

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

WRIT PETITION NO. 2705 OF 1997

1 The State of Maharashtra.
(Through Collector, Osmanabad).

2 Executive Engineer,
Irrigation Division, Osmanabad.

...PETITIONERS

-VERSUS-

Sow.Sunanda Basappa Havari,
Age : 22 years, Occupation : Service,
R/o Irrigation Colony, Osmanabad.

...RESPONDENT

**WITH
WRIT PETITION NO.2706 OF 1997**

1 The State of Maharashtra.
(Through Collector, Osmanabad).

2 Executive Engineer,
Irrigation Division, Osmanabad.

...PETITIONERS

-VERSUS-

Sow.Shobah Rajendra Gaikwad,
Age : 26 years, Occupation : Service,
R/o Hirabhawan,
before Ambedkar Statute,
Osmanabad.

...RESPONDENT

...

AGP for Petitioner : Shri N.T.Bhagat.
Advocate for Respondents : Shri Parag Shahane h/f Shri Pradeep L.
Shahane

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th December, 2016

Oral Judgment :

1 In both these petitions, the same Petitioner has challenged the judgment and order dated 27.01.1997 by which Complaint (ULP) Nos.414 and 415 of 1990 filed by the Respondents have been allowed and the Petitioner/ State is directed to grant regularization to the Respondents as Typists from the date of completion of five years from their initial employment.

2 By order dated 24.07.1995, after hearing both the sides, these petitions were admitted and interim relief in terms of prayer clause (D) was granted. Consequentially, the impugned judgments were stayed.

3 Both the learned Advocates, despite adjournments having been granted in this matter from July, 2016, are unable to state whether, the Respondents are in employment or not.

4 Notwithstanding the above, the issue of Mustering Assistants is no longer res-integra. The cases of Mustering Assistants had reached the

Honourable Supreme Court. The scheme for considering and regularizing the Mustering Assistants in employment was prepared by the State Government by the Government Resolution dated 01.12.1995. The said Government Resolution was placed before the Honourable Supreme Court and the same was accepted. Consequent thereto, the State was to consider the cases of Mustering Assistants strictly as per the Government Resolution dated 01.12.1995 and take a decision for regularizing the services of eligible Mustering Assistants.

5 By judgment dated 22.03.1991 in the matter of *Subhash Narayan Ahirrao vs. Deputy Engineer, P.W.D., Sub Division*, **1993 FLR (Vol.66) 353**, this Court (Coram : M.F.Saldanha, J.) concluded that the Mustering Assistants be continued in service. In a subsequent judgment dated 06.07.1995, this Court (Croam : B.N.Srikrishna, J., as His Lordship then was), in *Manabhau Damu Khairnar and others vs. State of Maharashtra and others*, **1995 (II) CLR 649**, proceeded to grant the benefits to the Mustering Assistants based on the Subhash Ahirrao case (supra).

6 However, pursuant to the Government Resolution dated 01.12.1995 which was accepted by the Honourable Supreme Court, as is informed by the learned Advocates, this Court (Coram : A.P. Deshpande,

J.) in large number of matters in Writ Petition No.847/1996 with connected matters (*State of Maharashtra and others vs. Kakasaheb Bhausaheb Khandagale and others*), concluded in its judgment dated 18.08.2001 and 30.08.2001 that the cases of the Mustering Assistants should be considered by the State for absorption in regular service in accordance with the scheme prepared by the State Government vide Government Resolution dated 01.12.1995 and the norms laid down in the Government Resolution dated 21.04.1999.

7 The view taken by this Court (Coram : A.P.Deshpande, J.) in Kakasaheb Khandagale case (supra) has been consistently followed by this Court in the subsequent judgments delivered on 15.10.1999 (Coram J.A.Patil, J.) in Writ Petition No.703/1997 and other connected matters (*Zilla Parishad, Ahmednagar vs. Namdeo Natha Pawar*) and on 21.09.2000 (Coram : Dr.D.Y.Chandrachud, J., as His Lordship then was) in the matter of *Chief Executive Officer, Zilla Parishad, Ahmednagar vs. Daulat Narsingrao Deshmukh and others*, **2001 (2) Mh.L.J. 543**.

8 Considering the above, I have no reason to take a different view. However, I am required to consider the aspect as to whether, the Respondents are in employment today or not.

9 In the light of the above, both these Writ Petitions are partly allowed. The judgment of the Industrial Court dated 27.01.1997 in Complaint (ULP) Nos.414 and 415 of 1990 stands modified as under:-

- (a) Declaration of ULP in paragraph 16(II) of the impugned judgment is quashed and set aside.
- (b) Paragraph 16(III) is modified by directing the Petitioner/ State to consider the cases of the Respondents in the light of the Government Resolution dated 01.12.1995 and the norms settled by the Government Resolution dated 21.04.1999 for granting regularization to these Respondents.
- (c) The direction in clause (b) above shall be subject to the condition that the Respondents should be in employment as on date and during the pendency of these proceedings.
- (d) In the event, these Respondents are not in employment during the pendency of these proceedings, the direction in clause (b) above would be inoperable and the impugned judgment of the Industrial Court granting benefits of regularization in paragraph 16(III) would, therefore, stand quashed and set aside.
- (e) In the event, the Respondents are in employment during the pendency of these proceedings and have superannuated as on

date, their cases shall be considered by the Petitioner under the Government Resolutions dated 01.12.1995 and 21.04.1999 to the extent of granting monetary and retiral benefits, if entitled.

10 Rule is made partly absolute in the above terms.

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(RAVINDRA V. GHUGE, J.)