

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8535 OF 2011

1. Sk. Umar Sk. Dagdubhai
Age: 57 years Occu: Service,
R/o Near Imam Bawada, Allahu Masjid,
Tattupura, Old Jalna.
2. Sayed Andul Bari Sayed Bashroddin
Age: 59 years Occu: Retired servant,
R/o Dukhi Nagar, Behind Bagwan Masjid,
Old Jalna.
3. Nelsan Mariba Kamble,
Age: 52 years Occu: Service,
R/o. C/o P. No. 2.
4. Rafatbegum Mohd. Isahak
Age: 61 years, Occu:
R/o. C/o P. No. 2.
5. Chagan Rupchand Navmahalkar
Age: 56 years Occu: Service,
R/o. Near Bus Stand,
Near Bablu Chodhari's House, Jalna.
6. Smt. Umadeo Shrotri
Age: 62 years Occu: Retired Employee,
R/o Ramnagar, Aziz Maidan,
Opp. Municipal School, Jalna.
7. Ashok Sanduji Pagare
Age: 52 years, Occu: Service,
R/o. Kanhyyanagar,
Near Ambedkar Statute, Jalna.
8. Smt. Kunda Vijayraj Nayadu
Age: 62 years Occu: Retired,
R/o. Near Main Post Office,
Sadar Bazar, Jalna.

9. Suresh Radhakishan Tiwari,
Age: 50 years Occu: Service,
R/o. Badi Sadak, Sadar Bazar,
Jalna.
10. Babukhan Amirkhan
Age: 55 years Occu: Service,
R/o. Ramnagar Colony, Jalna.
11. Rameshchand Chatrubuj Sethi
Age: 55 years, Occu; Service,
R/o. Near Santoshi Mata Mandir,
Sadar Bazar, Jalna.
12. Ramesh Haribhau Shinde
Age: 48 years, Occu: Service,
Near Santoshi Mata Mandir,
Sadar Bazar, Jalna.
13. Smt. Shalini Gangadhar Khandagale
Age: 61 years, Occu: Retired,
R/o. Ramnagar,
Near Z.P. High School, Jalna

.. PETITIONERS

Versus

1. The State of Maharashtra,
Secretary, Municipal Administration,
Mantralaya, Mumbai-32.
2. The Director,
Municipal Administration,
Pune.
3. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
4. The Collector, Jalna.
5. The Municipal Council, Jalna.
Through its Chief Officer

.. RESPONDENTS

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Mr. S.M. Kulkarni, Advocate for petitioners
Mr. S.N. Morampalle, A.G.P. for respondents no. 1 to 4
Mr. H.K. Munde, Advocate for respondent no. 5

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CORAM : SUNIL P. DESHMUKH &
SANGITRAO S. PATIL, JJ.
DATE : 13-11-2017

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

1. Indisputable position in the present matter appears that the petitioners were appointed by Municipal Council, Jalna on respective posts, referring to that their appointments were initially for a period of one year and on temporary posts, their appointments have been on vacant posts and/or on newly created posts pursuant to communication issued by the State Selection Board dated 21-03-1983.

2. In case of regular appointments, certain procedure, it appears, had been prevalent. However, over a period of time, procedure for making regular appointments had not been undertaken. Situation emerges that the State Selection Board had subsequently been dissolved.

3. In 1990, the State of Maharashtra had issued resolution for regularization of appointments made prior to 18-06-1983 referring to certain criteria.

4. It is not the case of respondents, rather it is the case of petitioners, that, petitioners fulfill criteria referred to under said resolution. It is emphasized by learned counsel for petitioners that, there had been a judgment of the High Court, wherein it has been considered that it would be sufficient, if only one criterion is satisfied.

5. Although, petitioners were continued in service, however, approval to their appointments had been pending before various authorities and had reached respondent no. 1 around 2000.

6. While approving appointments of petitioners, respondent no. 1 and Director of Municipal Administration, Pune (respondent no. 2) passed an order that appointments of petitioners have been made without following due procedure as may be necessary pursuant to the provisions of Maharashtra Municipal Council, Nagar Panchayats and Industrial Townships Act, 1965 and in exercise of power under Sections 76 (2) and 337, purported to regularize the

services as a one time measure subject to the conditions enumerated therein, *inter alia*, condition no. 2, reading thus,

" (२) सदर कर्मचाऱ्याची प्रथम ५ वर्षांची सेवा कोणत्याही सेवाविषयक म्हणजे सेवाजेष्ठता, वेतनवाढ, पदोन्नतीसाठी ग्राह्य धरता येणार नाही (निवृत्तीवेतन वगळून)"

7. It appears that various representations were made and particularly by Municipal Council Employees' Union of Jalna against aforesaid order for relaxing condition of five years service for regularization referred to in condition no. 2, to two years service.

8. In response to representations, order dated 07-07-2007 came to be passed and request of petitioners to relax condition no. 2 of five years service to two years service, had been rejected. It is against said order, petitioners are before this Court.

9. Learned Counsel for the petitioners Mr. S.M. Kulkarni contends that position clearly emerges that, appointment of the petitioners had been pursuant to the permission given to the Municipal Council. Petitioners have been qualified and satisfy all other criteria save their applications and candidature being processed through the recruitment process of State Selection Board. Further, recruitment process could not be undertaken by State Selection Board and said Board, subsequently had been abolished.

10. He further points out that the State had issued a resolution regularising services of persons employed before 18-6-1983. Said resolution applies and wholly covers petitioners' case. Petitioners satisfy criteria therein. Petitioners, as such, are entitled to approval of their service without any condition. He submits that impugned order is capricious and discriminatory.

11. Learned Assistant Government Pleader for respondents no. 1 to 4 Mr. S.N. Morampalle has referred to affidavit-in-reply, pointing out that appointments being made were without approval of the Directorate of Municipal Administration pursuant to Section 76(2) and 337 of the Maharashtra Municipal Council, Nagar Panchayats and Industrial Townships Act, 1965. They were not appointed by following due selection procedure. Reply further refers to earlier decision taken in 2000 about absorption of daily wagers working prior to 10-03-1993 in Municipal Council on humanitarian grounds and under certain conditions. Therefore, under the policy, five years tenure of service from the date of their absorption would not be considered for seniority, promotion, increment and other service benefits and the petitioners cannot blame the respondents saying that said order is prejudicial, as the order, in-fact, regularizes the services of petitioners subject to certain conditions. He, therefore, purports to justify the order.

12. Learned counsel Mr. H.K. Munde, appearing for respondent no. 5 purports to support the impugned order and the stand taken by the State.

13. Although, learned counsel for respondents purport to justify the impugned order, replies filed by said respondents and even the submissions fall way too short to explain as to why the Government Resolution dated 05-02-1990 issued pursuant to High Court's decision in Writ Petition no. 3685 of 1984 has not been taken into account at all, which has been specifically made applicable to the appointments made before 18-06-1983. It is further not their case that the criteria, as referred to thereunder is not satisfied by the petitioners.

14. Petitioners have referred to that while they were appointed in 1983, their ages and other qualifications were in accordance with the prevailing recruitment rules. Further, their appointments have been made on recommendation from Employment Exchange. It further appears that respondents have not been able to meet with the submission of the petitioners that under High Court's order, it has been considered that fulfillment of even one of the criteria would be sufficient for regularization of their

services pursuant to the Government Resolution dated 05-02-1990, referred to hereinabove.

15. State Government on 15-02-1990 had resolved to regularize the services of petitioners who were employed purportedly without following regular process of selection prescribing certain criteria therefor. While the petitioners fulfilled all the requisite criteria, order/decision being taken amounts to second round decision being taken where a formal endorsement of regularization had been required, but making regularization subject to condition thereunder, has been an exercise of power which is colourable one, particularly while the Government decision had been taken embracing the cases of similarly situated persons, singling out the petitioners of the Municipal Council, Jalna, under impugned order is discriminatory.

16. Perusal of impugned orders does not depict that said Government Resolution had ever been taken into account. The order appears to have been passed without taking into account the Government Resolution specifically taking under its focus appointments by the Municipal Council prior to 18-06-1983.

17. In the circumstances, it would be expedient to allow Writ Petition in view of Government Resolution dated 05-02-1990.

18. Writ Petition, as such is allowed in terms of prayer clause (A) and (B) and is disposed of.

19. Rule is accordingly made absolute.

[SANGITRAO S. PATIL]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

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