

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

969 WRIT PETITION NO. 12043 OF 2016

KADU MAHADU BHAWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12044 OF 2016

SHRIKRISHAN SITARAM SHARMA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12045 OF 2016

DNYANDEO BAPU BORUDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12046 OF 2016

PANDURANG NARAYAN JAHAGIRDAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12047 OF 2016

BALU SHANKAR DEVIKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12048 OF 2016

NANASAHEB SAKHARAM SUPEKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12049 OF 2016

NEHRU KONDIBA GAWARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12050 OF 2016

ARUN MURLIDHR KALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12051 OF 2016

VINAYAK BALKRUSHNA KULKARNI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Kakade Amol N .
AGP for Respondents/State: Mr. M.B. Bharaswadkar

...

with
WRIT PETITION NO. 12100 OF 2016

ANNASAHEB GOPINATH DHANGAT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12101 OF 2016

GOPINATH GANPAT KOLHE
VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

with

WRIT PETITION NO. 12102 OF 2016

BABAN SHANKAR AHER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

with

WRIT PETITION NO. 12103 OF 2016

BHAUSAHEB LAXMAN WAKADE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

with

WRIT PETITION NO. 12104 OF 2016

PRAKASH MAHADEO EKBOTE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

with

WRIT PETITION NO. 12105 OF 2016

SAKHARAM BABURAO DHUMAL

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

with

WRIT PETITION NO. 12106 OF 2016

DATTATRAY VITHOBA SINARE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

with

WRIT PETITION NO. 12107 OF 2016

MAHADU SAHADU PANSARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12108 OF 2016

DATTATRAY RAMBHAU SHETE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Walujkar A.B.
AGP for Respondents/State: Mr. M.B. Bharaswadkar

...
with
WRIT PETITION NO. 12281 OF 2016

DNYANDEO CHIMAJI ALHAT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12282 OF 2016

BHAUSAHEB ANNA RANSING DIED LRS SUNITA BHAUSAHEB RANSING
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12283 OF 2016

SITARAM BAJIRAO DARKUNDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12284 OF 2016

ANNASAHEB LAXMAN THORAT
VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

with

WRIT PETITION NO. 12285 OF 2016

MAHADU TUKARAM HARAL

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

with

WRIT PETITION NO. 12286 OF 2016

DILIP DIGAMBAR KULKARNI

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

with

WRIT PETITION NO. 12287 OF 2016

RAOSAHEB BHAU PANSAMBAL

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

with

WRIT PETITION NO. 12288 OF 2016

SHIVRAM HAMBIRRAO GAVHANE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

with

WRIT PETITION NO. 12289 OF 2016

USMAN AHMED HAWALDAR

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

with

WRIT PETITION NO. 12290 OF 2016

SHANKAR BHAGWANTA NALKANDE

VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12291 OF 2016

GAUTAM KERBA SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12747 OF 2016

PRAKASH SITARAM SWANTSARKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

with
WRIT PETITION NO. 12748 OF 2016

VASANT DADA GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Kakade Amol N.
AGP for Respondents/State: Mr. M.B. Bharaswadkar
...

**CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**
DATE : 06.09.2017

P.C. :-

. We have heard the learned counsel for respective petitioners,
Mr. Arora, the learned counsel for the Irrigation Department, the learned
A.G.P. and the learned counsel for respective Zilla Parishads.

2. The petitioners herein claim to have been appointed as Mustering Assistants prior to 1984-85. All these petitioners had filed complaint U.L.P. bearing nos. 41/1989, 22/1989, 12/1989, 166/1989, 42/1989, 98/1989, 277/1989, 28/1989, 18/1989, 13/1989, 28/1989, 89/1989, 53/1989, 381/1989, 381/1989, 341/1989, 16/1989, 381/1989, 234/1989, 10/1989, 140/1989, 121/1989, 556/1988, 19/1987, 218/1989, 17/1987, 517/1989, 423/1995, 53/1989, 169/1989, 88/1989 and 10/1987, alleging unfair labour practice and directing grant of status and privileges of permanency and other consequential benefits from the date of complaint. It is also stated that the petitioners in writ petition nos. 12748/2016 and 12747/2016 have also approached the Maharashtra Administrative Tribunal subsequently the O.A. were dismissed.

3. This Court in writ petition no. 8359 of 2013 with connected writ petitions under order dated 13.08.2015 and the another Division Bench of this Court in writ petition no. 11183 of 2015 with connected writ petitions under order dated 07.04.2016 in respect of similarly situated employees' who had filed complaint U.L.P. had passed the order, as passed in writ petition nos. 2946 of 1997, 2236 of 1997 and 2246 of 1997 at Principal seat. The S.L.P. filed against the order in writ petition

2946/1997 is also dismissed.

4. The learned counsel for respective petitioners submit that, one of the mustering assistant filed writ petition No. 2946 of 1997 before this Court at it's Principal seat at Bombay. The Division Bench of this Court gave directions in the said writ petition to consider the past services for grant of pension in view of the judgment and order passed by the Industrial Court. The same relief is being claimed by these petitioners in the present writ petitions. The learned counsel submit that, the special leave petition filed against the said judgment and order of this Court is also dismissed.

5. The learned Additional Government Pleader states that, the past service cannot be considered of the petitioners in view of the scheme framed by the Government and approved by the Apex Court vide Government Resolution dated 01.12.1995 and the subsequent Government Resolution of the year 1999. The learned A.G.P. further submits that, it is only after the mustering assistants are absorbed in Government service, they can be considered as Government employees and benefits of Government service can be accorded to them. As these petitioners after absorption did not complete the period of qualifying

service, they are not entitled for pensionary benefits.

6. It is not disputed that in these matters, the petitioners had approached the Industrial Court by filing complaint ULP. The said complaints are allowed and Industrial Court directed present respondent/State to accord those complainants/petitioners herein status and privileges of permanency and consequential benefits from the date of filing of complaints. As the pensionary benefits are not being accorded, one of such complainants filed writ petitions bearing Writ Petition No. 2946 of 1997, Writ Petition No. 2236 of 1997 and Writ Petition No. 2246 of 1997. The Division Bench of this Court partly allowed the said petitions and passed the following order.

“1. In view of the Judgment and Order dated 08th April, 1997 passed by the learned Industrial Court, Solapur, for the purpose of considering the grant of pensionary benefits, the Petitioners shall be treated as Permanent Employees with effect from 01st October, 1988 till the respective dates of superannuation.

2. In case of the Petitioners who were already superannuated, it will be open for them to make a representation to the concerned Authorities for grant of pensionary benefits.

3. If such representation is made, same shall be decided as expeditiously as possible and preferably within a period of four months from the date on which the representations are made.

4. We make it clear that, apart from issuing directions regarding the date of permanent employment of the respective Petitioners, we have not examined the case of the Petitioners as regards the eligibility of pensionary benefits.

5. Rule is made partly absolute on both terms with no order as to costs."

7. The Special Leave Petition filed against the said judgment and order is also dismissed. In the light of that, we adopt the same course as adopted by this Court in the above said writ petitions and pass the following order.

I) In view of the Judgment and Order passed by the learned Industrial Court for the purpose of considering the grant of pensionary benefits, the Petitioners shall be treated as Permanent Employees with effect from the date of their complaints i. e. from the date of filing of their respective ULP's till the respective dates of superannuation.

II) In case of the Petitioners who were already superannuated, it will be open for them to make a representation to the concerned Authorities for grant of pensionary benefits.

III) If such representation is made, same shall be decided as expeditiously as possible and preferably within a period of four months from the date on which the representations are made.

IV) We make it clear that, apart from issuing directions regarding the date of permanent employment of the respective Petitioners, we have not examined the case of the Petitioners as regards the eligibility of pensionary benefits.

V) Rule is made partly absolute on above terms with no order as to costs.

VI) Writ petitions accordingly partly allowed.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]