

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3602 OF 1995

1. The State of Maharashtra,
Through Conservator of Forests,
Nasik Circle Nasik,
 2. Deputy Conservator of Forests,
Nagar Aurangabad Road,
Ahmednagar
- PETITIONERS

VERSUS

1. Mr.Kaduchand Shankar Markad,
R/o Madhi, Tal.Pathardi,
District : Ahmednagar,
 2. The Learned Member **(Deleted)**
Industrial Court,
Ahmednagar
- RESPONDENTS

WITH
WRIT PETITION NO.3617 OF 1995

1. The State of Maharashtra,
Through Conservator of Forests,
Nasik Circle Nasik,
 2. Deputy Conservator of Forests,
Nagar Aurangabad Road,
Ahmednagar
- PETITIONERS

VERSUS

1. Mrs.Suman Daulatrao Dahiphale,
R/o 28- Nagroja, Hudco,
Delhi Gate, Ahmednagar
 2. The Learned Member **(Deleted)**
Industrial Court,
Ahmednagar
- RESPONDENTS

Mr.U.K.Patil, Spl.Counsel with Mr.P.G.Borade and Mr.S.W.Munde,
AGP's for the petitioners.
Mr.P.V.Barde, Advocate for the respondents/employees.
Respondent No.2 is deleted.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 11/08/2016

ORAL JUDGMENT :

1. Both these petitions arise out of identical proceedings against the respondents, who are identically placed.
2. Since the Industrial Court is not required to be added as a respondent, respondent No.2 in both these matters stands deleted.
3. Both these matters were heard together when this Court passed an order on 07/12/1995, which reads as under :-

“This is a group of petitions in which identical questions in respect of continuity of services of the respondents in various departments have arisen. Shri Shelke, learned counsel for the respondents submits that the Government appears to have taken a decision in case of Muster Assistants to make them permanent who are in service from 1993. Shri Savant, learned Assistant Government Pleader seeks time to get correct information from the concerned authorities in that behalf, as to whether the Government has taken decision in the matter of regularisation of services of such persons.

By consent S.O. To 22.1.1996.

It may be stated that in case of similarly situated persons working in other departments of State Government, similar questions have to be dealt with for which often quoted judgment of Supreme Court is relied upon. In order to see if effect can be given to the judgment of the Supreme Court it is necessary that the State Government shall be ready with tabular statement in case of other departments such as Forestry, P.W.D. Etc. on basis of seniority list of those temporary employees engaged in service right from 1980, This will help the Court to appreciate the orders passed by the Labour Courts while directing regularisation of their services as permanent employees in case of other departments also. It is, therefore, expected that the Assistant Government Pleader each and every authority, in respect of which cases are pending for adjudication of their rights.

Shri Shelke, learned counsel points out that some of the persons who are similarly situated but who have been shown to have been dismissed from their services or terminated for one or the other reason are not included in the seniority list. It is, therefore, necessary that those persons should also appear in the seniority list for the purpose of giving effect to the directions of the apex court in respect of persons similarly situated. IT is, therefore, further expected from the learned Assistant Government Pleader to impress upon the concerned authorities to come with a correct seniority list in respect of employees who were first appointed in the year 1980 and whose claim require consideration till 1993."

4. I have heard the strenuous submissions of Mr.Patil on behalf of the petitioners and Mr.Barde on behalf of the identically placed

respondents. With their assistance and in the light of their submissions, I have gone through the record available.

5. There is no dispute that these 2 respondents alongwith another respondent, who is not before the Court, were appointed on 02/07/1982 as "Clerks". The document Exhibit C-71 referred to by the Industrial Court in the impugned judgments pertains to the 3 posts of clerks being vacant and available as in July 1982. The Industrial Court, therefore, concluded that these employees, who were appointed on the available vacant posts of clerks, deserve to be granted the benefits of permanency from 01/01/1984. Their services were also directed to be treated as continuous from January 1984.

6. There is also no dispute that in the second petition, the employee Suman Daulatrao Dahiphale @ Suman S. Tandale has given an undertaking to the petitioner on 23/09/2013, which is taken on record and marked as Exhibit "X" for identification, that she waives her right to work as a Clerk and she prefers to continue to work as a "Wan Majoor".

7. The Industrial Court has framed appropriate issues and has extensively dealt with the matter. The documents placed on record at

Exhibit U-12/1 to 15 and Exhibit C-7/1 to 3, were considered and the Industrial Court has concluded that none of these respondents were working on employment guarantee scheme, they were working as Clerks and had completed more than 240 days in continuous employment in each calendar year.

8. In the light of the above, I am of the view that the respondents/workmen had belatedly approached the Industrial Court by filing their complaints in 1990 for making a claim from 1984. They could have approached the Industrial Court earlier considering the fact that they were aggrieved about not been granted benefits of permanency from 1984.

9. Mr.Patil submits that a Government Resolution dated 31/01/1996 was introduced and on the basis of the same, both these respondents have been granted service benefits from 01/11/1994. The respondent in the first case namely Kaduchand Shankar Markad is still in employment and the other employee Mrs.Suman has recently superannuated.

10. It is apparent from the record which was before the Industrial Court and which was considered extensively in the impugned

judgments, that both the respondents were entitled for permanency. In this backdrop, the impugned judgment of the Industrial Court in so far as the first employee Mr.Markad is concerned, could be given effect to from the date of filing of his complaint. In the case of Mrs.Suman, as she has filed an undertaking declaring that she desires to work as “Wan Majoor”, such benefits would be extended from the date of filing her complaint.

11. Since I find that the benefits incidental and consequential to permanency have been rightly given by the Industrial Court from the date of the complaint, no further orders are required to be passed in the first matter. The first petition in the case of Mr.Markad is, therefore, dismissed. Rule is discharged. In the second matter, the impugned judgment shall stand modified only to the extent of treating the employee Mrs.Suman as a “Wan Majoor” instead of “Clerk”. The second petition is, therefore, partly allowed and rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)