

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

WRIT PETITION NO. 8205 OF 2013

- 1 Executive Engineer,
 Kukadi Irrigation Division No.2,
 At & Post Shrigonda,
 Tq.Shrigonda,
 District Ahmednagar.
- 2 Superintending Engineer,
 Pune Irrigation Circle,
 Sinchan Bhawan, Pune-11.
- 3 Sub Divisional Engineer,
 Ghod Irrigation Sub Division,
 Madhe Wadgaon, Tq.Shrigonda,
 District Ahmednagar.
- 4 Superintending Engineer,
 Kukadi Command Area Development
 Authority, Mangalwar Peth,
 Pune-11.
- 5 Superintending Engineer &
 Administrator,
 Command Area Development
 Authority, Pune-11.

...PETITIONERS

-VERSUS-

- 1 Navnath s/o Vinayak Nawale,
 Age : 55 years, Occupation : Service,
 R/o Takali Kadhe Walit,
 Tq.Shrigonda, District Ahmednagar.
- 2 Uttam s/o Yadu Khamkar,
 Age : 53 years, Occupation : Service,
 R/o Takali Kadhe Walit,
 Tq.Shrigonda, District Ahmednagar.

- 3 Babu s/o Bhiwa Shriram.
since deceased through his L.Rs.:-
3-a) Shubai Babu Shriram.
Age : 60 years,
Occupation : Nil.
- 3-b) Appa Babu Shriram,
Age : 38 years, Occupation : Labour,
Both R/o Belwandi, Tq.Karjat,
District Ahmednagar.
- 4 The State of Maharashtra.
The Secretary,
Government of Maharashtra,
Irrigation Department,
Mantralaya, Mumbai.

...RESPONDENTS

**WITH
WRIT PETITION NO.8207 OF 2013**

- 1 Executive Engineer,
Kukadi Irrigation Division No.2,
At & Post Shrigonda,
Tq.Shrigonda,
District Ahmednagar.
- 2 Superintending Engineer,
Pune Irrigation Circle,
Sinchan Bhawan, Pune-11.
- 3 Sub Divisional Engineer,
Ghod Irrigation Sub Division,
Madhe Wadgaon, Tq.Shrigonda,
District Ahmednagar.
- 4 Superintending Engineer,
Kukadi Command Area Development
Authority, Mangalwar Peth,
Pune-11.
- 5 Superintending Engineer &

Administrator,
Command Area Development
Authority, Pune-11.

...PETITIONERS

-VERSUS-

- 1 Ramesh s/o Dattatraya Khamkar,
Age : 55 years, Occupation : Service,
R/o Takali Kadhe Walit,
Tq.Shrigonda, District Ahmednagar.
- 2 The State of Maharashtra.
The Secretary,
Government of Maharashtra,
Irrigation Department,
Mantralaya, Mumbai.

...RESPONDENTS

...
Advocate for Petitioners : Shri Rajale Gulab.
Advocate for Respondents/ Employees : Shri P.V.Barde.
AGP for Respondent/ State : Shri S.N.Kendre.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st February, 2017

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 An identical case arising out of the identical proceedings and in relation to identically placed workmen was decided on 12.06.2015 by this Court in the matter of *Appa Anant Walunj vs. State of Maharashtra*,

Writ Petition No.2642/2013.

3 Even in these two petitions, these identically placed Respondents/ Workers were terminated on 01.04.1988. The Respondents/ workers were granted reinstatement with continuity and 50% back wages by the judgment of the Labour Court dated 25.08.1992 and Complaint (ULP) No.55/1988 was allowed. Appa Anant Walunj, who is the Petitioner in Writ Petition No.2642/2013 decided on 12.06.2015, was Complainant No.2 in Complaint (ULP) No.55/1988. It is not disputed before this Court that the said judgment of the Labour Court dated 25.08.1992 was not challenged by the Petitioner/ Establishment before any Court and the same has attained finality.

4 Shri Barde, learned Advocate for the Respondents/ Workmen, submits on instructions that Navnath Vinayak Navale, Uttam Yadu Khamkar and Ramesh Dattatraya Khamkar are agreeable to consider their first date of joining as 01.04.1988 keeping in view that the Labour Court has granted reinstatement with continuity from 01.04.1988. The statement made on instructions is accepted since the Industrial Court in the impugned judgment has concluded that Babu Bhiva Shriram had completed five years prior to his termination on 01.04.1988 and rest of the workers have not completed continuous five years prior to their

termination.

5 In this backdrop, the statement is accepted and these three persons, namely, Navnath Vinayak Navale, Uttam Yadu Khamkar and Ramesh Dattatraya Khamkar will be treated as having joined employment from 01.04.1988. Consequentially, their five years of employment would be considered w.e.f. 01.04.1993 by virtue of which they will have to be brought on Converted Regular Temporary Establishment (CRTE) from the said date.

6 Since Babu Bhiva Shriram has been held to have worked for five consecutive years prior to his termination, his date of joining will have to be deemed from 01.04.1983 and he will be deemed to have completed five years so as to bring him on CRTE w.e.f. 01.04.1988.

7 The contention of the Petitioner that these Respondents/ Workers had never worked from 01.04.1988 onwards, has been answered by the Labour Court which granted the Respondents reinstatement and continuity of service from 01.04.1988. This issue has been extensively dealt with in the identical petition in the matter of Appa Anant Walunj. For the reasons set out in the said judgment dated 12.06.2015, the contentions of the Petitioner in these petitions, stand negated.

8 Though the issue of an undertaking having been executed by the Respondents is taken up in these petitions, it appears from the record that the said undertaking was not a plain undertaking, but was a typed document signed by these Respondents and they had lodged the protest on the said undertaking as well as through separate applications filed with promptitude. The said undertaking which runs counter to the judgment of the Labour Court, therefore, cannot have any sanctity.

9 In the light of the above, these Writ Petitions are partly allowed to the extent of the direction under clause (3) of the impugned judgment dated 30.12.2012 and the said direction is modified as under:-

- (a) The said three employees, namely, Navnath Vinayak Navale, Uttam Yadu Khamkar and Ramesh Dattatraya Khamkar shall be treated as having joined duties on 01.04.1988 and will be deemed to have completed five years w.e.f. 01.04.1993.
- (b) Babu Bhiva Shriram will be deemed to have joined duties w.e.f. 01.04.1983 and will be deemed to have completed five years on 01.04.1988.
- (c) Consequentially, they all would be entitled for benefits of CRTE upon completion of five years and thereafter, would be further entitled for all such benefits as are available to them

under the Kalelkar Award.

- (d) Since Babu Bhiva Shriram is no more, his legal heirs on record would be entitled to all monetary benefits which would have been available to the deceased in the light of the above.
- (e) Since by the judgment dated 12.06.2015 in the case of Appa Walunj, four months have been granted to the Establishment to extend the benefits to the employee, similar directions would follow and the Petitioner in these petitions shall extend the said benefits to these Respondents/ Workers and the legal heirs of the deceased, within FOUR MONTHS from today.

10 Rule is made partly absolute in the above terms.