

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10250 OF 2014

**RATILAL BABURAO AKOSKAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

**WITH
WRIT PETITION NO.10252 OF 2014**

**AJINATH TUKARAM DANGEKAR.
-VERSUS-
THE STATE OF MAHARASHTRA AND ANOTHER.**

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Advocate for Petitioners : Shri Jadhavar R.K.
AGP for Respondent 1 : Shri S.N.Kendre.
Advocate for Respondent 2 : Shri S.M.Godsay a/w Ms.N.S.Godsay.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th February, 2017

Per Court:

1 The learned Advocates for the respective sides have no objection if this Court hears these petitions.

2 The Petitioners in both these petitions are aggrieved by the common judgment of the Labour Court dated 24.12.2010 as well as the common judgment of the Industrial Court dated 03.11.2012 by which their Complaint (ULP) Nos.45/2000 and 44/2000 and Revision (ULP)

Nos.37/2011 and 36/2011, respectively, have been dismissed.

3 While issuing notice in these two petitions involving identically placed Petitioners, I had observed on 13.12.2016 as under:-

- "1. The petitioners are aggrieved by the judgment of the Labour Court dated 24/12/2010 by which their Complaint (ULP) Nos.45/2000 and 44/2000 have been dismissed. They are further aggrieved by the judgment of the Industrial Court dated 03/11/2012 by which their Revision (ULP) Nos.37/2011 and 36/2011 have been dismissed.
2. The grievance of the petitioner is that both of them were appointed through the Freedom Fighters quota by respondent No.2 on the basis of the circular dated 24/11/1990. Being nominees of freedom fighters, their appointments were sanctioned after it was confirmed through the District Collector, Osmanabad that they have been validly nominated as nominees of the Freedom Fighters.
3. Grievance is that being nominees of the Freedom Fighters, these petitioners fall in a distinct category and their services could not be terminated after a passage of 2 years on the ground that several persons in the list of compassionate appointments are waiting for being appointed.
4. Notwithstanding that both the Courts below are against the petitioner, I find that it needs to be judged as to whether the reason for terminating the petitioners could be sustained. It can also be considered as to whether they can be held entitled for some compensation considering the fact that almost 17 years have passed by after their termination.
5. Issue notice to the respondents, returnable on 20/01/2017. Learned AGP waives service for respondent No.1 in both these matters."

4 I have heard the learned Advocates for the respective sides.

5 There is no dispute insofar as the appointment orders of these
Petitioners who were initially on temporary basis. There is also no dispute
that both of them have been discontinued by the termination orders dated
29.02.2000 concluding that other persons, who are senior in the waiting
list for appointment on compassionate ground, have been overlooked and
these Petitioners have been appointed merely on the basis of the
applications that they had filed.

6 Shri Godsay, learned Advocate appearing for the Respondent/
erstwhile MSEB, has strenuously contended that insofar as the
appointments through Freedom Fighters quota and on compassionate
basis are concerned, each of the eligible candidates has to be enlisted.
Based on the seniority of enlisting, the candidate is to be given preference.
Both these candidates were not considered in tune with the said principle.
So also, no advertisement was published and keeping in view the law laid
down by the Honourable Supreme Court in the matter of *Secretary, State
of Karnataka v/s Umadevi* reported at **AIR 2006 SC 1806 : 2006(4) SCC**
1, even the candidates from the category of compassionate appointments
and freedom fighters quota have to apply through the said categories and
have to be considered in competition with all such candidates from these

categories.

7 The submissions of Shri Godsay can be sustained only to the extent that such candidates falling in compassionate or freedom fighters categories have to be considered on the basis of the seniority of their applications/ enlistment.

8 However, his contention that an advertisement will have to be published and that such candidates will have to be considered from different agencies like employment exchange, cannot be sustained for two reasons.

Firstly, that by correction slip No.206 dated 14.11.1990, the MSEB granted approval to the Board Resolution No.627 dated 11.10.1990 which reads as under:-

"The Board by their Resolution No.627, dated 11.10.1990 have accorded approval to --

(i) *authorise the Appointing Authorities to give employment in Pay Group III and Pay Group IV posts on preferential basis to the "Freedom Fighters" or their nominees directly without reference to the Competent Selection Committee, subject to other provisions of Government orders on the subject.*

Consequently, clause (ii) of Departmental Circular (B) No.23324, dated 18.05.1966 incorporated as Appendix "C" to the M.S.E.B. Classification and Recruitment Regulations stands deleted.

(ii) *follow/ adopt all Government orders/ clarifications issued on this subject from time to time and also those*

orders/ clarifications that may be issued by Government in future."

As such, the candidates from the freedom fighters quota can be considered directly by the Appointing Authority for employment without competent selection committee. He is unaware as to whether, this resolution, which has been accorded approval, has undergone any change subsequently. In the event, there is any such change, the rules or resolutions approved thereafter, would become applicable.

9 Secondly, clause (1)(a) of the Government Resolution dated 04.02.1991 with regard to the appointment of candidates from the freedom fighters quota, clearly exempts the candidates from this quota from being recommended only through the Employment Exchange or the Regional Selection Board. Such candidates are permitted to directly apply to the Appointing Authority under the said quota for seeking appointments.

10 It is obvious that neither of these two Petitioners were ever enlisted through freedom fighters quota notwithstanding the fact that they had factually applied directly to the Appointing Authority by their applications dated 10.12.1997 and 15.09.1997, respectively. By virtue of these two applications, they were appointed without considering whether,

there was any senior candidate wait listed from the said category.

11 Shri Godsay points out that the learned Division Bench of this Court in Writ Petition No.980/2000 (*Dnyaneshwar Rambhau Kagde vs/ State of Maharashtra*) concerning the issue of appointments from open categories or against the quota for freedom fighters nominees, had observed in it's order dated 29.08.2000 in paragraph 4 as under:-

"4. While we do not find any fault with the order of removal issued by the Board, we make it clear that the Petitioners applications will have to be listed in the wait list for the post of line-men/ helpers and as and when there are vacancies for the said posts in future from the open category or against a quota for freedom fighters nominees, the Petitioners cases shall be considered and we direct the Board not to appoint any such candidate from outside market unless the Petitioners candidature is considered, irrespective of their age as a special case."

12 There is no dispute that both these Petitioners are out of employment for the last 17 years after having worked temporarily for about two years and two months.

13 Considering the order passed by the learned Division Bench, Shri Jadhavar, learned Advocate for the Petitioners/ Employees, submits that the right of the Petitioners cannot be extinguished only because they have lost before the Labour Court and the Industrial Court. If they have a

right from the quota of freedom fighters nominees, they need to be enlisted and considered on the basis of their applications made on 10.12.1997 and 15.09.1997, respectively. If they are senior in the said quota and if there are vacancies, they need to be considered on preferential basis notwithstanding that they may have crossed the age bar.

14 In the light of the above, I feel that ends of justice would be met by issuing the same direction as was issued by the learned Division Bench in Writ Petition No.980/2000 in paragraph 4 reproduced above.

15 Considering the above, these Writ Petitions are disposed of with similar directions as under:-

- (a) I do not find any fault with the order of removal issued by Respondent No.2/Electricity Board. I make it clear that the Petitioners applications will have to be listed in the wait list for the post of line-men/ helpers and as and when there are vacancies for the said posts in future from the open category or against a quota for freedom fighters nominees, the Petitioners' cases shall be considered. I direct Respondent No.2/ Electricity Board not to appoint any such candidate from outside market unless the Petitioners' candidature is considered, irrespective of their age as a special case.

- (b) Needless to state, considering that almost 20 years have lapsed from the dates of applications made by both these Petitioners, Respondent No.2 shall be under an obligation to consider the claims of both these Petitioners, namely, Ratilal Baburao Akoskar and Ajinath Tukaram Dangekar, in the light of their applications dated 10.12.1997 and 15.09.1997 and their age shall not be a barrier in the light of the above directions.

kps

(RAVINDRA V. GHUGE, J.)