

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.2562 OF 2008

1. The Chief Executive Officer,
Zilla Parishad, Nagpur,
Civil Lines, Nagpur.
2. The Deputy Engineer (Works),
Sub Division, Z.P. Katol,
Tah. Katol, Distt. Nagpur.
3. The Junior Engineer (Works)
Sub Division, Z.P. Katol,
Tah. Katol, Distt. Nagpur.

.... **PETITIONERS.**

// **VERSUS** //

Manohar S/o. Sadashiv Meshram,
Aged about 49 years, Occu.:
Service, R/o. Mohapa, Ward No.10,
Zopadpatti, Tah. Kalmeshwar,
Distt. Nagpur.

.... **RESPONDENT.**

Shri M.V.Mohokar, Advocate for Petitioners.
Shri P.D.Meghe, Advocate for Respondent.

CORAM : Z.A.HAQ, J.
DATED : DECEMBER 17, 2015.

ORAL JUDGMENT :

Heard learned advocates for the respective parties.

2. According to the respondent, he was appointed as labourer on 1st May, 1985 on monthly salary of Rs.450/-. The services of the respondent were terminated in 1990. The respondent had filed Complaint ULPA No. 632 of 1990 before the Labour Court. The petitioners opposed the claim of the respondent on the ground that the respondent was engaged under the Employment Guarantee Scheme and he was discontinued as the work was not available under the Employment Guarantee Scheme. The Labour Court by the order dated 18th September, 1998 allowed the complaint filed by the respondent and directed the petitioners to reinstate the respondent. This order was challenged by the petitioners before the Industrial Court in revision which was dismissed. The petitioners had filed Writ Petition No. 360 of 2006 before this Court which is also dismissed on 8th February, 2007. This Court has recorded as follows :

“Shri Meghe, learned counsel for the respondent invites attention to discussion undertaken by the Industrial Court also in para 11 and also the evidence on record, particularly cross examination of witness of the petitioner. The said cross examination clearly shows that the present respondent was directly appointed by the petitioner and his name was not forwarded by the Tahsildar or by the Collector.

In these circumstances, the only contention raised before this Court that respondent was EGS employee cannot be accepted. Writ Petition is, therefore, dismissed. No order as to costs.”

3. The respondent filed another complaint ULPA No.65 of 1999 before the Industrial Court contending that the petitioners indulged in unfair labour practice by not conferring permanency though he was in continuous

employment with the petitioners. The petitioners opposed the claim of the respondent, the substantive defence being that the respondent was engaged under the Employment Guarantee Scheme and therefore, he was not entitled for regularization and permanency. The Industrial Court conducted the trial and after considering the material on the record allowed the complaint filed by the respondent and directed the petitioners to regularize the services of the respondent as per the Government Resolution dated 6th August, 2001. The petitioners, being aggrieved by the order passed by the Industrial Court, have filed this writ petition.

4. Shri M.V. Mohokar, learned advocate for the petitioners has submitted that the Government Resolution dated 6th August, 2001 deals with the entitlement of 220 employees who had completed more than five years of continuous employment till 31st December, 1998, and the name of the respondent is not included in the list of 220 employees who are given benefit of the Government Resolution dated 6th August, 2001. It is further submitted that the respondent had not pleaded about his entitlement on the basis of Government Resolution dated 6th August, 2001 before the Industrial Court and therefore, the petitioners are deprived of the opportunity of pointing out to the Industrial Court that the respondent is not entitled for the benefits as per Government Resolution dated 6th August, 2001.

5. After examining the documents placed on the record of the petition, I find that the submission made on behalf of the petitioners cannot be accepted. There is no such ground in the writ petition. The petitioners have prayed for interim order which was rejected by this Court. The petitioners had filed Letters Patent Appeal No. 68 of 2009 which was allowed and the matter was remanded to the learned single Judge for considering the prayer of the petitioners for interim relief and for passing the reasoned order. Again prayer of the petitioners for interim relief came to be rejected and the petitioners had filed Letters Patent Appeal St. No.1143 of 2011 which is dismissed on 16th June, 2014. The learned advocate for the petitioners has not been able to point out that the petitioners raised the issue of non-applicability of the Government Resolution dated 6th August, 2001 to the case of the respondent. Under these circumstances, the submission as made on behalf of the petitioners regarding non-applicability of the Government Resolution dated 6th August, 2001 to the case of the respondent cannot be considered.

6. The pleadings of the petitioners and the evidence led on behalf of the petitioners show that the petitioners opposed the claim of the respondent mainly on the ground that he was engaged under the Employment Guarantee Scheme and therefore he was not entitled for regularization and permanency. Apart from the fact that this contention has been rejected by this Court in the earlier round of litigation as recorded

earlier, Shri Gangadhar Mahadeorao Sakode witness No.1 examined on behalf of the petitioner has admitted in his cross-examination as follows :

“... It is not true to say that we have started preparing documents to show his work on E.G.S. after the order of Labour Court dated 30.01.1992.

It is true that, to get work on E.G.S. He has to register as per provision of M.E.G.S., Act in the office of Tahsildar. Tahsildar used to recommend the names of the registered persons. We have not filed any documents to show that the name of Complainant was registered in any Tahsil office, for the employee as per M.E.G.S. Act and also not filed documents to show his registration number.

It is true that Complainant was appointed directly by then Sub Division Officer, Katol (Works Division) Z.P, Nagpur. Complainant is getting twelve months continuous work with the respondent. At present the complainant is working as a Chaukidar Kalambhe metal quarry. It is not true that post of Chaukidar is available with respondent. It is not true that, to avoid regularization of complainant, we showing him on E.G.S. Revision against the order of Labour Court is dismissed.”

In view of the admissions given by the witness examined on behalf of the petitioners, who was working as Deputy Engineer (Works) the claim made by the petitioners that the respondent was engaged under the Employment Guarantee Scheme cannot be accepted. Shri Mohokar learned advocate submitted that the persons who are engaged as labourers under the Employment Guarantee Scheme are not required to be registered under the provisions of the M.E.G.S. Act and it is not necessary that only the persons whose names are recommended by the Tahsildar should be engaged under the Employment Guarantee Scheme. However, there are no such pleadings anywhere on the record. Moreover, the admissions given by the witness

examined on behalf of the petitioners falsify the claim as is being made by the learned advocate. The witness examined on behalf of the petitioners has admitted that the respondent was getting continuous work for 12 months, that he was working as Choukidar at Kalambhe Metal Quarry. The Industrial Court has properly appreciated the material on the record. I do not find any illegality or perversity in the impugned order which necessitates interference by this Court in the extraordinary writ jurisdiction.

7. At this stage, it is submitted by the learned advocate for the petitioners that the proposal for regularizing the services of the respondent was forwarded to the State Government, however, it is rejected and therefore, it is not possible to regularize the services of the respondent as the sanctioned post is not available on the establishment of the Zilla Parishad. It is not known as to what type of proposal was forwarded by the petitioners and for what reason the proposal has been rejected by the State Government. The learned advocate for the petitioners has stated that the rejection of the proposal by the State Government has been informed to the respondent and he has not taken any steps to challenge it. However, this submission is again irrelevant for the purposes of deciding the present writ petition.

8. For the reasons recorded above, the writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

9. The petitioners had deposited the amount of Rs.3,82,034/- with the Registry of this Court out of which Rs.1,20,000/- are withdrawn by the respondent and the balance amount is kept in the fixed deposit. The amount kept in the fixed deposit shall be given to the respondent along with interest, if any.

CAW NO. 343/2014.

The respondent has filed this application praying that the petitioners be directed to release the retirement benefits. In view of dismissal of the writ petition, upholding the order passed by the Industrial Court directing the petitioners to regularize the services of the respondent, it is directed that the petitioners shall consider the claim of the respondent for retirement benefits treating the services of the respondent as regular as per the order passed by the Industrial Court and confirmed by this Court.

The decision shall be taken by the petitioners and communicated to the respondent within three months and if it is found that the respondent is entitled for the retirement benefits the same shall be paid to the respondent within three months from the date of the decision.

The civil application is disposed of in the above terms. No costs.

JUDGE

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