

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

WRIT PETITION NO. 9447 OF 2016

KAMLAKAR SADASHIV MHASKE AND OTHERS
VERSUS
AAYUKTA TATHA SANCHALAK NAGAR PARISHAD PRASHANSAN
SANCHALANALYA MUMBAI AND OTHERS

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Advocate for Petitioners : Shri Satyajit Mirajkar h/f Shri More Abhijit S.

Advocate for Respondent No.2 : Shri R.V.Naiknavare.

AGP for Respondent 3 : Shri S.D.Kaldate.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th October, 2016

Per Court :

1 The Petitioners are aggrieved by the judgment dated 24.04.2014 delivered by the Industrial Court, Latur by which Complaint (ULP) No.141/2012 filed by these Petitioners, has been dismissed. The impugned judgment dated 24.04.2014 is challenged in this petition filed on 24.05.2016.

2 Shri Mirajkar, learned Advocate along with Shri More, learned Advocate for the Petitioner has strenuously criticized the impugned judgment. He submits that as the Industrial Court was convinced that the Petitioners had come up with a continuous cause of action and recurring

cause of action, the complaint was maintainable. Yet the Industrial Court, on merits of the complaint, has declined to grant any relief to the Petitioners.

3 He further submits that the following three issues are primarily required to be looked into:-

- (a) The Petitioners, who were granted permanency w.e.f. 01.04.1982 after 22 years in service by the decision dated 27.10.2004, were subjected to eight arbitrary conditions.
- (b) The conditions imposed upon them while granting regularization were unilaterally introduced by the concerned authority.
- (c) Though the Petitioners have been working since 1975-1976 and even during the period of strike of the Government employees, they have been subjected to unfair conditions.

4 He has strenuously taken me through the petition paper book and the 8 conditions that have been reproduced by the Industrial Court below paragraph 12 in the impugned judgment. He submits that in recognition of their long standing employment, the appropriate authorities found it just and proper to grant permanency to these Petitioners. While doing so, they ought not to have introduced arbitrary conditions and that

too without hearing the Petitioners. The Industrial Court should have considered these aspects since the complaint was filed under Items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971.

5 Shri Naiknaware, learned Advocate appearing on behalf of Respondent No.2 and the learned AGP on behalf of Respondent No.3, have defended the impugned judgment. It is contended that the appointments of the Petitioners were irregular. They were back door entries. In order to conclude the issue of regularization and to ensure that the workers are given some stability and security in employment, the State decided to take a decision with regard to regularizing their services.

6 It is further submitted that considering that they were back door entries, the appropriate authorities devised the eight conditions in order to ensure that additional financial burden is not created on the State inasmuch as the schemes as like the compassionate appointment are not foisted upon the State. It is further submitted that insofar as the retiral benefits are concerned, the State has recognized their dates of joining employment and it is from the said dates that they were granted the retiral benefits as and when the Petitioners would stand superannuated. It is, therefore, submitted that neither are the conditions arbitrary nor unjust.

7 Insofar as the right of hearing is concerned, it is submitted that since the State had introduced the scheme of regularization with certain conditions to strike a balance, had the Petitioners been aggrieved by the said conditions, they should have refused to accept the regularization package. They first accepted the regularization and after attaining security in employment, they have started raising issues about the purported illegality in the conditions and about violation of principles of natural justice. It is, therefore, prayed that this petition be dismissed with costs.

8 I have considered the submissions of the learned Advocates.

9 The Honourable Supreme Court in paragraph 44 of its judgment in the matter of *Secretary, State of Karnataka v/s Umadevi* reported at **AIR 2006 SC 1806 : 2006(4) SCC 1**, has held that if employees who have acquired irregular appointments and have been in service for the periods of more than 10 years, the Establishment should introduce the schemes for regularizing their services and their conditions of employment.

10 In my view, the Respondents have taken an appropriate

decision of regularizing the services of the Petitioners keeping in view that they have been in employment from about 1975-1976. These irregular appointments have been regularized by the State.

11 I have gone through the eight conditions imposed by the State. The rights of these Petitioners for retiral benefits have been rightly safeguarded by the State. It is trite law that compassionate appointment is not a matter of right and such appointments would flow only through the scheme of compassionate appointment. The State decided to create posts and accordingly, absorb all these employees on the said posts and their retiral benefits have been assured from the dates of their joining duties.

12 Thus, the Petitioners have accepted their orders of regularization along with the conditions. Having accepted the said orders dated 27.10.2004 and having acquired security in employment, I do not find that the Industrial Court has erred in dismissing the complaint filed by the Petitioners in 2012 raising the grievance about their conditions. The impugned judgment, therefore, does not call for any interference. This Writ Petition is, therefore, dismissed.

13 It is informed by Shri Mirajkar that some representations of the Petitioners and probably several other employees are pending with the

State Government and the State Government may decide the same. Considering the order of the learned Division Bench dated 13.02.2012 delivered in Writ Petition No.3299/2011 in the matter of *Prakash Panditrao Gaikwad and others vs. the State of Maharashtra and others* (the same Petitioners being parties to this petition), I am not inclined to issue any direction to the Respondents for deciding the representations. The fate of the representations, therefore, has to be left to the competent authorities.

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(RAVINDRA V. GHUGE, J.)