

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7314 OF 2016
(The State of Maharashtra Vs.Ramdas Haribhau Palaskar)
WITH

WRIT PETITION NO.7315 OF 2016
(The State of Maharashtra Vs.Manik Prabhakar Maharnavar)
WITH

WRIT PETITION NO.7316 OF 2016
(The State of Maharashtra Vs.Ratan Anna Chavan)
WITH

WRIT PETITION NO.7317 OF 2016
(The State of Maharashtra Vs.Sharad Kantilalaji Suryawanshi)
WITH

WRIT PETITION NO.7318 OF 2016
(The State of Maharashtra Vs.Kisan Vitthal Bobde)
WITH

WRIT PETITION NO.7320 OF 2016
(The State of Maharashtra Vs.Deilip Dattu Kedare)
WITH

WRIT PETITION NO.7321 OF 2016
(The State of Maharashtra Vs.Keru Dadu Borude)
WITH

WRIT PETITION NO.7322 OF 2016
(The State of Maharashtra Vs.Shivaji Radhuji Kungar)
WITH

WRIT PETITION NO.7323 OF 2016
(The State of Maharashtra Vs.Harishchandra Kisan Malshikare)
WITH

WRIT PETITION NO.7324 OF 2016
(The State of Maharashtra Vs.Dilip Pandharinath Palaskar)
WITH

WRIT PETITION NO.7325 OF 2016
(The State of Maharashtra Vs.Madhukar Baburao Jadhav)

Mr.N.T.Bhagat, AGP for the petitioner/State.

Mr.P.V.Barde and Mr.V.V.Tarde, Advocates for the respondents.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 07/12/2016

PER COURT :

1. I have considered the submissions of the learned AGP on behalf of the petitioner and the learned Advocates on behalf of the identically placed respondents.

2. In all these petitions, the petitioner/Department has challenged the judgment and award delivered by the Labour Court, which are as under :-

Ref.(IDA) No.	Date of Judgment
35/2012	09/05/2014
7/2013	15/04/2015
32/2012	08/05/2014
09/2013	15/04/2015
05/2013	15/04/2015
26/2012	07/05/2014
29/2012	08/05/2014
33/2012	09/05/2014
06/2013	15/04/2015
22/2012	07/05/2014
11/2013	15/04/2015

3. In identical set of facts, by judgment dated 26/07/2016 delivered in WP No.2952/2016 and group of matters in between the same petitioners and identically placed respondents/employees, this Court has observed in paragraph Nos.4 to 16 as under :-

“4. Learned Advocates for the respective sides have extensively put forth their submissions. Having considered the said submissions, the following issues, which need to be dealt with and for which purpose,

there had been minimal co-operation from the petitioner/Department before the Labour Court, are as under :-

- [A] Whether the second party workmen have been working on the schemes or projects of the petitioner/Department which are funded by the allocation of funds ?*
- [B] Whether the second party/workmen can be said to be working on the Employment Guarantee Scheme ?*
- [C] Whether the second party/workmen can be said to be working on the Mahatma Gandhi National Rural Employment Guarantee Scheme which has replaced the E.G.S., on being discontinued in 2008 ?*

5. In all these matters, after considering the record and proceedings available, I have no hesitation to observe that the petitioner/Department has in fact shown least interest in the reference proceedings before the Labour Court. Voluminous documents in the form of "Maharashtra Gramin Rozgar Hami Yojana Rokha Lekha Nond Wahi" have been tendered before this Court across the bar by the petitioner contending that these documents would indicate the amount of payments made to the respondents/ employees herein towards the work performed by them on EGS. There is no dispute that these documents were never produced before the Labour Court.

6. There is no dispute that the petitioner had produced a list of such daily wagers who were purportedly working on EGS at various locations, before the Labour Court. Their dates of first joining have also been mentioned and in some cases it is indicated that such workmen have been working from 1973 onwards. Similar charts were also

produced before the Labour Court indicating the complete names of the employees, their dates of birth, their educational qualifications and the dates on which they joined work purportedly on EGS. The Labour Court has disbelieved these charts/lists on the ground that in none of these 12 cases, has the Department produced such evidence so as to establish that each of these individuals were working on EGS. In this backdrop, the Labour Court has concluded that the Reference cases deserve to be allowed.

7. The oral evidence recorded in these cases indicates that the second party/workmen claimed to be working as Watchmen on daily wages for many years. They had also produced certain documents which have been referred to by the Labour Court since they were proved and exhibited.

8. After considering the conclusions arrived at by the Labour Court, though the said conclusions are based on the oral and documentary evidence, the documents shown to the Court by the petitioners as mentioned above, also lead to a serious doubt as to whether the respondents/ workmen were actually working with the Department on their project/ scheme or whether they were working on EGS ?

9. It is not disputed that the State Government has introduced two Resolutions dated 19/10/1996 and 31/10/2013 whereby employees working with the Forest Department or in any schemes of the Forest Department, are being considered for regularization and in fact have been regularized. However, those workers working on the EGS have been excluded. The 1996 GR was challenged on the ground of

discrimination before the Nagpur Bench of this Court in WP No.2910/1997. By its order dated 29.11.2001, this Court has concluded that the exclusion of the employees working on EGS for consideration for regularization is not discriminatory. As such, these aspects need to be considered by the Labour Court, though the issue of permanency is not addressed to the Court for the reason that the claim for reinstatement on daily wages is at issue.

10. Learned Advocates appearing for the employees have strenuously argued that the pendency of the litigation would cause hardships to the said employees. The failure on the part of the petitioners in not assisting the Labour Court by placing entire record available with it and seeking a remand and seeking a remand would further aggravate the hardships suffered by these employees. It is, therefore, prayed that if this Court is inclined to remand the matters to the Labour Court, those who are already in service, need to be protected, costs for remitting the matters be imposed on the petitioners and the reference cases should be made time bound.

11. Having considered the fact situation as above, this Court needs to consider that on account of the laxity on the part of the petitioner, employees working on EGS should not get reinstatement under fortuitous circumstances and at the same time those workers, who are factually not working on EGS, should get the benefits to which they are entitled to. It is in this situation that I am constrained to remit the matters to the Labour Court for permitting the petitioner to place on record whatever documentary evidence it may have to indicate which workman was working on EGS and which of the said workmen are

working on the scheme/project of the petitioner/Department.

12. In the light of the above, these petitions are partly allowed. The impugned awards are quashed and set aside on the following conditions :-

- [a] The petitioner/Department shall deposit an amount of Rs.15,000/- in each of these cases per worker, before the Labour Court within 6 (six) weeks from today as a pre-condition for adducing further oral and documentary evidence.*
- [b] After the amounts are deposited, each of the respondents/ employees in these 12 cases shall withdraw the said amounts without conditions.*
- [c] The litigating sides shall appear before the 1st Labour Court, Ahmednagar on 06/08/2016 and formal notices need not be issued.*
- [d] The petitioner shall place on record before the Labour Court their documents which they deem fit and proper on or before the 08/09/2016.*
- [e] Needless to state, extension of time shall not be sought by the petitioner for this purpose.*
- [f] The Labour Court shall not discard the oral and documentary evidence already recorded and which shall be considered while deciding the reference cases afresh.*
- [g] Both the litigating sides are at liberty to lead further oral and documentary evidence.*
- [h] The Labour Court shall thereafter proceed to decide the said reference cases, as expeditiously as possible and preferably on or before 29/04/2017.*

13. *Needless to state those second party / workmen who were in employment during the reference proceedings or after the impugned awards were delivered, shall be continued in employment and this judgment shall not create any liberty to the petitioner either to dispense with their services or to shift them to the EGS if they are not working on EGS.*

14. *Rule is made partly absolute in the above terms.*

15. *Record and proceedings be returned to the 1st Labour Court, Ahmednagar forthwith.*

16. *The learned Advocates/AGP for the petitioner shall place a copy of this judgment before the Principal Chief Conservator of Forests Nagpur and Chief Conservator of Forests at Nasik, expecting the said Authorities to consider the manner in which their cases are being conducted before the Labour / Industrial Courts / Tribunal and to initiate remedial measures taking into account that this Court has come across hundreds of such cases wherein the case of the petitioner/Department has not been properly put forth or canvassed.”*

4. Though the learned Advocates for the respondents/workmen have strenuously tried to support the impugned awards, I am unable to take a different view than the one taken in the judgment dated 27/06/2016.

5. Considering the above, I am passing the same order in all these cases as under :-

- [a] The petitioner/Department shall deposit an amount of Rs.15,000/- in each of these cases per worker, before the Labour Court within 6 (six) weeks from today as a precondition for adducing further oral and documentary evidence.
- [b] After the amounts are deposited, each of the respondents/employees in these 11 cases shall withdraw the said amounts without conditions.
- [c] The litigating sides shall appear before the respective Labour Courts, Ahmednagar (which have dealt with these respective cases) on 17/12/2016 and formal notices need not be issued.
- [d] The petitioner shall place on record before the Labour Court their documents which they deem fit and proper on or before the 17/01/2017.
- [e] Needless to state, extension of time shall not be sought by the petitioner for this purpose.
- [f] The Labour Court shall not discard the oral and documentary evidence already recorded and which shall be considered while deciding the reference cases afresh.
- [g] Both the litigating sides are at liberty to lead further oral and documentary evidence.
- [h] The Labour Court shall thereafter proceed to decide the said reference cases, as expeditiously as possible and preferably on or before 30/06/2017.

(RAVINDRA V. GHUGE, J.)