

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.274 OF 2016

1. The Vice Chancellor,
Vasantrao Naik Marathwada
Agriculture University, Parbhani,
Tq. and Dist.Parbhani,
 2. The Registrar,
Vasantrao Naik Marathwada
Agriculture University, Parbhani,
Tq. and Dist.Parbhani,
 3. The Director of Research,
Research Centre,
Vasantrao Naik Marathwada
Agriculture University, Parbhani,
Tq. and Dist.Parbhani
- PETITIONERS

VERSUS

1. Smt.Gayabai w/o Kishan Shinde,
Age-56 years, Occu-Service,
R/o.Khanapur Nagar, Chincholi Road,
Parbhani, Tq. and Dist.Parbhani,
 2. The Deputy Secretary,
Department of Agriculture,
Mantralaya, Mumbai
- RESPONDENTS

WITH
WRIT PETITION NO.328 OF 2016

1. The Vice Chancellor,
Vasantrao Naik Marathwada
Agriculture University, Parbhani,
Tq. and Dist.Parbhani,
2. The Registrar,
Vasantrao Naik Marathwada
Agriculture University, Parbhani,

Tq. and Dist.Parbhani,

3. The Director of Research,
Research Centre,
Vasantrao Naik Marathwada
Agriculture University, Parbhani,
Tq. and Dist.Parbhani

-- PETITIONERS

VERSUS

1. Yashwant S/o Digambar Dhale,
Age-57 years, Occu-Service,
R/o Raipur, Tq.Parbhani,
Dist.Parbhani

2. The Deputy Secretary,
Department of Agriculture,
Mantralaya, Mumbai

-- RESPONDENTS

Mr.M.N.Navandar, Advocate for the petitioner.
Mr.V.P.Kadam, Advocate for respondent No.1.
Mr.S.B.Joshi, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 17/10/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. I have considered the strenuous submissions of both the learned Advocates for the respective sides and have gone through the judgments cited by Mr.Navandar. I am not required to advert to their entire submissions for the reason that the respondent in the first

petition has already been recommended for regularization. The University has fairly stated in its additional affidavit dated 18/04/2016 in both these matters that as per the GR's dated 24/07/2015 and 16/11/2015, the name of the respondent in the first petition is at Sr.No.14 in the list of the 32 daily wage workers who have been recommended to the appropriate Government for regularization. Similarly, though the respondent in the second petition has superannuated on 19/06/2015, his name has been included in the list of Skilled Machine Operators at Sr.No.83 by which it is stated that he would be entitled for benefits of regularization.

3. In so far as the directions of the Industrial Court by which the petitioners have been directed to make the respondents/employees permanent in service is concerned, it appears that the Industrial Court has lost sight of the fact that the Universities do not have the right to create posts. In several judgments delivered by this Court, it has been concluded that the Vice Chancellor or the Registrar of the University cannot create posts and the creation of posts vests in the appropriate department of the State Government. Consequentially, this court has set aside the declaration of ULP made by the Industrial Courts in the matters of regularization, against the

Universities.

4. In the facts of these cases, the additional affidavit filed by the petitioners clearly indicates that the State Government, by the two resolutions, has finalized the list of daily rated labourers (283) and 267 skilled/semi skilled labourers, for regularization on the regular establishment on available vacant posts. Those who remained to be absorbed would also be accommodated on regular establishment on super numerary posts which would be sanctioned by the State Government by following the procedure.

5. The communication dated 29/02/2016 by the Registrar of the University to the Deputy Secretary (Education) to the Hon'ble Chancellor of Universities, indicates that under the orders of the Government, 434 daily wage workers have already been absorbed on available vacant posts. The name of the respondent in the first petition is included in the list of 34 such daily wage workers who are senior to the 432 employees who have been regularized in employment.

6. In the light of the above, it is apparent that the Department of Agriculture, State of Maharashtra will have to take a decision with

regard to these two respondents and similar other daily wage workers who are identically placed, as regards their absorption on available vacant posts. Learned Advocate for the respondent has voiced an apprehension that it may take months or years for the Government to take a decision. The respondent in the second petition has already superannuated and unless a decision is taken in promptitude, he would have to live a retired life without any service benefits.

7. Considering the above and the undisputed position that the respondent in the first matter was reinstated on 17/08/2004 and the second respondent was reinstated on 15/12/2001 and have been working thereafter till the respondent Yashwant Digambar Dhale superannuated on 19/06/2015, I deem it appropriate to direct the Department of Agriculture, State of Maharashtra to take a decision with regard to both these respondents namely Smt. Gayabai Kishan Shinde and Shri Yashwant Digambar Dhale within a period of 16 weeks. For the said purpose, the petitioners are permitted to add the Department of Agriculture, State of Maharashtra through its Secretary. Addition be carried out forthwith. Learned AGP waives service for the added respondent.

8. In the light of the above, both these petitions are partly

allowed. The impugned judgments in both these petitions stand modified as under :-

- [a] The declaration of ULP in clause 'B' of the operative part of the impugned judgment is quashed and set aside.
- [b] The direction in clause 'C' of the operative part is modified by directing the added respondent No.2 Department to consider the cases of both these respondents in the light of the facts recorded hereinabove and grant regularization and benefits to both these respondents on existing vacant posts within a period of 16 weeks from today.
- [c] The learned AGP shall communicate this order to the concerned respondent No.2 by placing a copy of the same for necessary action.

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

(RAVINDRA V. GHUGE, J.)