

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5634 OF 1999

Vinayak S/o. Raoji Tupe,
died through L.Rs. :

- 1) Kantabai Vinayak Tupe,
Age : 30 years, Occu: Household & Labour,
R/o. Shevta Taluka Phulambri,
Dist. Aurangabad.
- 2) Vishwanath Vinayak Tupe,
Age : 5 years, Minor u/g. of mother
Kantabai Vinayak Tupe.
- 3) Sainath Vinayak Tupe,
Age : 3 years, Minor u/g. of mother
Kantabai Vinayak Tupe.
- 4) Ajinath Vinayak Tupe,
Age : 1 year, Minor u/g. of mother
Kantabai Vinayak Tupe.

...Petitioners.

Versus

1. President,
Mahatma Gandhi Mission Society,
Aurangabad.
2. Principal,
Jawaharlal Neharu Engineering College,
Aurangabad.
3. The Presiding Officer,
College Tribunal,
University Campus, Aurangabad.

...Respondents.

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Advocate for Petitioner : Shri Dhengle S.A.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: May 09, 2017

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ORAL JUDGMENT:-

1. The petitioner is aggrieved by the impugned judgment dated 3.8.1994 delivered by the College and University Tribunal, by which, the respondent Engineering College was directed to either continue the petitioner as a daily wager as he was engaged earlier or if no vacancy is available within ten weeks from the receipt of the judgment copies, the respondent can pay six month's emoluments as per Section 42D(2)(e) of the Dr. Babasaheb Ambedkar Marathwada University Act.

2. This petition was filed on 15.7.1996. It was dismissed for non-removal of office objections. After restoration, it was circulated on 30.11.1999. The petitioner has passed away on 21.7.2005 and legal heirs have been brought on record.

3. Shri Dhengale learned Advocate for the legal heirs strenuously prays for full backwages, continuity in service and all retiral benefits, which the deceased petitioner would have been entitled to had he been alive.

4. I had considered his submissions. It is undisputed that the deceased petitioner used to be given work as a Peon from time to time by the respondents 1 and 2 management. He was not issued

with any appointment order and is said to have worked intermittently in between 1990 to 3.7.1992. He was paid daily wages on vouchers. He was neither selected nor appointed in accordance with the Rules. The Tribunal, therefore, concluded that he was an irregular daily wager. He was being given work intermittently by the respondent / management on sympathetic ground considering that he was physically disabled.

5. In the light of these findings on facts, I do not find that the contention of the petitioner could be accepted for grant of continuity of service and full backwages from the date of his oral disengagement till his demise on 21.7.2005. This petition, therefore, cannot be entertained.

6. Shri Dhengale learned Advocate submits that the respondent / management has not challenged this judgment before this Court and has, therefore, accepted the directions for payment of six monthly emoluments.

7. In the light of the above, this petition is dismissed. Rule is discharged.

8. It however, needs mention that if the respondents have not challenged the directions to pay six monthly emoluments, respondent

Nos.1 and 2 shall accordingly make the said payment to the wife of the deceased, namely, Kantabai Vinayak Tupe on the address mentioned in the cause title, within a period of eight weeks from today, if not already paid and Interest @ 6% per annum from the date of judgment of the Tribunal shall also be payable in the event the said amount is not paid within eight weeks as directed above.

(RAVINDRA V. GHUGE, J.)

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akl/d