

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6142 OF 2007

1. Marathwada Raste, Imarati va.
Pathandhare Kamgar Union,
branch Parbhani, a registered
Trade Union, through its Joint
Secretary, Shri Udhav Namdeo Shinde,
Age : 50 years, occup. Union Work,
R/o Trade Union Centre,
Gashiram Bungalow, Parbhani,
Tq. & Dist. Parbhani
2. Smt. Rajdulari Ramdhan Saude, .. Petitioners/
Age : 37 years, occup. : Daily Wager, Original
R/o Sailu, Tq. Sailu, Dist. Parbhani Applicants

versus

1. The State of Maharashtra,
through Public Works Department,
Mantralaya, Mumbai
2. Superintending Engineer,
Public Works Circle,
Nanded, Tq. & Dist. Nanded
3. The Executive Engineer,
Public Works Department,
Parbhani Division, Parbhani
4. The Sub Divisional Engineer,
Public Works Sub Division,
Sailu, Tq. Sailu, Dist. Parbhani .. Respondents

Mr. Avishkar S. Shelke, Advocate for petitioner

Mr. P.K. Lakhotia, Asstt. Government Pleader for respondents

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

DATE : 21-11-2017

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

1. Petitioners, aggrieved by dismissal of their Original Application bearing no. 306 of 2006 under order dated 21-09-2006 by Maharashtra Administrative Tribunal ("Tribunal" for brevity) under order dated 21-09-2006, are before this court.

2. The Original Application referred to above had been filed, claiming relief against letters dated 04-02-2006 issued by respondent no. 3 and 07-03-2006 by respondent no. 4 with a direction that proposal to bring petitioner no. 2 on Converted Regular Temporary Establishment ("CRTE") pursuant to Government Resolution dated 24-04-2001 on computation of period of five years of continuous service be forwarded to the Government.

3. Petitioners' case is that petitioner no. 2 had been continuously in employment of respondents since 03-07-1985 onwards without interruption and she had completed 240 days service in each year since then. She was being paid daily wages in accordance with Minimum Wages Act as was being paid to other daily rated employees. Despite more than 20 years service, her name had not been taken on muster roll.

4. The Government of Maharashtra through its Public Works Department had issued a Resolution dated 24-01-2001 based on Kalelkar Award. Under the same, employees working on daily rates work charged establishments in Public Works Department, Irrigation Department, Rural Development and Water Conservation Department were eligible and qualified to have permanency benefits by bringing them of CRTE on completion of 5 years continuous service by 31-12-1998.

5. Respondent no. 3 had under letter dated 13-01-2005 submitted a proposal to respondent no. 2, for bringing petitioner no. 2 on CRTE specifically referring to that she has been working for over fifteen years as a sweeper in government guest house at Sailu as a full time employee and

her work had been satisfactory. She was being paid daily wages as per minimum wages on hand receipts, further referring to that her full time work is a necessity and that the work being performed by petitioner no. 2 cannot be got performed from other employees. Respondent no. 3 on 06-01-2006 had sent reminder to respondent no. 2, forwarding copy of the same to respondent no. 4. However, respondent no. 2 under communication dated 04-02-2006 purportedly rejected the proposal considering that petitioner no. 2 does not fulfill criteria required under Government Resolution dated 24-04-2001 since she had been working with payment to her which was by issuing hand receipts. In the down communication of 07-03-2006, respondent no. 3 had informed the same to respondent no. 4 who, in turn, had communicated the same to petitioner no. 2 under letter dated 13-03-2006. Thus, the petitioners had before the Tribunal under Original Application no. 306 of 2006 referred to above.

6. The claim of the petitioners before the Tribunal had been resisted by the respondents, contending that petitioner no. 2 had not been working as a daily rated employee and her services were engaged on contract basis for particular hours only and she had not completed 240 working days in each

year and, as such, she does not fulfill criteria under Government Resolution dated 24-04-2001. Petitioner no. 2 had been working and paid issuing hand receipts and thus the proposal for bringing her on CRTE had been rightly turned down by the Tribunal.

7. The Tribunal, on the premise that petitioner no. 2 does not fulfill the conditions under Government Resolution dated 24-04-2001, for, it had not been disputed by petitioners that services of petitioner no. 2 were on contract basis for particular hours and thus her services were utilized for a period of less than 240 days in each year, had rejected the Original Application under order impugned in this petition.

8. Learned counsel Mr. Avishkar Shelke appearing on behalf of the petitioners vehemently contends that decision rendered by the Tribunal depicts that it had been oblivious of contention of petitioners that petitioner no. 2 had been working as daily rated employee continuously without any interruption for more than 20 years from 03-07-1985 and had been receiving wages as per Minimum Wages Act. Said position has not at all been disputed by the respondents at any point of time, albeit, it is purportedly contended that petitioner no. 2 had been working on contract basis and for specific hours. He contends

that such a response on behalf of respondents had not at all been with reference to any material despite factual position is, the record is supposed to be available with the respondents.

9. Further, he points out that information solicited by petitioners under the Right to Information Act reflects upon that petitioner no. 2 had been getting wages on hand receipts. He submits, petitioner no. 2 had no control over issuance of such hand receipts. He submits that in any case, it is not the submission of respondents that petitioner no. 2 was not being paid as per the Minimum Wages Act nor it is disputed that she had been continuously working since 1985. The consideration that has weighed with the Tribunal that petitioner no. 2 had not completed 240 working days each year for five years is not supported by any material on record. He submits, what is germane to be considered is that petitioner no. 2 was being paid wages under Minimum Wages Act and on daily rated basis and as such, the benefit which is rightfully and legitimately due to her under solemn decision in Government Resolution dated 24-04-2001 not only deserves to be given to her but, she is rightfully entitled to the same.

10. He further points out that Government Resolution makes it amply clear that it is applicable retrospectively. He submits that it is not denied by respondents that petitioner no.2 had, indeed, completed five years service before 31-12-1998 and that she had been employed before 1986. In the circumstances, according to learned counsel, in the absence of any record lending credence to the contention on behalf of respondents, decision rendered by the Tribunal is on assumptions and presumptions, conjectures and surmises and thus untenable. He submits that the decision beneficial to daily rated employee, to petitioner no.2, who had served for 20 years shall not be refused to be given, by taking a pedantic approach.

11. Learned Assistant Government Pleader submits that though petitioner no. 2 claims to have been employed in 1985 and served for twenty years continuously onwards yet, record shows that her name had not figured on muster roll as daily rated employee or on work charged establishment and she was being paid by issuance of hand receipts. It is sufficient indication of the fact that she was not a daily rated employee. It is submitted that petitioner no.2 had been working in government rest-house on contract basis for specific hours is

yet another indication of the position that she is not daily rated employee. He further contends that petitioner no. 2 has not been able to place anything on record indicating that she can be said to have worked for 240 days continuously in each year for a period of five years as rightly considered by the Tribunal. He, therefore, supports the decision of the Tribunal and requests the court not to indulge into giving reliefs as claimed in writ petition.

12. The position emerges that, undeniably, petitioner no. 2 had been employed by respondents from 03-07-1985 and that she had been working since then continuously without any interruption. There is no specific denial by respondents that petitioner no. 2 had not been paid according to Minimum Wages Act, albeit, she was being paid by issuing hand receipts for engagement of her services. For over twenty years, she has worked with the respondents in such a manner. It is not the case that she was not being paid as per the Minimum Wages Act for her employment as was done in cases of daily wagers. There is considerable force in the contention on behalf of the petitioners that requisite record in respect of nature of employment of petitioner no. 2 is supposed to be in control and custody of the respondents. Despite the claim of

respondents about petitioner no. 2 having been employed on contract basis for specific hours, no material worth consideration save averments has been placed before the court by respondents nor it is the case that the documents which have been produced during the course of writ petition do not depict the wages being paid were pursuant to the Minimum Wages Act for a daily wager.

13. Apart from aforesaid, perusal of the communication by respondent no. 2 declining the proposal for bringing petitioner no. 2 on CRTE would show it had been cursorily communicated under letter dated 04-02-2006 that petitioner no. 2 does not fulfill the criteria under Government Resolution dated 24-04-2001, for, she had been paid by issuing hand receipts. It may have to be taken note of that issuing of hand receipts is a matter not attributable to petitioner no.2 and had been overbearingly done under their power and control by respondents. The communication does not depict that there had been any application of mind to that petitioner no. 2 had been working since 1985 continuously without any interruption and that she had been working daily. It is not the case under the communication that she had been working on contract basis and only for specific hours nor the proposal

which had been sent for consideration makes reference to any such matter that petitioner no. 2 had been working on contract basis or for that matter for a few hours daily. This is a contention for the first time taken while resisting the Original Application without being supported by any credible material.

14. In the circumstances, consideration by the Tribunal that petitioner no. 2 had been working on contract basis for a few hours and that she had not said to have completed 240 working days in a year, is only on assumption and is thus conjectural and as such, would be untenable. We, therefore, consider that while there is a decision by the Government under its resolution dated 24-04-2001 to bring on CRTE the employees who had been working with the respondents for a period of five years before 1998, implementation of such a decision beneficial to the employees, should not be declined to employees like petitioner no. 2 simply on assumptions and presumptions. We, therefore, consider it expedient to allow writ petition and set aside impugned order.

15. Writ petition, as such, is allowed in terms of prayer clauses (B), (C) and (D), setting aside decision dated 21-09-2006 passed by the Maharashtra Administrative

Tribunal, Aurangabad Bench in Original Application No. 306 of 2006. It is expected, respondents would take appropriate action expeditiously.

17. Rule accordingly made absolute.

SANGITRAO S. PATIL
JUDGE

SUNIL P. DESHMUKH
JUDGE

pnd/-