

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.9755 OF 2016

1. The State of Maharashtra through  
Divisional Forest Officer,  
Van Bhawan, Aurangabad Road,  
Ahmednagar,

2. The Range Forest Officer,  
Shrigonda, Tq.Shrigonda,  
Dist.Ahmednagar

-- PETITIONERS

VERSUS

1. Udhav Dhondiba Yerkal,  
Age-43 years, Occu-Service,  
R/o Pisora (Khand),  
Tq.Shrigonda, Dist.Ahmednagar,

2. Narayan Sahebrao Karale,  
Age-46 years, Occu-Service,  
R/o Pisora (Khand),  
Tq.Shrigonda, Dist.Ahmednagar

-- RESPONDENTS

Mr.N.T.Bhagat, AGP for the petitioners.

Mr.P.V.Barde, Advocate for respondent Nos. 1 and 2.

( CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/01/2017

ORAL JUDGMENT :

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

2. The petitioners are aggrieved by the judgment of the Industrial

Court dated 15/09/2015 by which Complaint (ULP) No.208/2013 is allowed and the petitioners are directed to grant permanency to the respondents/workmen on the post of 'Van Majoor' as per the GRs dated 31/01/1996 and 16/10/2012 w.e.f. the date of filing of the complaint which is 03/10/2013.

3. The learned AGP has strenuously criticized the impugned judgment of the Industrial Court. The thrust of his submissions is that these respondents were working on Employment Guarantee Scheme (EGS). Considering the law laid down by this Court, daily wagers working on EGS cannot approach the Labour Court or Industrial Court for seeking reinstatement or permanency, as the case may be. It is also stated that the Forest Department is not an Industry.

4. He has taken me through the 15 grounds set out below paragraph No.4 in the memo of the petition to support his contention that the respondents were working on EGS and hence they cannot be granted regularization in the light of the judgment of this Court in the matter of Arvind G.Chaudhary Vs.Dhanraj Nathu Patil and another, [2008(2) CLR 748].

5. Mr.Barde, learned Advocate appearing on behalf of the respondents/workmen submits that if it is established that the respondents are working on EGS, they cannot make a claim before the Labour Court or Industrial Court. Their complaint for permanency therefore could be dismissed. However, if no evidence at all is brought before the Industrial Court to prove that the respondents are working on EGS, it cannot be presumed that their claims deserve to be rejected only because the petitioners contend that they are engaged on EGS.

6. I have considered the submissions and have gone through the petition paper book. It was contended by the respondents that they are working from 01/12/1993 and 17/09/1994 as 'Van Majoor' on the consolidated pay of Rs.5,000/- p.m. The Industrial Court, while dealing with the complaint, has observed that the petitioners have not produced any evidence to indicate that the respondents were enrolled with the Tahsildar EGS for seeking employment. They were never issued with the EGS Identity Cards which is mandated. The petitioners did not produce any documentary evidence to show that they were working on EGS.

7. The Labour Court has further observed that as per the EGS, a

worker, who is in need of work, has to apply to the Tahsildar through the Talathi for being allotted the work on EGS. His name is registered in the EGS register by the Talathi. Accordingly, he is issued an EGS Identity Card / Job Card. None of these documents have been produced by the petitioners before the Labour Court.

8. The Labour Court has further concluded that since Exhibit U-9 is an Identity Card issued by the Forest Department which is not in any way connected with the EGS, it would amplify the fact that the respondents/employees were not working on EGS. In this backdrop, I do not find any reason to interfere with the findings of the Labour Court that the respondents are not working on EGS.

9. The State of Maharashtra has introduced a GR dated 31/01/1996 and which is followed by another GR dated 16/10/2012. By virtue of the earlier GR, all such daily wagers, who are not working on EGS, have been held eligible for absorption after having put in 5 years in continuous service as daily wagers. The daily wagers working on EGS have been excluded.

10. Considering this position and the subsequent GR which furthers the cause of such daily wagers, I deem it appropriate to

modify the impugned judgment of the Industrial Court with regard to the direction at Clause 3 under paragraph No.33.

11. This Court in the matter of Mukhyadhikari, Nagar Parishad, Tuljapur Vs.Vishal Vijay Amrutrao and other connected matters, [2015(5) Mh.L.J.75] and in the matter of Municipal Council, Tuljapur Vs.Baban Hussain Dhale (dead) through LR's and others in WP No.1843/2015 and other connected matters vide judgment dated 26/02/2015, has concluded that in the matters of regularization in service, unless the post on which an employee is to be regularized is sanctioned or is not vacant, the Industrial Court cannot issue directions granting regularization on a non-existent post merely on the basis of completion of 240 days in continuous service. The learned Division Bench of this Court in the matter of Municipal Council, Tirora and another Vs.Tulsidas Baliram Bindhade, [2016(6) Mh.L.J.867] has concluded that Standing Order 4(C) would not apply in such cases where the post is not available and vacant.

12. Considering the above and in the light of the statement made by Mr.Barde that the respondents have continued in employment, this petition is partly allowed. The direction at clause 3 under paragraph No.33 of the impugned judgment is modified by directing

the petitioners to consider the case of the respondents as per the GR dated 31/01/1996 and grant regularization to these respondents on the basis of their eligibility and seniority.

13. In so far as the objection of the petitioners that the respondents/workmen have approached the learned Maharashtra Administrative Tribunal, Mr.Barde makes a solemn statement that the pending Original Application No.625/2012 has already been withdrawn and disposed of on 19/12/2016.

14. Rule is made partly absolute in the above terms.

( RAVINDRA V. GHUGE, J.)