

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 791 OF 1998

1. The State of Maharashtra

2. The Executive Engineer,
Public Works Division,
Neelanga, Latur.

..Petitioners

Versus

1. Govind Daulatrao Birajdar,
Age 40 years, Occ. Service
R/o Hanchanal, Taluka Udgir,
District Latur.

2. Member,
Industrial Court, Solapur.

..Respondents

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AGP for Petitioners : Shri N.T.Bhagat
Respondent 2 : Deleted

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 16, 2017

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ORAL JUDGMENT:-

1. The petitioner is aggrieved by the judgment dated 17.12.1996, by which, the Industrial Court, Solapur has allowed Complaint (ULP) Nos. 93 to 96 of 1990 and 100 to 105 of 1990, in the matters of these Mustering Assistants. This petition is with regard to Complaint (ULP) No.104 of 1990.

2. None appears for respondent No.1. Respondent No.2 being the

Industrial Court stands deleted from the proceedings.

3. I have considered the submissions of the petitioner and have gone through the petition paper book with his assistance.

4. The issue of Mustering Assistants is no longer *res integra*. The said issue regarding claims of permanency by Mustering Assistants, had reached the Honourable Apex Court. Pursuant to the directions of the Honourable Apex Court, the State of Maharashtra prepared a scheme by Government Resolution dated 1.12.1995, by virtue of which, those Mustering Assistants, who were working for the Employment Guarantee Scheme (EGS) were held to be eligible subject to the terms of the Scheme. Those who were actually working under the EGS as EGS employees, were excluded. This Scheme was accepted by the Honourable Apex Court.

5. By order dated 2.12.1996, the Honourable Apex Court (Three Judges) in the matter of State of Maharashtra Vs. Subhash Narayan Ahirrao - Civil Appeal No. 15339 of 1996, by order dated 2.12.1996, set aside the judgment of this Court dated 22.3.1991, by which, absorption of the Mustering Assistants was directed. The Apex Court, therefore, directed the State Government to consider the cases of such Mustering Assistants as per the Scheme set out in the Government Resolution dated 1.12.1995.

6. Pursuant to the above, this Court, by judgment dated 18.8.2001 / 30.8.2001, in a group of petitions, bearing Nos. 847 to 870 of 1996 with another group of matters, directed the State Government to consider these Mustering Assistants for absorption strictly as per the Government Resolution dated 1.12.1995.

7. By the impugned judgment, dated 17.12.1996, the Industrial Court, being oblivious of the fact that the Government Resolution dated 1.12.1995 was introduced, relied upon the judgment of this Court in the matter of Subhash Narayan Ahirrao Vs. Deputy Engineer P.W.D. [1993 (66) FLR 353], and has allowed the complaint and directed permanency w.e.f. 1.10.1988. Apparently, it was not brought to the notice of the Industrial Court that, by order dated 2.12.1996 in Civil Appeal No. 15339 of 1996, State of Maharashtra Vs. Subhash Narayan Ahirrao, the Honourable Apex Court has set aside the judgment of this Court.

8. Considering the above, this petition is partly allowed. The judgment of the Industrial Court dated 17.12.1996 in Complaint (ULP) No.104 of 1990 stands modified by directing the petitioner to consider the case of the respondent - Govind Daulatrao Birajdar, in accordance with the Government Resolution dated 1.12.1995. The petitioner shall take a decision as per these directions within a

period of 12 weeks from today and communicate it's order to the respondent forthwith.

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

(RAVINDRA V. GHUGE, J.)

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