

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

WRIT PETITION NO. 138 OF 1997

1 The State of Maharashtra.
Through the Executive Engineer,
Girna Irrigation Division, Jalgaon.

2 The Sub Divisional Engineer,
Irrigation Sub Division, Erandol,
District Jalgaon.

...PETITIONERS

-VERSUS-

Shri Nago Sakaram Mali,
At and Post Paldhi, Tq.Erandol,
District Jalgaon.

...RESPONDENT

...
AGP for Petitioners : Shri P.N.Kutti.
Advocate for Respondent : Shri R M Deshmukh.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 06th October, 2016

Oral Judgment :

1 The Petitioner is aggrieved by the judgment dated 31.07.1996 by which Application (IDA) Nos.16/1995 and 46/1995 filed by the Respondent/ Employee under Section 33-C(2) of the Industrial Disputes Act, 1947, have been allowed by the common judgment.

2 The learned AGP appearing on behalf of the Petitioner has strenuously criticized the impugned order. He submits that the Respondent has not completed 10 years in service after he was taken on Converted Regular Temporary Establishment (CRTE). He would be entitled for pensionary benefits only after completing 10 years of service on CRTE.

3 He draws my attention to the grounds raised in the petition to support his contention that an employee has to put in 10 years after working on CRTE. He submits that the Respondent had worked for 09 years and 08 months on CRTE and he is not entitled to the benefits claimed.

4 Shri Deshmukh, learned Advocate for the Respondent, has supported the impugned judgment and submits that there is no error committed by the Labour Court.

5 He submits that the Respondent was appointed on CRTE on 01.08.1982 and he retired on 01.10.1989. From 1962 upto 1973, he had worked on daily wages and from 1973 to 31.07.1982 on permanent daily wages on muster. He also points out that from 1977 till July, 1982 he has been working continuously and hence, he was taken on CRTE on

01.08.1982. He, therefore, prays that this petition be dismissed.

6 Having considered the submissions of the learned Advocates, I have gone through the petition paper book with their assistance.

7 This Court, in the matter of the *State of Maharashtra vs. M.V.Ghalge*, **1992 Labour and Industrial Cases 748 : 1991 (2) Mh.L.J. 1557**, after considering the Kalelkar Settlement has observed in paragraph 10 that an employee on daily rate establishment upon putting in five consecutive years irrespective of the number of days actually worked in each of these five years, he would be entitled to the benefits of Clause 28 of the Kalelkar Award after his post is converted to the post on Converted Regular Temporary Establishment (CRTE).

8 Clause 28 of the Kalelkar Award deals with the benefit available to the daily rated workmen. The Clause 28, when freely translated into English, would read as under:-

"28 The benefits available to the daily rated employees under the Kalelkar Agreement (regarding availability of definite appointments on definite establishments) -- Such of the workmen on daily wages who have been working continuously for five years on such establishment shall be entitled, upon completion of five years, to have the posts held by them converted into posts on temporary establishment

and such daily rated workmen shall be appointed on such converted posts. The post created on the converted establishment shall be personal to the incumbent and if the incumbent, for any reason leaves service, such post shall come to an end. Upon appointment on the converted temporary establishment, the workmen shall be covered by the Bombay Civil Services Rules."

9 Based on the interpretation of Clause 28, the Labour Court concluded that the service of the Respondent from 1977 will have to be reckoned while calculating his qualifying service.

10 I do not find that the impugned judgment could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

11 The Petitioner has deposited an amount of Rs.51,712/- in this Court. The Respondent was permitted to withdraw Rs.20,000/- by order dated 19.08.1998 passed in Civil Application No.4429/1998.

12 Considering the same, remaining amount along with accrued interest can be withdrawn by the Respondent towards full and final satisfaction of the impugned judgment. While filing an application for withdrawal, the Respondent shall place on record his latest photograph

and evidence of identity in the form of the Election Commission's Voters Identity Card.

13 Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)