

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1161 OF 1998
WITH
CIVIL APPLICATION NO.11172 OF 2016

1. The Superintending Engineer,
Irrigation Project Investigation
Circle, Sinchanbhavan,
Aurangabad,
2. The Executive Engineer,
Water Resources Division,
Opp. to CADA Office,
Near Gajanan Maharaj Mandir,
Aurangabad,
3. The Deputy Engineer,
Water Resources Sub Division No.1,
Plot No.116, Garkheda Area,
Shastri Nagar, Aurangabad -- PETITIONERS

VERSUS

Digambar S/o Sahebrao Inge,
Age-Major, Occu-Service,
R/o At Post : Samangaon,
Tq. Shevgaon, Dist. Ahmednagar -- RESPONDENT

WITH
WRIT PETITION NO.1162 OF 1998

1. The Superintending Engineer,
Irrigation Project Investigation
Circle, Sinchanbhavan,
Aurangabad,
2. The Executive Engineer,
Water Resources Division,
Opp. To CADA Office,
Near Gajanan Maharaj Mandir,
Aurangabad

3. The Dy.Engineer,
Water Resources Sub Division No.1,
Plot No.116, Garkheda Area,
Shastri Nagar, Aurangabad – PETITIONER

VERSUS

Nandu Bansi Pawar,
Age-24 years, Occu-Service,
R/o : at Bhagoor, Post : Warood,
Tq.Shevgaon, Dist.Ahmednagar – RESPONDENT

WITH
WRIT PETITION NO.1163 OF 1998

1. The Superintending Engineer,
Irrigation Project Investigation
Circle, Sinchanbhavan,
Aurangabad,
2. The Executive Engineer,
Water Resources Division,
Opp. to CADA Office,
Near Gajanan Maharaj Mandir,
Aurangabad,
3. The Deputy Engineer,
Water Resources Sub Division No.1,
Plot No.116, Garkheda Area,
Shastri Nagar, Aurangabad -- PETITIONERS

VERSUS

Ashok Sahebrao Nagre,
Age-Major, Occu-Service,
R/o Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar -- RESPONDENT

Mr.S.D.Kaldate, AGP for the petitioners/State.
Mr.S.D.Ghayal, Advocate for the respondent in WP No.1161/1998.
Mr.Sandeep Swami h/f Mr.V.D.Gunale, Advocate for the respondent
in WP No.1163/1998.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/08/2016

ORAL JUDGMENT :

1. In all these matters, the petitioner/Department has challenged the judgments of the Industrial Court by which the ULP complaints of the respondents/employees have been allowed and the petitioners are directed to regularize their services with benefits incidental and consequential thereto.

2. While admitting these petitions, this Court, by its order dated 16/03/1998, had stayed the impugned judgments only to the extent of the payment of back wages.

3. By a detailed order dated 29/08/1998, this Court admitted the petitions and by placing reliance upon the judgment of the Hon'ble Supreme court in the matter of Executive Engineer, State of Karnataka Vs. K.Somsetty, 1997(2) CLR 387 and in the matter of Himanshu Kumar Vs. State of Bihar, 1997(2) CLR 15, refused to grant interim relief to the petitioner.

4. It is informed that in WP No.1162/1998, the respondent/

employee has passed away and his legal heirs have been brought on record.

5. I have considered the strenuous submissions of the learned AGP who has criticized the impugned judgments. Contention is that the petitioners cannot create posts and as such there cannot be a declaration that the petitioner/department has indulged in unfair labour practices.

6. The learned AGP has specifically pointed out clause 3 of the Government circular dated 10/05/1991, which covers the daily wage employees of the petitioner/establishment. He submits that the specific provision made thereunder was with regard to entering the names of such daily wagers on Converted Regular Temporary Establishment (CRTE) as per the recommendations of the Kalelkar Award, only if they have completed 5 years in continuous employment as on 31/07/1991. He further points out that none of the respondents had completed 5 years as on 31/07/1991. They, therefore, were not entitled to any benefit under the said circular, which the Industrial Court has erroneously lost sight of. Consequentially, the impugned judgment on the basis of the said circular dated 10/05/1991, cannot be sustained.

7. I do find that the contentions of the learned AGP deserve consideration. Purely based on the circular dated 10/05/1991, the impugned judgment of the Industrial Court calls for an interference. However, by the civil application, the respondents have brought on record a government resolution which was subsequently introduced on 24/04/2001, by which the benefits of the Kalelkar Settlement were made available to all those daily wage employees who have been working and have completed 5 years in employment latest by 31/12/1998. On the basis of the record available and which was perused by the Industrial Court, these respondents are squarely covered by the said government resolution dated 24/04/2001.

8. As such, the impugned judgments can be suitably modified so as to ensure that the ends of justice are met in the light of the subsequent government resolution.

9. As such, these petitions are partly allowed. The declaration of ULP against the petitioners is set aside. Considering the effect of the government resolution dated 24/04/2001 and keeping in view that the respondents in the first and third petition have been working for almost about 29 years, the petitioners can be directed to submit their proposals expeditiously, if not already submitted and take a decision

thereon.

10. The respondent in WP No.1162/1998 has passed away on 24/11/2007. The proposals of these respondents are already pending before the appropriate authorities of the petitioner. Consequentially, the pending proposal of the two respondents namely Digambar Sahebrao Inge and Ashok Sahebrao Nagre shall be decided as expeditiously as possible and preferably within a period of 12 (twelve) weeks from today in the light of the government resolution dated 24/04/2001. They shall therefore be entitled to the benefits of the Kalelkar Settlement based on their seniority and by considering their dates, on which they completed 5 years, which shall be the date on which they would have been treated to be brought on CRTE.

11. So also, the benefits on similar grounds as would have been available to the deceased Nandu Pawar, shall be calculated by the petitioner/department and the said benefits shall be extended only to his widow, who has been brought on record in WP No.1162/1998, within a period of 16 weeks from today.

12. Rule is made partly absolute in the above terms.

13. The civil application, in the light of the above, therefore stands allowed.

(RAVINDRA V. GHUGE, J.)