

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

**WRIT PETITION NO. 4991 OF 1998
WITH
CIVIL APPLICATION NO. 1233 OF 2016**

Ram Dharu Mane

Age: 44 years, Occu.: Service,
R/o Ravivar Peth, Gawli Galli,
Ambajogai, At post Tq. Ambajogai,
District- Beed.

..PETITIONER

VERSUS

1. Adhikshak,
Shaskiya Mulache Bal Gruha,
(Kanistha), Parbhani.
At Post Tq. Dist. Parbhani.

2. Balvikas Prakalpa Adhikari,
Divisional Level, Aurangabad,
At Post Tq. Dist. Aurangabad.

3. Divisional Social & Welfare Officer,
Divisional Level, Aurangabad.
At Post Tq. Dist. Aurangabad.

4. The State of Maharashtra
(Copy served through Government
Pleader, High Court, Bench at Aurangabad.)

..RESPONDENTS

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Mr. Parag Shahane with Mr. P.L. Shahane, Advocates for petitioner.
Mr. D.V. Tele, AGP for Respondent.

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CORAM : RAVINDRA V. GHUGE, J.
DATED : 4th FEBRUARY, 2016

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment and order dated 25.11.1998 delivered by the Industrial Court, Jalna by which his complaint ULP No. 1393/1994 has been dismissed. His claim for regularisation is therefore turned down.

2. This Court admitted this petition by order dated 12.06.2001. Ad-interim protection to the services of the petitioner was granted on 02.12.1998 and subsequently the same has been continued.

3. The petitioner had preferred the ULP complaint before the Industrial Court, Jalna claiming that he was in service of the respondent from 01.08.1988. His services were under the control of the Divisional Social Welfare Officer, Aurangabad. After working continuously, he preferred the said complaint in 1998. By an ad-interim order, the respondents were directed not to terminate the

services of the petitioner. The interim relief granted to the petitioner was continued till the complaint was eventually dismissed by the Industrial Court vide the impugned judgment dated 25.11.1998. The interim protection was refused to be extended by the Industrial Court.

4. The petitioner rushed to this Court by filing this petition and by order dated 02.12.1998, this Court directed the respondent to maintain 'status quo'. It is stated that the petitioner was in employment when this order was passed. The said order continues even till today.

5. The petitioner submits that on 01.07.2014 having attained the age of superannuation, the petitioner has retired from service. Mr. Shahane, learned Counsel for the petitioner therefore submits that no purpose would be served in considering this petition on its merits since the petitioner continued in service from 1988 and has superannuated on 01.07.2014.

6. The learned AGP appearing on behalf of the respondent has opposed this petition. His submission is that the Industrial Court did not find any merit in the complaint preferred by the complainant. It was concluded that the entry of the petitioner in service was a 'back door entry'. The complaint was therefore rightly dismissed.

7. He further submits that the Industrial Court concluded that merely because the petitioner has completed 240 days in continuous employment, would not entitle him to get regularisation in service. As such, the impugned judgment is neither perverse nor erroneous and therefore no interference is called for. This petition be dismissed with costs.

8. I have considered the submissions of the learned Counsel.

9. It is undisputed that the petitioner has attained superannuation on 01.07.2014. It is also not disputed that he has worked from 1988 till 01.07.2014. The observations of the Apex

Court in paragraph no.42 and 44 of the judgment in the matter of **Secretary, Karnataka State Vs. Umadevi and Others** reported in **AIR 2006 SC 1806** reads as under :-

“42. The argument that the right to life protected by Article 21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39(a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in Government service or in

the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the Court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 32 of the Constitution.

44. *One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in **S.V. Narayanappa** reported in **AIR 1967 SC 1071**, **R.N. Nanjundappa** reported in **AIR 1972 SC 1767** and **B.N. Nagrajan** reported in **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 regularisation 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 regularisation, if any already made, but not sub judice, 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.”

10. In the peculiar facts recorded above, I find that this petition is left of an academic interest. Even if the petition is dismissed, the fact remains that the petitioner has worked till

01.07.2014, has discharged his duties and has earned his salary.

11. As such, this petition is disposed of without considering the contentions of the petitioner on its merits in the peculiar facts recorded as above. Rule is discharged.

12. Pending civil application does not survive and therefore is disposed of accordingly.

(RAVINDRA V. GHUGE, J.)