

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

WRIT PETITION NO. 2770 OF 2016

Shaikh Yasin Shaikh Hasan,
Age : 53 years, Occupation : Service,
R/o H.No.3, Gangapur, Tq.Gangapur,
District Aurangabad.

...PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
 Through the Secretary,
 Rural Development Department,
 Mantralaya, Mumbai.
- 2 Zilla Parishad, Aurangabad.
 Through Chief Executive Officer,
 Z.P.Aurangabad.
- 3 Executive Engineer,
 Water Supply, Zilla Parishad,
 Aurangabad.

...RESPONDENTS

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Advocate for Petitioner : Shri P.B.Salunke h/f Shri Kakde Sunil B.
AGP for Respondent 1 : Shri P.N.Kutti.
Advocate for Respondents 2 and 3 : Shri Nangare Prashant R.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 23rd August, 2016

Oral Judgment :

- 1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 I have heard Shri P.B.Salunke, learned Advocate for the Petitioner, Shri Kutti, learned AGP on behalf of Respondent No.1/ State and Shri Nangare, learned Advocate for Respondent Nos.2 and 3, at length. Considering the order that I intend to pass, I am not required to advert to their entire submissions.

3 The Petitioner is aggrieved by the impugned judgment dated 28.10.2014, by which the Industrial Court has dismissed his Complaint (ULP) No.49/2009, purely on the following two grounds:-

(a) Though the Petitioner has been working on daily wages with the Respondent/ Establishment for more than 20 years, his entry has been termed as being a back door entry.

(b) Since the Petitioner has not prayed in the complaint that he should be given the benefits of the Kalelkar Settlement by bringing him on CRTE, he has been deprived of the said benefits.

4 The Industrial Court has accepted that the Petitioner has been working from 15.11.1989 as a Valve Man. He was working as a Pump Operator though he was not officially so appointed. There is no dispute that the Kalelkar Settlement is applicable to the Respondent/ Establishment. In this backdrop, while considering the reliefs sought by

the Petitioner, the Industrial Court should have exercised its jurisdiction under Section 32 of the MRTU & PULP Act, 1971 which empowers the Industrial Court to decide all incidental and consequential issues connected with the main cause of action as long as the inherent jurisdiction of the Industrial Court is not expanded. (Read *National General Mazdoor Union v/s M/s Nitin Casting Limited*, **1990 (II) CLR 641 : 1991(1) BCR 8**).

5 By order dated 19.07.2016, I had called upon the Respondents to indicate as to what decision has the Zilla Parishad taken with regard to 157 Valve Men, who were serving with it and several of them being junior to the Petitioner, and as regards bringing them on CRTE and granting them the posts of Pump Operators. The order dated 19.07.2016 reads as under:-

“1 *The Petitioner is aggrieved by the judgment and order of the Industrial Court dated 28.10.2014 by which his Complaint (ULP) No.49/2009 has been dismissed since the evidence with regard to juniors conferred with benefits of the Kalelkar Settlement and consequential benefits of Pump Man, was not led before the Court.*

2 *The learned Advocate for the Petitioner points out that the Respondent/ Zilla Parishad was before this Court in Writ Petition No.6666/2006 challenging the judgment of the Industrial Court which granted the benefits of the CRTE to similar employees mentioned in Annexure-A, who were Valve Men. This Court by its*

interim order dated 14.12.2006 directed the Zilla Parishad to bring the employees on CRTE within three weeks and pay all consequential benefits to them.

3 *The learned Advocate for Respondent Nos.2 and 3 seeks time to take instructions as to whether, the Zilla Parishad has taken any decision with regard to 157 Valve Men, several of them being juniors to the Petitioner herein, as regards bringing them on CRTE and granting them the posts of Pump Man.*

4 *Stand over to 26.07.2016. The matter to appear in the Supplementary Board.”*

6 Shri Nangare fairly placed on record the communications dated 31.03.2009 and 23.03.2010 (nine pages), which are collectively marked as Exhibit “X” for identification. Exhibit X indicates that about 110 such Valve Men have been brought on CRTE.

7 In the above backdrop, as the complaint of the Petitioner has been dismissed, I find it proper to modify the impugned judgment by issuing directions to the Respondent/ Establishment for taking the Petitioner on CRTE and grant further benefits as may be accrued to him strictly in accordance with the Rules and Policies of the Respondent/ Establishment.

8 Insofar as the conclusion of the Industrial Court that the Petitioner has been given a back door entry, is concerned, it cannot be

ignored that he is working since 1989. It is practically 27 years that he is in employment. Paragraph 44 of the judgment delivered by the Honourable Supreme Court in the matter of *Secretary, State of Karnataka v/s Umadevi* reported at **AIR 2006 SC 1806 : 2006(4) SCC 1**, 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)* [AIR 1967 SC 1071], *R.N.Nanjundappa (supra)* [AIR 1972 SC 1767], and *B.N.Nagrajan (supra)* [AIR 1979 SC 1676], 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 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.”

9 Considering the view taken by the Honourable Supreme Court in the case of *Umadevi* (supra), the Respondent/ Establishment needs to take immediate steps for extending the benefits of the Kalelkar Settlement to the Petitioner by strictly following the seniority.

10 Considering the above, this Writ Petition is partly allowed. The judgment of the Industrial Court dated 28.10.2014 is quashed and set aside and the following directions are being issued:-

- (a) Respondent Nos.2 and 3/ Establishment shall take the Petitioners on CRTE after his completion of five years.
- (b) Needless to state, the Kalelkar Settlement shall be made applicable to the Petitioner strictly on the basis of his seniority and further benefits shall be extended to him upon considering the availability of posts and his seniority.

11 Rule is made partly absolute in the above terms.