

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2657 OF 2003

Sunil s/o Vishwasrao Kulkarni,
Age 37 years, Occup. Service,
R/o Kannad, Tq. Kannad,
Dist. Aurangabad

.. Petitioner

versus

1. The State of Maharashtra,
 2. The Chief Executive Officer,
Zilla Parishad, Aurangabad
 3. The Executive Engineer, (W.S.S.),
Zilla Parishad, Aurangabad
- .. Respondents

Mr. D. S. Kulkarni, Advocate for petitioner

Mr. S. K. Tambe, Asstt. Government Pleader for respondent no. 1

CORAM : SUNIL P. DESHMUKH &
SANGITRAO S. PATIL, JJ.

DATE : 15-11-2017

ORAL JUDGMENT (PER : SUNIL P. DESHMUKH, J.)

1. The petitioner is before this court, aggrieved by communication dated 23-01-2003 by respondent no. 2 - Chief Executive Officer, Zilla Parishad, Aurangabad whereunder, it is purportedly declared that since the petitioner had been working as unskilled daily rated employee in Water Supply Division, Gangapur since 01-09-1997 and as such, he would be eligible for payment accordingly. He would, thus, be not entitled to amount of Rs.36,558/- paid to him pursuant to communication by the Deputy

Engineer, Water Supply Division, Gangapur, bearing no. 10/2000 and said amount be recovered from him.

2. Learned counsel appearing on behalf of the petitioner Mr. D. S. Kulkarni refers to a decision dated September 6, 2005 in writ petition no. 354 OF 1993. The Division Bench had directed inclusion of petitioner's name in the seniority list of the Muster Assistants, declaring that petitioner would be entitled to be granted all the benefits of scheme framed for Muster Assistants. A photocopy of decision of high court dated 06-09-2005 in writ petition no. 354 of 1993 is tendered across which is marked 'X' for identification.

3. Learned Assistant Government Pleader appearing on behalf of respondents no. 1 refers to the affidavit in reply filed on behalf of respondents no. 2 and 3 and purports to support the order.

4. Perusal of said affidavit in reply shows that the same had been submitted on 10-11-1993. Said affidavit makes reference to pendency of writ petition no. 354 of 1993 for inclusion of petitioner's name in seniority list of Muster Assistants.

5. It appears, the petitioner herein although had been appointed as Muster Assistant in 1986, there had been interlude in treating him as Muster Assistant claiming that petitioner had been working as daily rated employee from 1989, and as such, writ petition no.

354 of 1993 had been moved by him before this court. During pendency of said writ petition, impugned order came to be passed.

6. It appears that impugned order has been passed pursuant to directions to decide the representation of the petitioner in writ petition no. 3577 of 2001. However, having regard to the order passed on September 6, 2005 in writ petition no. 354 of 1993, the amount which is sought to be recovered from petitioner treating him as a daily wager loses its efficacy and validity. Further, it does not appear that the decision of this court in writ petition no. 354 of 1993 had been taken exception to before any higher court.

7. In the circumstances, present petition will have to be considered and given treatment pursuant to the order in writ petition no. 354 of 1993 referred to earlier. To this, there is no counter submission on behalf of the respondents.

8. We, therefore, deem it appropriate to allow the writ petition. Writ petition thus, is allowed in terms of prayer clause (B) and is disposed of.

9. Rule made absolute accordingly.

SANGITRAO S. PATIL
JUDGE

SUNIL P. DESHMUKH
JUDGE