

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

WRIT PETITION NO. 7256 OF 2004

**LAXMAN DATTATRAYA RALEBHAT & ANR
VERSUS
THE STATE OF MAHARASHTRA AND ORS**

Mr. V.P. Golewar, Advocate for the petitioners

Mr. V.M. Kagne, A.G.P. for respondent Nos. 1 to 4

**CORAM : R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

Dated : 08-08-2017.

ORAL ORDER (PER R.D. DHANUKA, J.) :-

1. By this petition filed under Article 226 of the Constitution of India, petitioners seek writ of certiorari or any other appropriate writ, order or directions to absorb the petitioners in regular Government/Zilla Parishad Employment as per the Scheme of Absorption of Mustering Assistants, from the list annexed at Exhibit-C to the petition.

2. Some of the relevant facts for the purpose of deciding this petition are as under :-

It is the case of the petitioners that petitioner No.1 had passed S.S.C. Examination and had completed Diploma Course of Building Construction. Petitioner No.2 had appeared in S.S.C Examination and was declared as failed. It is the case of petitioner No.1 that in the month of October 1983 he was appointed as Mustering Assistant and had served on that post till 30-04-1986. Petitioner No.2 came to be appointed as Mustering Assistant on 01-10-1983 and he served as such till 31-08-1989.

3. It is the case of petitioners that since the Government of Maharashtra had taken a policy decision of termination of services of all the Mustering Assistants of entire State of Maharashtra, the petitioners and other such Mustering Assistants raised various disputes under the provisions of Industrial Disputes Act. The petitioners also filed complaint of unfair labour practice before the Industrial Court for the benefit of permanency.

4. On 25-06-2004 the Government of Maharashtra formulated a Scheme of Absorption of Mustering Assistants in regular government employment and to make their payment and salary from E.G.S. funds. It is the case of the petitioners that respondent No.3 accordingly prepared list of Mustering Assistants, who were in the employment as Mustering Assistants with different agencies. The said list provides the names of 65 such Mustering Assistants.

5. Learned Counsel for the petitioners submits that petitioner No.1 is possessing technical qualification of I.T.I. in Trade of Building Construction. He has also experience of work of Technical Assistant. It is submitted by the learned Counsel that out of those 65 Mustering Assistants, who are named in the said list prepared by respondent No.3, respondent No.2 has absorbed 11 Mustering Assistants in regular Government / Z.P. Employment under the Scheme of Absorption of Mustering Assistants. The names of the petitioners are mentioned at Sr. No.49 and 50 of the said list. It is submitted by learned Counsel for the petitioners that though respondent No.2 has absorbed 11

Mustering Assistants, the petitioners, though similarly situated, have not been absorbed by respondent No.2 in the regular Government /Z.P. Employment. He submits that the impugned action on the part of respondent No.2 is thus in violation of Article 14 and 16 of the Constitution of India. He submits that the petitioners are deprived of the absorption in regular government / Z.P. Employment.

6. Learned A.G.P. appearing for the respondents, on the other hand, submits that by virtue of the interim orders passed by the Industrial Court, the petitioners are in service as Mustering Assistants and are getting wages. He submits that since there were no vacant posts so as to absorb the remaining Mustering Assistants from the seniority list, the Government Resolution dated 25-04-2004 came to be passed by the Government after considering the orders of this Court in Writ Petition No. 954/1990 dated 20-12-2001, Writ Petition No. 4/2000 and Writ Petition No. 83/2003, dated 28-02-2003. He submits that though there is no work available with the office of Public Works Department, the petitioners are getting their wages as Mustering Assistants.

7. It is submitted by the learned A.G.P. that as per the Scheme formulated as per the directions of the Supreme Court, vide G.R. dated 01-12-1995, the Mustering Assistants who were in service as Mustering Assistants during the period between 26-05-1993 and 31-05-1993 only were to be absorbed. He submits that since the petitioners were not in service during the said period between 26-05-1993 and 31-05-1993, the petitioners are even otherwise not eligible for absorption in Government service and cannot avail of the benefit under such Government Resolution dated 25-06-2004.

8. It is submitted by learned A.G.P. that out of 65 Mustering Assistants, who are named in the said list, 7 of such Mustering Assistants are absorbed in the Government / Semi-Government services. 28 are terminated from service from the service of Mustering Assistants. The remaining Mustering Assistants are in service as Mustering Assistants whose cases are pending in this Court and before Maharashtra Administrative Tribunal. He also submits that there is no question of any discrimination as canvassed by learned Counsel of the petitioners.

9. Learned Counsel for the petitioners in re-joinder has not disputed that petitioners were not in service as Mustering Assistants during the period between 26-05-1993 and 31-05-1993. A perusal of the averments made in paragraphs 4 and 5 of the Writ Petition makes it clear that even according to petitioner No.1, he was appointed as Mustering Assistant in the Month of October 1983 and had served as Mustering Assistant till 30-04-1986. In so far as petitioner No.2 is concerned, he was appointed as Mustering Assistant on 01-10-1983 and had worked as such till 31-08-1989. Learned Counsel for the petitioners does not dispute that though the order of reinstatement was passed in favour of the petitioners by the Industrial Court, the same was passed on 06-07-1994. It is, thus, not in dispute that both the petitioners were admittedly not in the employment as Mustering Assistants during the period between 26-05-1993 and 31-05-1993. The averments made by the respondents in the affidavit-in-reply are not disputed by the petitioners.

10. In our view, since the petitioners were not in the

employment admittedly as Mustering Assistants during the period between 26-05-1993 and 31-05-1993, they were not eligible to be absorbed by the Government / Zilla Parishad. We are inclined to accept the submissions made by the learned A.G.P. that the petitioners were not eligible to be considered for absorption in the said post. There is no merit in the submission of the learned Counsel for the petitioners that there was any discrimination between the petitioners and other such employees who have been absorbed by the Government under the said Resolution in question. There is no violation of Article 14 of the Constitution of India as canvassed by the learned Counsel for the petitioners.

11. It is made clear that if any other Scheme is formulated by the Government and if the petitioners are eligible to be absorbed under such Scheme, this order would not debar the petitioners from making an application under such Scheme. If any application is made under such new Scheme, the same shall be considered by the Government on its own merits.

12. In our view, there is no merit in the petition. We, therefore, pass the following order.

ORDER

1. Writ Petition No. 7256 of 2004 is dismissed.
2. Rule is discharged.
3. No costs.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

vdd/