

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7205 OF 2015

1. Kum.Satvaguna d/o Sidharth Jogdand,
Age : 39 years, Occ.: Service as
Community Organizer,
R/o.: Flat No. 15, Ameya Avenue Aptt.
Khadkeshwar, Aurangabad,
Dist. Aurangabad
2. Sau.Sarla w/o Devrao Meshram,
Age : 40 years, Occ.: Service as
Community Organizer,
R/o.: Behind Bibi Ka Makbara,
Begumpura, Aurangabad

..PETITIONERS

VERSUS

1. The State of Maharashtra,
(Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai)
2. The Director/Commissioner,
Of Municipal Administration,
Sir Pohchkhawala Road,
Govt. Transport Service Building,
III Floor, Worli, Mumbai 30
3. The District Collector,
Aurangabad, Dist Aurangabad
4. The Commissioner,
Municipal Corporation,
Aurangabad
5. The Union of India
(Ministry of Housing & Urban
Poverty Alleviation, Nirman Bhavan,
New Delhi)

6. Smt.Mangala d/o Santaram Jadhav,
Age : 47 years, Occu. Service as
Community Organizer,
R/o. Sanjay Nagar, Baiji Pura,
Galli No.7, Aurangabad
7. Smt.Lalita d/o Sainaji Dabhade,
Age : 44 years, Occu. Service as
Community Organizer,
R/o. Kranti Nagar,
Aurangabad

..RESPONDENTS

Mrs.Ujjwal C. Agrawal, Advocate for the Petitioners
Mr. A.G. Magare, A.G.P. for respondent nos. 1 to 3
Mr. A.M. Karad, Advocate for respondent no. 4
None for respondent no. 5 to 7 though served.

**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.**

**JUDGMENT RESERVED ON : 19th JULY, 2016
JUDGMENT PRONOUNCED ON : 10th AUGUST, 2016**

JUDGMENT (PER : SANGITRAO S. PATIL, J.):

Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, the petition is heard finally.

2. Indisputably, the petitioners were selected and appointed on contract basis as Group Organizers under Suwarna Jayanti Shahari Rojgar Yojana at Aurangabad on

29th July, 2005. They were getting consolidated payment of Rs.10,000/- per month each. The said scheme came to an end and new scheme under the name and style as "National Urban Livelihood Mission Scheme" came to be implemented by the Central Government (for short, "NULM Scheme"). Respondent nos.1 and 5 were funding for running the said scheme in the ratio of 25:75 respectively. The petitioners came to be absorbed on contract basis as Community Organizers under NULM Scheme with effect from 17th December, 2014, for a period of two years i.e. till 31st March, 2016 with respondent no.4 at Municipal Corporation, Aurangabad. The petitioners came to be declared as surplus and transferred to work as Community Organizers at Municipal Councils, Kannad and Vaijapur respectively, as per the impugned order dated 9th June, 2015.

3. On the basis of contentions raised in the Writ Petition and the documents filed on behalf of the petitioners, the learned counsel for the petitioners submits that the petitioners are not claiming any benefits of permanency for the post of Community Organizer. However, though the petitioners were seniors

to respondent nos.6 and 7, instead of transferring respondent nos.6 and 7 from Aurangabad to other Taluka places in the District, respondent no.4 has illegally and arbitrarily transferred petitioner nos.1 and 2 to Municipal Councils, Kannad and Vaijapur respectively. He further submits that petitioner no.1 is unmarried. She carries the responsibility of her father aged about 85 years who is suffering from multiple diseases. There is nobody to look after him except petitioner no.1. It is difficult for petitioner no.1 to reside alone at Kannad. Moreover, petitioner no.2 is having only one daughter aged about 13 years and she is residing far away from the city area at Aurangabad. It is unsafe for her daughter to reside alone in that remote area. There is nobody to look after her daughter except petitioner no.2. In the circumstances, respondent no.4 should not have transferred petitioner nos.1 and 2 from Aurangabad, considering their difficulties as well as seniority. He, therefore, submits that impugned order dated 9th June, 2015, transferring the petitioners to Municipal Council, Kannad and Municipal Council, Vaijapur, may be set aside and they may be ordered to be retained at Aurangabad only. He further submits that the consolidated pay of

the petitioners from June-2014 to July-2015 amounting to Rs.1,40,000/- has not been paid by respondent nos.1 and 5. He, therefore, prays that respondent no.1 and 5 may be directed to pay arrears of pay/salary to the petitioners.

4. One Bharat Prabhakar Rathod, the District Administrative Officer, Grade-I, Urban Development Branch, Collector Office, Aurangabad, filed affidavit-in-reply on behalf of respondent no.3. On the basis of the said reply and the documents annexed thereto, the learned A.G.P. submits that after implementation of NULM Scheme and State Urban Livelihood Mission Scheme (SULM Scheme), two posts of Community Organizers were treated as excess than the sanctioned strength. Therefore, respondent no.4 informed respondent no.3 regarding absorption of the present petitioners, who were found to be surplus. Respondent no.3 further requested respondent no.4 to absorb the petitioners on the similar posts under the SULM Scheme in Aurangabad district. Since only two posts of Community Organizers were required for Aurangabad Municipal Corporation, respondent no.4 requested respondent no.3 to modify the order dated 17th

December, 2014 and appoint only two senior most candidates to the said posts. Accordingly, Smt.Sindhu Kaduba Suradkar and Smt.Rajkumari Laxman Gaikwad, who were at Sr.Nos.1 and 2 of the seniority list of the Community Organizers, were ordered to be posted as such at Aurangabad. The remaining seven posts of Community Organizers were treated as surplus. The petitioners then came to be transferred to Municipal Council, Kannad and Municipal Council, Vaijapur respectively, as per the impugned order dated 9th June, 2015. Both of them did not join at their transferred places. It is stated that the petitioners have been transferred and posted on the same post at Municipal Council, Kannad and Municipal Council, Vaijapur respectively, on which they were previously working with respondent no.4. On these grounds, it is submitted that there is no merit in the present Writ Petition and same is liable to be dismissed.

5. Respondent nos. 5 to 7 were duly served with the notices of the writ petition, however, none appeared on their behalf to contest the claims made in the present writ petition. The learned counsel for respondent no.4 supported the impugned order.

6. The letter dated 14th May, 2015 (Exhibit "H") addressed by respondent no.4 to respondent no.3 contains the names of the Community Organizers and their dates of joining the services are as under.

Sr. No.	Names of Community Organizers	Joining Date
1	Smt.Sindhu Kaduba Suradkar	04/12/1992
2	Smt.Rajkumari Laxman Gaikwad	26/12/1993
3	Smt.Sharda Kachru Kharat	29/07/2005
4	Smt.Satwaguna Siddharth Jogdand (P/1)	29/07/2005
5	Smt.Sunita Kachru Kulkarni	29/07/2005
6	Smt.Savita Sukhdeo Aagle	29/07/2005
7	Smt.Sarla Devrao Meshram (P/2)	29/07/2005
8	Smt.Mangal Santaram Jadhav (R/6)	01/08/2005
9	Smt.Lalita Sainaji Dabhade (R/7)	01/08/2005

7. As seen from the above-mentioned communication dated 14th May, 2015, the candidates at Sr.Nos.1 and 2 namely Smt.Sindhu Kaduba Suradkar and Smt.Rajkumari Laxman Gaikwad came to be retained at Municipal Corporation, Aurangabad as Community Organizers, considering their seniority. The candidates at Sr.Nos.3 to 9 became surplus. Petitioner nos.1 and 2 came to be transferred from Municipal Corporation, Aurangabad to Municipal Councils, Kannad and Vaijapur respectively, as per the impugned orders. Since both the petitioners were

juniors to Smt.Sindhu Kaduba Suradkar and Smt.Rajukumari Laxman Gaikwad, they were not entitlement to claim postings at Aurangabad only. When it is the case of the petitioners that respondent nos.6 and 7, though juniors to them have been retained at Aurangabad, it was necessary for them to produce the appointment order issued in favour of respondent nos.6 and 7 as Community Organizers at Aurangabad. However, the petitioners have not produced those orders. In the absence of such orders, the contention of the petitioners that their juniors have been retained at Aurangabad and they have been arbitrarily transferred from Municipal Corporation, Aurangabad to Municipal Councils, Kannad and Vaijapur respectively, cannot be appreciated and accepted. There is no mention even in the representations dated 15th June, 2016 and 2/3rd July, 2015, that respondent nos. 6 and 7 though juniors to them, have been retained at Municipal Corporation, Aurangabad. In the circumstances, the case of the petitioners that they have been arbitrarily and illegally transferred from Municipal Corporation, Aurangabad to Municipal Councils, Kannad and Vaijapur respectively, ignoring their seniority cannot be

accepted. The petitioners have totally failed to establish that they have been subjected to discrimination or arbitrariness by transferring them from Municipal Corporation, Aurangabad to Municipal Councils, Kannad and Vaijapur, respectively. Moreover, the petitioners have no legal right to claim posting at any particular place. In the circumstances, they are not at all justified in challenging the impugned order dated 9th July, 2015, whereby they have been transferred from Municipal Corporation, Aurangabad to Municipal Councils, Kannad and Vaijapur, respectively.

8. It is the case of the petitioners that they have not been paid arrears of salary at the rate of Rs.10,000/- p.m. each, for a period of 14 months with effect from June-2014 onwards, amounting to Rs.1,40,000/- each. Therefore, they sought directions against respondent nos.1 and 5 to pay the said amount to them. In our view this prayer of the petitioners cannot be entertained in this writ petition filed under Article 226 of the Constitution of India. The claim for arrears of salary would involve a number of questions of facts. There is nothing on record to show that the petitioners

presented any representation before the competent authority for payment of arrears of salary, if any, and that it was considered and rejected by that authority. Such a claim cannot be made directly to the High Court. The petitioners would be at liberty to make representation to the competent authority for arrears of salary and in case, such representation is made, the competent authority would decide it expeditiously. In the above circumstances, we pass the following order.

- (i) The Writ Petition is partly allowed.
- (ii) The claim of the petitioners for quashing and setting aside impugned order dated 9th June, 2015, is hereby rejected.
- (iii) The petitioners are at liberty to make a representation before respondent no.4 for arrears of salary and in case such representation is made, respondent no.4 shall consider the claim of the petitioners for arrears of salary for a period of 14 months from June-2014 onwards, as expeditiously as possible and preferably within a period of 12

weeks from the date of receipt of the representation and if it is found that the petitioners are entitled to get arrears of salary as claimed by them, pay the arrears of salary to them.

- (iv) Rule made absolute in the above terms.
- (v) The Writ Petition is accordingly disposed of.
- (vi) The parties shall bear their own costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.S. SHINDE**]
JUDGE