

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

WRIT PETITION NO.5116 OF 1995

Deputy Director,
Social Forestry Division,
Shivaji Nagar, Parbhani.

...PETITIONER

-VERSUS-

- 1 Marathwada Sarva Shramik Sanghatana.
Registration No.AWB-121,
Trade Union Centre, Kotwalpura,
Aurangabad.
(Through it's General Secretary
in Complaint ULP No.759 & 932/94
and through Secretary in Complaint
ULP No.952 and 981/94).

- 2 Marathwada Sarva Shramik Sanghatana.
Regn.No.AWB-121, Trade Union Centre,
Ghasniram Bunglow, Parbhani,
District Parbhani.
Through its General Secretary.

...RESPONDENTS

**WITH
WRIT PETITION NO.5117 OF 1995**

Deputy Director,
Social Forestry Division,
Nanded.

...PETITIONER

-VERSUS-

- 1 Marathwada Sarva Shramik Sanghatana.
Trade Union Centre,
Mahavir Nagar, Kamgar Bhavan,
Behind Kabde Hospital,

Nanded, District Nanded.
Through its Vice President.

- 2 Madhav Ganpati Chatekar,
Age : 28 years, Occupation : Service,
R/o At & Post Lahan,
Tq. & Dist.Nanded.
- 3 Shaikh Gani Shaikh Gafoor Saheb,
Age : 26 years, Occupation : Service,
R/o At & Post Dabhad,
Tq. & Dist.Nanded.
- 4 Ambaji Gyanu Narwade,
Age : 27 years, Occupation : Service,
R/o Dhanura, Post Limbjaon,
Tq. & Dist.Nanded.
- 5 Sheshrao Nagorao Borate,
Age : 25 years, Occupation : Service,
R/o Khadki, Post : Kamtha (Ganpur),
Tq. & Dist.Nanded.
- 6 Yeshwant Ganpat Nagre,
Age : 30 years, Occupation : Service,
R/o Walki, Post Aundha,
Tq.Hingoli, District Parbhani.

...RESPONDENTS

**WITH
WRIT PETITION NO.5118 OF 1995**

Deputy Director,
Social Forestry Division,
Jalna.

...PETITIONER

-VERSUS-

- 1 Marathwada Sarva Shramik Sanghatana,
Kotwalpura, Aurangabad.
- 2 Gopal Vasantrao Boralkar,

c/o Shri R.K.Kulkarni,
Brook Bond India Ltd.,
Jintur, Tq.Jintur,
Dist.Parbhani.

- 3 Mohan Kesu Adhe,
Age : Major,
R/o Dahifalgaon Jane,
Tq.Partur, Dist.Jalna.

...RESPONDENTS

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Shri S.V.Warad, Advocate for the Petitioner.

Shri A.S.Shelke, Advocate for Respondent Nos.1 and 2 in Writ Petition
No.5116/1995, for Respondent Nos.1 and 6 in Writ Petition
No.5117/1995 and for Respondent No.1 in Writ Petition No.5118/1995.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd July, 2016

Oral Judgment :

1 In these petitions, the Department of Social Forestry is aggrieved by the judgments dated 31.03.1995, 10.04.1995 and 28.03.1995 delivered by the Industrial Court, Jalna in ULP Complaints filed by the Respondent/ Union on behalf of the workers mentioned in Annexures-A to each of the complaints under Section 28(1) of the MRTU & PULP Act, 1971.

2 By the impugned judgments, the Industrial Court has allowed the complaints and has directed that the employees mentioned in

Annexures-A should be granted regularization in service upon completion of one year in continuous employment and pay them regular pay scale and other incidental and consequential benefits.

3 This Court, by order dated 20.10.1995, admitted these petitions and granted interim relief in terms of prayer clause (E), which reads as under:-

“(E) Pending hearing and final disposal of this writ petition, the execution and implementation of the order dated 31.03.1995 kindly be stayed.”

4 The civil applications filed by the Respondent/ Union subsequently praying for vacating the interim relief have been rejected by this Court by a speaking order dated 22.06.2001.

5 I have considered the submissions of the learned Advocates for the respective sides at length on 21.07.2016 and again today on 22.07.2016.

6 Having considered a host of factors canvassed by the litigating sides and especially in the light of the Government Resolution dated 19.10.1996 which was the subject matter of the judgment of the learned Division Bench of this Court dated 29.11.2001 delivered in Writ Petition

No.2910/1997 (*Manik Guglaji Zine vs. Directorate of Social Forestry*) and considering the Government Resolution dated 31.10.2013, I find that the contentions of the Petitioner/ Department that the Department of Social Forestry is not an industry, does not need further debate.

7 The Industrial Court, after considering the contents of the Written Statement filed by the Petitioner, dealt with the objects for which the Social Forestry Department was established. It cannot be ignored that the Industrial Court has dealt with the issue extensively and has concluded that the Petitioner/ Department is an industry. However, a short issue is now raised before this Court in the light of the above referred two Government Resolutions and especially the judgment of this Court dated 29.11.2001, which takes care of the issue raised by the Petitioner as regards whether, it is an industry under Section 2(j) of the Industrial Disputes Act, 1947.

8 The Government Resolution dated 19.10.1996 was the subject matter of challenge in Writ Petition No.2910/1997 which was dealt with by the learned Division Bench of this Court in its judgment dated 29.11.2001. The grievance put forth was that two ULP Complaint Nos.461/1991 and 755/1994 were pending adjudication before the Industrial Court at Nagpur. Item 6 of Schedule IV of the MRTU & PULP

Act, 1971 was invoked alleging that the employees were continued as badlis, casuals or temporaries for years together with an object of depriving them of the permanency status and its benefits. The said Government Resolution makes a distinction/ categorization of employees working on the Employment Guarantee Scheme (EGS) and those working on the specific schemes or projects of the Social Forestry Department. The Government Resolution further provides that those workers working on the EGS would not have right to stake a claim for regularization. However, those workers working on the schemes or projects would be considered for regularization after completion of five years in continuous employment.

9 Paragraphs 10, 11 and 12 of the judgment dated 29.11.2001 are reproduced as under:-

- “10. In view of this law laid down by the Apex Court making a distinction between the persons working under the Employment Guarantee Scheme (or Rozgar Hamee Yojana) and Jawahar Rozgar Yojna on the one hand and a regular employment on the other, no fault can be found with Clause (l) of the Government Resolution dated 19th October, 1996. Which directs that the work done under the Rozgar Hamee Yojana or similar schemes ought to be executed while arriving at 240 days. This being the position, in our view, the declaration, as sought by the petitioner, cannot be granted in this petition.
11. The impugned Resolution of 19.10.1996 is passed to concern permanency on those employees who have put in continuous service of five years under Respondent No.1. The Resolution states that the work put in

under the Departmental Schemes or Projects other than the Employment Guarantee Schemes is to be considered. It specifically excludes the period put in under the Employment Guarantee Scheme or such Schemes when allotted to Respondent No.1. The idea is to confirm the benefit only on those who have put in specified period in the Departmental Schemes or other Projects taken by the Department. The work for the period of five years by the employees would indicate the requirement of the Department over a sufficiently long period wherein the employees have worked continuously. The Government wants to regularize them on the basis of this continuity. In that it does not want to include the period for which these persons have put in work for Employment Guarantee Schemes. The purpose of those schemes is different and the funds are from a source other than of the Department conferment of permanency on only those engage in Departmental Schemes of Projects undertaken by Department (other than Employment Guarantee Scheme) cannot amount to discrimination or unjustified classification.

12. *The above preferred two complaints filed by petitioners are pending. Mr.Bhide, learned counsel for the petitioners, states that the workmen would like of lead evidence to point out that they have, in fact, worked under the Scheme of Respondent No.1 itself (other than Employment Guarantee Scheme) and have put in 240 days continuously for five years prior to 01.01.1994.”*

10 There is no dispute in this case that neither have the employees represented by the Respondent/ Union, contended in their respective complaints that they are working on EGS, nor has the Petitioner/ Department even whispered in it's Written Statement, much less, pleaded that the employees mentioned in Annexures-A to the

complaints are working on EGS.

11 It is strenuously canvassed by Shri Shelke, learned Advocate for the Respondents, that after the complaints were allowed by the impugned judgments, many amongst these workers were shifted from the schemes/ projects of the Department to the EGS only to create a 'make believe' picture that they are working on the EGS.

12 Beside the above contentions, Shri Shelke further submits with regard to the present position of the workers working in the Social Forestry Department in three districts, as under:-

- (A) Nanded District:- 224 workers, 16 workers regularized in 2012 by virtue of the Government Resolution, 19 workers have passed away, 88 workers are still in service, no information about 84 other workers and 13 workers have superannuated.
- (B) Jalna district :- 241 employees, 30 employees are regularized by the Government Resolution and rest are believed to be out of employment.
- (C) Parbhani district :- 92 employees, 40 employees are regularized by the Government Resolution, 15 employees have passed away, 03 employees are working as daily wagers

today and 20 workers are believed to be not in employment.

13 Shri Warad, learned Advocate for the Petitioner, submits on instructions from the Officer present in the Court that the EGS is closed in March, 2008 and rest of the schemes were also closed in August, 2008. Presently, the Petitioner / Department implements schemes under the Mahatma Gandhi National Rural Employment Guarantee Scheme.

14 What emerges from the above fact situation and which is relevant for the decision in this case is that the Social Forestry Department has, by the Government Resolution dated 19.10.1996, whose validity has been upheld by this Court vide it's judgment dated 29.11.2001 and the Government Resolution dated 31.10.2013, framed a scheme for regularizing the daily-wagers in it's service and whose wages would be paid from the funds allocated to the various schemes or projects. This is also in tune with the law laid down by the Honourable Supreme Court in paragraphs 43 and 44 of it's judgment in the case of *Secretary, State of Karnataka v/s Umadevi*, **AIR 2006 SC 1806 : 2006(4) SCC 1**, whereby, it was held by the Honourable Apex Court that the employees who are irregularly inducted in employment and have been working for a considerable period, should be regularized in service by introducing a specific scheme by the concerned Departments.

15 In the above backdrop and especially in the light of the view taken by the learned Division Bench of this Court in the above reproduced judgment dated 29.11.2001, those workers, who on the date of the judgments of the Industrial Court, which are 31.03.1995, 10.04.1995 and 28.03.1995, have been working on the schemes or projects of the Petitioner/ Department, deserve to be regularized in service. The two Government Resolutions would assist the Petitioner/ Department to arrive at a decision to regularize the services of such employees. To this extent, I am not interfering with the conclusions of the Industrial Court and consequentially, these petitions are partly dismissed to that extent.

16 By this judgment, I find it appropriate to close the debate as to whether, the workers at issue in these petitions were working on EGS. There was neither any restriction nor an embargo upon the Petitioner to specifically aver in their Written Statement before the Industrial Court as to whether, any of the workers mentioned in Annexures-A were working on EGS. After 25 years of litigation, I do not deem it proper to permit the Petitioner to reopen this issue and thereby, start a debate as to whether, any of these workers were working on EGS primarily for the reason that in the Written Statement, the Petitioners have not identified even a single worker from those mentioned in Annexures-A to be working on EGS.

17 Shri Shelke has strenuously submitted that those workers who have passed away while in service and those who have been disengaged and are out of employment or those who have been switched over from the main scheme/ project to the EGS by the Petitioner, only to defeat their claims, deserve to be compensated.

18 The said contention can be considered to the extent of those workers who have passed away. They would, therefore, be entitled to those service benefits as would be available to them under the law applicable considering that they were working on the main scheme or project of the Department.

19 The Respondent/ Union is, therefore, at liberty to make specific representations to the concerned Department at its respective divisions indicating such deceased employees and the exact tenure of their employment so as to enable the Petitioner/ Department to consider the representations and decide them in the light of the directions of this Court. Such representations could be filed within a period of EIGHT WEEKS from today and upon submitting such representations, the Petitioner/ Department shall take a decision on the said representations within a period of TWELVE WEEKS thereafter and communicate such

decision to the Respondent/ Union. In the event the Respondent/ Union is aggrieved by any decision of the Department, it would be at liberty to seek redressal of its grievance.

20 Insofar as those employees, who are said to have been surreptitiously shifted from the main scheme/ project to the EGS purportedly to defeat their claims are concerned, the Respondent/ Union would be at liberty to raise a grievance afresh either by making a representation to the Petitioner/ Department or by any other mode as is legally permissible considering the judgments of the Industrial Court. They would, therefore, be at liberty to claim all benefits as they deem fit and the same would then be considered by the Department or Authority, as the case may be, strictly in accordance with the policy and Government Resolutions applicable to the Petitioner/ Department.

21 Insofar as those workers who are said to be not in employment today and are away from work for the past about more than 20 years are concerned, the impugned judgments of the Industrial Court would not give them a right to seek benefit of continued employment. In the event they are aggrieved by their purported disengagement or removal or termination or retrenchment, they would be at liberty to raise an industrial dispute either independently under Section 2(A) or through the

Union under Section 2(k) of the Industrial Disputes Act, 1947, which would be considered on its own merits.

22 Insofar as those workers who are in employment and are the beneficiaries of the impugned judgments are concerned, the Petitioner shall forthwith submit their proposals within SIX WEEKS from today to the appropriate Authority in the light of the Government Resolutions dated 19.10.1996, 31.10.2013 and the judgment of this Court dated 29.11.2001, for granting regularization. Upon submitting such proposal as directed above, the concerned Department or Authority shall take a decision on the said proposal within TWELVE WEEKS from the receipt of the same. Considering the passage of time in these matters, the Petitioner as well as the concerned Department or Authority shall be precluded from seeking extension of time either for submitting the proposal or for deciding the same.

23 Needless to state, it is expected that the Petitioner and the concerned Department shall implement these directions within the time frame as above. It be noted that this Court has not directed the Petitioner or the concerned Department to create posts, but they are expected to take a decision strictly within the ambit of the Government Resolutions dated 19.10.1996, 31.10.2013 and the observations of this Court in its

judgment dated 29.11.2001.

24 Further, needless to state, the impugned judgments of the Industrial Court would stand modified in the light of the above conclusions.

25 These Writ Petitions are, therefore, partly allowed and Rule is made partly absolute.

kps

(RAVINDRA V. GHUGE, J.)