dated 16th October, 2012, services of several employees, who were junior to the present petitioners at the relevant time, have been regularized.

13) On the above grounds, the learned Counsel prayed for allowing their respective petitions by setting aside the order passed by the Tribunal in Original Application No. 812/2012 and by quashing the order dated 27.8.2012 issued by the Deputy Conservator of Forest, Parbhani.

14) Opposing the submissions advanced on behalf of the petitioners, the learned Asstt. Government Pleader submitted that the appointments of the petitioners made in pursuance of the Government Resolution dated 31.1.1996 have been rightly cancelled by the respondents since none of the petitioners was

fulfilling the criterion as laid down in the aforesaid Government Resolution.

15) Learned AGP invited our attention to condition No.1 in the GR dated 31.1.1996, which prescribes that for getting benefit of the concerned Government Resolution, the employee concerned was supposed to have worked in the preceding five years of 1.11.1994 for minimum 240 days in every year.

16) Learned AGP further submitted that each of the petitioners was served with a notice under the signature of Deputy Conservator of Forest, Parbhani and was called upon to show cause as to why the appointment given to him shall not be cancelled since he has not fulfilled the criterion of rendering services of minimum 240 days in every year during the period of five years preceding to 1.11.1994. The learned AGP further submitted

that when a dispute was raised in respect of the service record and a petition was filed before the High Court in that regard raising the said objection, the Department has shown its readiness to give inspection of the entire record to the petitioners. The learned AGP further submitted that in view of the order passed by the High court in Writ Petition No. 5413/2012, each of the petitioners was given due opportunity to inspect the record and to submit his say. Learned AGP further submitted that despite such opportunity being given to the petitioner, since the petitioner could not produce the record showing that they have worked for more than 240 days in every year during the period of five years preceding to 1.11.1994, nor from the record made available for their inspection, they could point out their eligibility according to the condition incorporated in the Government Resolution

dated 31.1.1996, rightly the appointments so issued in their favour were cancelled by the Deputy Conservator of Forest, Parbhani. The learned AGP further submitted that the learned Tribunal, after having considered the record available, did not find the petitioners eligible to be regularized and hence refused to grant any relief to the petitioners and rejected the Original Application filed by them. Learned AGP submitted that the Tribunal has considered every objection raised by the petitioners and has passed a well-reasoned order. Learned AGP further submitted that no interference is, therefore, required in the order passed by the Tribunal.

17) We have carefully considered the submissions advanced by the respective learned Counsel for the petitioners, and learned AGP. We have also gone through the documents placed

on record by the petitioners and the respondents.

18) The petitioners have filed on record their respective appointment letters issued in their favour pursuant to the Government Resolution dated 31.1.1996. Some of the petitioners were issued with such appointment orders in the year 1996 itself; whereas some in 1997 and some of them in the year 1998. From the record, it can be said that the last of such appointment was issued in August 1998. There is further no dispute that a show cause notice came to be issued to the petitioners on 7.6.2007, calling upon them to explain as to why their appointment shall not be cancelled since they had not worked for minimum 240 days in every year during the period of five years preceding to 1.11.1994, which was the condition precedent for appointing them on the

regular post of Vanmajur, vide Government Resolution dated 31.1.1996. It is thus evident that by the time the aforesaid notice came to be served on the petitioners they had already worked for the continuous period of about nine years on the basis of the regular appointment issued in their favour by virtue of Government Resolution dated 31.1.1996. Since the petitioners were the regular appointees and their services were not terminated till 7.6.2007, it has to be presumed that during the said period i.e. the period of about nine years, all the petitioners were in continuous service of the Deputy Conservator of Forest, Parbhani. In absence of any contrary evidence on record, it will have to be further presumed that each of the petitioners had definitely worked for more than 240 days in every year during the aforesaid period of nine years. The question,

therefore, arises whether their appointments could have been cancelled by the Deputy Conservator of Forest, Parbhnai without paying them any retrenchment compensation or without following due process of law. Further, the burden lies on the respondents to explain as to why they took the period of nine years to find out that the petitioners were not eligible to be given regular appointments on the strength of the Government Resolution dated 31.1.1996. It has also to be explained by the respondents and none else, and more particularly, the Deputy Conservator of Forest, Parbhani as to on what basis and on what record, the petitioners were provided with regular appointments at the relevant time, vide Government Resolution dated 31.1.1996. There is substance in the argument advanced on behalf of the petitioners that it was the office of Deputy Conservator of

Forest, which has made all proposals for regular appointments of the petitioners in view of the Government Resolution dated 31.1.1996 and no role was performed in that regard by the petitioners. It was brought to our notice that in the proposals forwarded at the relevant time for giving regular appointments to the petitioners in view of the government Resolution dated 31.1.1996, the entire record was examined by the concerned officials and the daily wagers, who were found eligible and complying with the terms and conditions incorporated in the Government Resolution dated 31.1.1996, and more particularly, the condition that the employee concerned must have worked for 240 days in every year during the period of five years preceding to 1.11.1994 that their names were recommended for issuing regular appointments and accordingly, the appointment were issued

in their favour. It has to be presumed that the regular appointments were issued to the petitioners since they were fulfilling the criterion as laid down in the Government Resolution dated 31.1.1996 and the concerned record in that regard was verified by the concerned officers before issuing such appointments. It is not the case of the respondents that in securing the regular appointments on the post of Vanmajur, any fraud was played by the petitioners. It is also not the case of the respondents that at that time some false service record was prepared and produced by the petitioners so as to secure advantage of the Government Resolution dated 31.1.1996. It is also not the case of the respondents that some wrong representations were made by the petitioners while securing the permanency benefits in view of the Government Resolution dated 31.1.1996

by producing some false service record. In the circumstances, after the period of about nine years, if it is the contention of the respondents that the regular appointments were wrongly issued to the petitioners though they were not fulfilling the condition of rendering 240 days work in every year during the period of five years preceding 1.11.1994, it is difficult to accept their contention. The respondents cannot deny that the entire record was in their possession. In the circumstances, if at all it was the question of verifying the said record, the onus is on the respondents to explain as to why the said record was not immediately verified and why they allowed the period of nine years to go.

19) It is further significant to note that though show cause notice, as aforesaid, was issued on 7.6.2007, the termination did not take place immediately thereafter and

admittedly, it took place after issuance of the impugned order of termination dated 27.8.2012 issued by Deputy Conservator of Forest, Parbhani. It is thus evident that till the said date each of the petitioners had completed the period of more than 14 years on the post of Vanmajur, to which, they were provided with regular appointment in pursuance of Government Resolution dated 31.1.1996. Prior to that, each of the petitioners had worked for more than five years as a Daily Wager. Thus, the petitioners were in service of the Forest Department for the period of about 19 years as on 27.8.2012.

20) As was submitted by Learned Counsel appearing for the petitioners all of the petitioners had crossed the upper age limit by the said date, i.e. 27.8.2012 for securing any fresh employment in the event the impugned

order of termination is upheld.

21) In the above circumstances, on the principle of equity, the impugned order dated 27.8.2012 appears quite unsustainable and deserves to be set aside on this ground alone.

22) Moreover, in view of the available material on record, we are unable to accept the contention raised by the Respondents in support of the impugned order of termination that none of the petitioners was fulfilling the criterion as laid down in the Government Resolution dated 31.1.1996 and more particularly the condition of rendering minimum 240 days service in every year during the period of five years preceding to 1.11.1994. As was brought to our notice, the record in respect of the working days of the petitioners as maintained by the Respondents

appears incomplete and cannot be depended upon. We may not refer to the service record of each of the petitioners; suffice it to consider the case of one of the petitioners, viz. Gauskhan Chandkhan Pathan, i.e. petitioner in Writ Petition No. 569/2014.

23) In the order of termination dated 27.8.2012, pertaining to said Gauskhan Pathan, following are the particulars in respect of the working days of the said petitioner during the period between 1.11.1989 to 31.10.1994.

Sr. No.	Period	No. of working days
1)	01.11.1989 to 31.10.1990	169
2)	01.11.1990 to 31.10.1991	135
3)	01.11.1991 to 31.10.1992	191
4)	01.11.1992 to 31.10.1993	329
5)	01.11.1993 to 31.10.1994	300

While in the show-cause notice dated 7.6.2007 issued to the said petitioner, his working days are provided as under, -

Sr. No.	Period	No. of working days
1)	01.11.1989 to 31.10.1990	189
2)	01.11.1990 to 31.10.1991	177
3)	01.11.1991 to 31.10.1992	186
4)	01.11.1992 to 31.10.1993	310
5)	01.11.1993 to 31.10.1994	315

In the Chart, which has been annexed as Exhibit-R.1 along with the affidavit in reply filed on behalf of the respondents, the working days, as are mentioned in respect of the aforesaid petitioner, are as follows, -

Sr. No.	Period	No. of working days
1)	01.11.1989 to 31.10.1990	245
2)	01.11.1990 to 31.10.1991	174
3)	01.11.1991 to 31.10.1992	211
4)	01.11.1992 to 31.10.1993	300
5)	01.11.1993 to 31.10.1994	302

24) On repeated queries made by us, the respondents could not provide any acceptable explanation as to why three different

particulars of working days pertaining to the aforesaid petitioner are coming on record. The respondents also could not point out as to which record shall be accepted as authentic one so as to justify the reason cited in the order of termination dated 27.8.2012. As such also, the order cannot be sustained.

25) Learned Counsel representing the Department of Forest made an attempt to submit that excluding the days of work rendered on the works of Employment Guarantee Scheme (EGS), the petitioners did not complete 240 working days in every year during the period of five years preceding to 1.11.1994. However, the material on record did not support the submission so made by the learned counsel for the Department of Forest. It has to be stated that in the letter of termination dated 27.8.2012, it has been specifically

mentioned that petitioner – Gauskhan Chandkhan Pathan did never work on the Employment Guarantee Scheme. Moreover, if this was the contention of the Department of Forest, some more convincing particulars must have been brought on record by them pertaining to all the petitioners. Admittedly, no such record has been produced by them. The contention raised on behalf of the respondents, therefore, is liable to be rejected.

26) The further question falls for our consideration is, whether on cancellation of the appointment of the petitioners on the post of Vanmajur, made in pursuance of the Government Resolution dated 31.1.1996, the benefit of permanency so conferred on them was liable to be withdrawn or it was having an effect of terminating the services of the petitioners and putting an end to the

employment of the petitioners in the Department of Forest. There is substance in the submission made on behalf of the petitioners that if the Department was of the opinion that order of regular appointment issued in favour of the petitioners on the strength of the Government Resolution dated 31.1.1996, was wrongly issued to the petitioners and was, therefore, intending to cancel the said appointment, even on cancellation of such appointment, it would have resulted only in relegating the petitioners back to their original position that of Daily Wager and in no case, their employment with the Forest Department could have been brought to an end rendering them unemployed. Even in the Government Resolution dated 31.1.1996, it has been provided in clause 9 thereof that review should be taken in respect of the Daily Wagers, who had not

completed continuous service of five years as on 1.1.1994 and if their services are no more required, they be terminated by following due process of law. Thus, if it is assumed that the petitioners were not eligible to be regularized as per the aforesaid Government Resolution, their services could not have been terminated without following due process of law, if not required by the Department. Vide the impugned order dated 27.8.2012; the Department has however not only cancelled the appointments of the petitioners on the post of Vanmajur, but has also terminated them from the services of the Forest Department. Such action is apparently unsustainable in view of the aforesaid clause in the Government Resolution dated 31.1.1996.

27) Further, our attention was invited to the Government Resolution dated 16th October,

2012. Vide the said Government Resolution the Government has resolved to regularize the services of 6546 Daily Wagers working on the different Schemes being implemented by the Department of Forest, who had worked either continuously or with breaks during the period between 1.11.1994 to 30.06.2004 and within the aforesaid ten years, who have worked for 240 days in a year in any of the five years thereof. It is brought to our notice that on the strength of the aforesaid Government Resolution, the aforesaid number of the Daily Wagers have been provided the regular appointments and all such workers are junior to the present petitioners. In this background, it was submitted by Learned Counsel appearing for the petitioners that had the petitioners be not given appointments on regular post of Vanmajur pursuant to the Government Resolution dated 31.1.1996, and if

the petitioners would have been continued as Daily Wagers, perhaps all of them would have got the benefit of the Government Resolution dated 16th October, 2012 and would not have been subjected to suffer the order dated 27.8.2012 rendering them unemployed. We are in complete agreement with the submission so made on behalf of the petitioners.

28) We have carefully perused the Government Resolution dated 16th October, 2012 in the preamble of which it has been stated that it was necessary to regularize the services of the workers, working on the different schemes on daily wages for years together and in the circumstances, the Government resolved to regularize the services of the Daily Wagers working for the period of ten years in the period between 1994 to 2004. Thus, in larger interest of the daily wagers,

even the period, which was five years in earlier Government Resolution dated 31.1.1996, was made ten years so that many more daily wagers can be extended the benefit of permanency. It is really not understood when this was the policy of the Government, which came to be declared in October 2012, how the order of termination came to be issued on 27.8.2012 cancelling the appointments of the employees, who had worked by that time for the period of more than 18 to 20 years of which the period of 14 years was on the regular post of Vanmajur.

29) Even if the contention of the respondents is accepted that since none of the petitioners had continuously worked for 240 days in every year during five years preceding to 1.11.1994 and hence were not liable to be regularized on the post of

Vanmajur, the petitioners would have been certainly continued as the daily wagers and, in such circumstances, as has been argued by the petitioners, would have got the benefit of the subsequent Government Resolution dated 16th October, 2012.

30) It is further significant to note that clause 3 of the Government Resolution dated 16th October, 2012 provides that if the daily wagers, who could not have been regularized, whatsoever may be the reason, on the strength of Government Resolution dated 31.1.1996, be now regularized. The clause, as aforesaid, fully supports the contention of the petitioners that even if the petitioners are held not eligible to be regularized, vide Government Resolution dated 31.1.1996, they have become eligible to be absorbed in view of the subsequent Government Resolution dated 16th

October, 2012.

31) The Government Resolution dated 16th October, 2012 also provides that the daily wagers, who had not completed five years of continuous service on 30.06.2004, but are continued in the employment, if required to be discontinued or terminated, be terminated by following due process of law. Considering the aforesaid clause, which was also there in the earlier Government Resolution dated 31.1.1996, the services of the petitioners could not have been terminated by the respondents without following due process of law. For this reason also, the impugned order cannot be sustained and deserves to be set aside.

32) On perusal of the judgment passed by the Tribunal, impugned in the present petitions, it is apparently revealed that the Tribunal, in fact, did not address the real

issues involved in the matter. The petitioners might not have approached the High court seeking further orders or clarificatory directions in respect of their service record; the fact remains that the record made available by the respondents cannot be depended upon for the reasons which we have discussed herein before. We reiterate that the respondents have failed in substantiating the reasons cited in the impugned order dated 27.8.2012.

33) The Tribunal also failed in considering the fact that by the time the impugned order dated 27.8.2012 came to be issued, whereby the Deputy Conservator of Forest, Parbhani cancelled the appointments of the petitioners and removed them from the services of the Forest Department, each of the petitioners had completed the services for more than 18 years. The aspect of equity was

thus totally lost sight of by the Tribunal while dismissing the Original Application. The Tribunal also did not consider that at the most the appointments made of the petitioners on the post of Vanmajur following the Government Resolution dated 31st January, 1996 only were liable to be cancelled and still the petitioners would have continued as the daily wagers. For all such reasons, the judgment of the Tribunal cannot be sustained.

34) The learned Counsel for the respondents have heavily relied upon unreported judgment of this Court in the case of Bapu Hari Jadhav Vs. State (Writ Petition. No. 2424/2003 decided on 14th July, 2003). According to the learned Counsel for the respondents, the facts involved in the present case are identical to the facts, which were involved in the aforesaid case and hence the

said judgment will squarely apply to the facts of the present case also. We have carefully perused the aforesaid judgment. It deals with the regularization of the daily wagers in Jalgaon Forest Division, Jalgaon, who were appointed on regular post of Vanmajur in pursuance of the Government Resolution dated 31st January, 1996. In the said case also, appointments of the concerned employees were cancelled on the ground that the petitioners therein were wrongly made permanent even though they were not complying with the conditions incorporated in Government Resolution dated 31.1.1996. However, it is further revealed that it was the contention of the Forest Department in the said matter that the petitioners in the said petition had also worked under the Employment Guarantee Scheme (EGS) and the work done by them under the EGS was also computed as their service period,

while arriving at 240 days, which was impermissible in view of the Scheme formulated under the Government Resolution dated 31st January, 1996; and in such circumstances, the Division Bench, relying upon the judgment in the case of Manik Vs. Director of Social Forestry, (2002 (2) Mh.L.J. 61), declined to grant any relief to the petitioners therein and confirmed the judgment delivered by the MAT, dismissing the Original Application filed by the said petitioners. In the case of Manik (cited supra), the issue involved was whether the restrictions put in the Government Resolution dated 19.10.1996, specifically excluding the period put in under the Employment Guarantee Scheme, while arriving at 240 days; and conferment of permanency on only those engaged in departmental scheme or projects undertaken by the Department other than Employment Guarantee Scheme, would amount

to discrimination or unjust classification. The Division Bench held that the restrictions so imposed would not amount to discrimination or unjust classification.

35) In the instant case, as we have already discussed, no such case is made out by the Forest Department that while computing the working days of the petitioners, the work rendered by them under the EGS has also been computed. It is thus evident that the aforesaid judgment may not apply to the facts of the present case. Secondly, in view of subsequent Government Resolution dated 16.10.2012, brought on record by the petitioners, the equations have changed so far as the present petitions are concerned.

36) In view of the discussion made herein above, we are inclined to set aside the impugned order dated 27.8.2012.

37) The petitioners have claimed the full back wages from the date of their termination. It has been argued that since their services were illegally terminated, they are entitled for the relief of full back wages. The learned Counsel appearing for the respondents have per contra submitted that even if the impugned order is set aside and consequently reinstatement is directed, the petitioners may not be held entitled for the back wages taking into account the principle of "No work No pay". It was further argued that for claiming the back wages, initial burden was on the the employees concerned to prove that they were jobless in the relevant period and did not earn. We are not much convinced with the contention raised on behalf of the respondents. When we have held the impugned order illegal and are directing re-instatement

of the petitioners, it may be wholly improper to refuse them the relief of back wages. Regarding gainful employment of the petitioner in the meanwhile period, there is no evidence from either side. In the circumstances, it appears to us that if 50% back wages are awarded of the relevant period, that would meet the ends of justice. Hence the following order, -

ORDER

- (i) The Writ Petition Nos.835/2014; 569/2014; and 1674/2014 are partly allowed;
- (ii) Judgment and order passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad on 1st August, 2013 in Original Application No. 812/2012 is set aside;
- (iii) The order dated 27th August, 2012, issued by Deputy Conservator of

Forest, Parbhani is quashed and set aside. Consequently, the respondents are directed to reinstate the petitioners with continuity of service;

- (iv) The respondents are further directed to pay to the petitioners 50% back wages from the date of their termination i.e. 27.8.2012, till their reinstatement;
- (v) Rule is accordingly made absolute in the aforesaid terms;
- (vi) There shall be no order as to costs.

Sd/-
(P.R.BORA)
JUDGE

Sd/-
(S.S.SHINDE)
JUDGE

bdv/

FLDR 21.9.15