

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4935/2001

Rajendra Shantaram Chavan	... Petitioner
V/s.	
Executive Engineer, Irrigation Division No.2, Nashik & Ors.	... Respondents

WRIT PETITION NO.3831/2002

Bhagwan Dhanaji Borase	... Petitioner
V/s.	
Executive Engineer, Irrigation Division No.2, Nashik & Ors.	... Respondents

WRIT PETITION NO.2989/2002

Madhukar Laxman Mali	... Petitioner
V/s.	
Executive Engineer, Irrigation Division No.2, Nashik & Ors.	... Respondents

Mr. D. B. Patil for the petitioner
Mrs. M. S. Bane, "B" Panel Counsel for the Respondents.

CORAM: K.K. TATED, J.
DATED : JANUARY 27, 2017

JUDGMENT :

1. Heard the learned counsel for the parties.
2. In the present proceedings, the learned Labour Court, Nasik passed a common judgment dated 07.08.2000 allowing the complaints (ULP) Nos.196/1988, 1999/1989 and 671/1989. The common order

passed by the Labour Court was challenged by the respondent State before the Industrial Court at Nasik by preferring Revision Applications (ULP) No.64/2000, 65/2000 and 77/2000. The Industrial Court, by common judgment dated 26.02.2001 allowed the revisions preferred by the State. Both the counsel submit that the issue involved in the present three Writ Petitions is common. Hence, all these Writ Petitions are being disposed of by common judgment.

3. By these Writ Petitions the petitioners original complaints challenge the common judgment dated 26.02.2001 passed by the Industrial Court at Nasik by which the common judgment dated 07.08.2000 passed by the learned Presiding Officer, Labour Court, Nasik was set aside. The Labour Court by common judgment directed the respondent to reinstate the petitioner-complainants on usual terms and conditions with continuity of services from the date of termination.

4. Few facts of the matter are as under:

In the present proceedings, the petitioners were appointed as Muster Assistant on consolidated salary of Rs.300/- pm for a particular period. They were posted to Irrigation Sub Division, Nasik under Employment Guarantee Scheme (hereinafter referred to as the "EGS"). In that appointment letter, it was specifically stated that their appointment was purely on temporary basis and were liable to be terminated at any time without notice at any time. It was also stated in the appointment letter that they cannot claim right for the Government service and/or retrenchment compensation even if they worked for more than 240 days in a year.

5. The respondent terminated their services some time in the year 1984. That termination order was challenged by the petitioners before the Labour Court, Nasik by preferring complaints of unfair labour practices under item 1 (a), (b), (d), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (said Act). The main grievance of the petitioner in their complaints was that without following due process of law the respondent terminated their services. In those complaints, the petitioner claimed the following reliefs:

“a. It may be declared that the respondents have engaged in unfair labour practices as stated above.

b. The respondents be directed to cease and to desist from engaging in unfair labour practices any further.

c. The respondents be therefore directed to reinstate the complainant with continuity of services and full back wages from the date of termination till realization along with other consequential benefits and reliefs thereto to the complainants which are available to permanent employees of the respondents.

d. Costs of these complaints be given in favour of the complainant.

e. Any other equitable relief which may deem fit.”

6. In those complaints, the respondents filed their written statement and raised objection about the maintainability of complaints itself. The respondent contended that the petitioners were appointed under the EGS of the State Government. The said scheme was to execute social activities of the State. The work undertaken under that scheme was in the nature of maintenance. The respondents in their written statement raised several objections. On the basis of the pleadings, the Labour

Court framed the following issues for its determination.

1	Whether the work of respondents in an “industry” within the meaning of Sec.2(j) of the I.D. Act ?	Yes
2	Whether the complainant is a workman within the meaning of Sec.2(s) of the I.D.Act ?	Yes
3	Does the complainant prove that the respondents engaged in unfair labour practice under item 1 a, b, d, e, f & g of Schedule IV of the MRTU & PULP Act, 1971 in terminating his services as alleged in the complaint ?	Yes, partly.
4	Is the complainant entitled to reinstatement with continuity of service and full back wages ?	Yes, partly.
5	What order and relief ?	As per final order

7. The learned Labour Court, considering the evidence on record held that the petitioners proved their case that the respondent is an “Industry” within the meaning of section 2(j) of the Industrial Disputes Act and the petitioners are entitled to an order of reinstatement with continuity of service.

8. Being aggrieved by the said judgment, the respondent preferred revision applications before the Industrial Court. The Industrial Court, on the basis of the pleadings framed the following points for consideration.

1	Whether the Labour Court has committed apparent error on the face of record while passing the impugned order ?
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2	Whether the order passed by the Labour Court is bad in law, illegal and improper ?
3	Whether the findings of the Labour Court are perverse and there is any reason so as to interfere in the order passed by the Labour Court ?

9. After considering the evidence on record, the Industrial Court held that the petitioners were appointed under the EGS and therefore the complaints filed by them for unfair labour practices under the said Act was not maintainable. The Industrial Court set aside the common order passed by the Labour Court dated 07.08.2000. Hence, the present Writ Petitions.

10. The learned counsel for the petitioner submits that the Industrial Court erred in coming to the conclusion that the petitioner is not entitled to any relief as granted by the Labour Court, because the petitioners were appointed under the EGS floated by the State Government of Maharashtra.

11. The learned counsel for the Petitioners submits that the Industrial Court failed to consider the fact that the petitioner worked with the respondent continuously for more than 240 days in each year since 1985 till the date of filing the complaint. He submits that the Industrial Court failed to consider the fact that the petitioners were appointed as a Muster Assistant for the regular work in Irrigation Department. The said work was not seasonal. He submits that the Industrial Court failed to consider the fact that if the workman works for more than 240 days with the Department then he is entitled to all benefits as permanent workman. In support of this contention, he relies on the judgment of

the Apex Court in the matter of ***Chief Conservator of Forests and Anr. Vs. Jagannath Maruti Kondhare AIR 1996 SC 2898***. He submits that in this case, though the plea raised by the Government that the workman was appointed under the Maharashtra Employment Guarantee Act, 1977, the Apex Court directed the Government to absorb the workman in service as a permanent workman and to provide all the benefits to that effect. Paragraph 27 of the said judgment reads thus:

“27. We may also meet the contention that some of the workmen had been employed under the Maharashtra Employment Guarantee Act, 1977. As to this, we would first observe that no factual basis for this submission is on record. Indeed, in some of the cases it has been pointed out that the employer had not even brought on record any order of appointment under this Act. This apart, a perusal of this Act shows that it has not excepted the application of the Industrial Disputes Act, 1947. This is apparent from the perusal of section 13 of this Act. It may be further pointed out that this Act having been brought into force 1978, could not have applied to the appointments at hand most of whom are of the year 1977.”

12. The learned counsel for the petitioner also relied on the judgment of this court (Coram : Smt. Nishita Mhatre, J. as she then was) dated **07.08.2008 in Writ Petition No.4847/1997 – Executive Engineer, Employment Guarantee Scheme, Nashik Vs. Mukund Ashokrao Shewale, Nashik**. He submits that in this authority also, this court has taken a similar view that even if a workman has employed under the EGS, but if he works for more than 240 days in a previous year, then he is entitled for permanent posting. He also relied on judgment of the Division Bench of this court (Coram : A. S. Oka & Shrihari P. Davare, JJ.) delivered on **19.07.2012 in Writ Petition No.2946/1997 - Ramchandra Kondiba Mahajan Vs. State of**

Maharashtra & Ors. He submits that in this authority, the issue was about the pensionary benefits to the workmen who were employed as per the EGS.

13. On the basis of this submission and the authorities referred to above, the learned counsel for the petitioner submits that the impugned judgment passed by the Industrial Court dated 26.02.2001 reversing the judgment passed by the Labour Court is required to be set aside.

14. On the other hand, the learned AGP for the respondent vehemently opposed the Writ Petitions. She submits that the Industrial Court, considering the judgment of this court in Writ Petition No.948/1995 and 847/1996 with connected matters, held that if a workman is appointed under the EGS, even if he worked for more than 240 days, cannot claim the benefit of permanency and /or other other benefits. She submits that even the Industrial Court relied on the Apex Court judgment in Civil Writ Petition No.15339/1996 arising out of Special Leave Appeal No.1565/1991 decided on 02.12.1996, wherein, it was held that if a muster assistant was appointed in EGS, then he is not entitled to claim benefit of permanency in service. If a person is appointed for a specific period, there is no question of granting him any other benefits which are available to the permanent workers. Therefore, there is no question of interfering with the well reasoned order passed by the Industrial Court.

15. Heard both sides at length. After hearing both the sides, the issue involved in this matter is as under:

a)	Whether the petitioner has made out a case that he is entitled to benefits like permanent employee and/or permanency in the service ?	No
b)	Whether the judgment passed by the Industrial Court dated 26.02.2001 is required to be interfered with?	No

16. It is to be noted that, the Department, by appointment letter dated 25.02.1985 appointed the petitioners as a Muster Assistant on consolidated salary of Rs.300/- pm and posted to the Irrigation Sub Division, Nasik for EGS work for the period 14.02.1985 to 31.03.1985. It was specifically stated in the said appointment letter that *“the appointment is purely on temporary basis and is liable to be terminated at any time without any notice, even earlier”*.

17 The appointment cannot be claimed as of right for Government service against the appointment and no retrenchment compensation is allowed”. Bare reading of the said appointment letter/Office Order No.191/1985 shows that the petitioners were appointed as a Muster Assistant for the EGS work for a stipulated period only. Therefore, the contention raised by the petitioner that he was appointed on regular basis in Irrigation Department cannot be acceptable. Once it is established that the petitioner was appointed for EGS work, then he is not entitled to any other benefits which were available to the permanent workman. This issue was decided by this court in ***Writ Petition No.847/1996 with connected matters in State of***

Maharashtra Vs. Kakasaheb Bhausahab Khandagale dated 30-8-2001. This court, after considering several judgments, held that if a workman is appointed for EGS work, then he is not entitled to any other benefits. Paragraph No.15 of the said judgment reads thus:

“15. From the discussion made hereinabove, I have no hesitation to conclude that the appointments of the respondents / employees were not made on the regular establishment of the State Government but the appointments were made on various works carried on under the Employment Guarantee Scheme and, in this view of the matter, provisions of the M.R.T.U. and P.U.L.P Act and Industrial Disputes Act are not applicable, as has been also held by my learned Brother, J.A. Patil, J. in Writ Petition No.703 of 1997 and similar batch of petitions. Having concurred with the view taken by J.A. Patil, J. and Dr. D. Y. Chandrachud, J. that the work undertaken under the Employment Guarantee Scheme is not an industry, I need not deal with other submissions made by the learned Assistant Government Pleader. But I prefer to mention to those submissions made by the respective parties, as herein below:

(A) It is the submission of the learned Assistant Government Pleader for the petitioners, that the Muster Assistants were appointed to work under the Employment Guarantee Scheme and the said appointments could not have been made in law to the said post under the provisions of the M.E.G. Act and, as such, the appointments are bad in law.

*(B) He then contends that the very appointments being bad in law, the said appointments does not vest the respondents/ employees with any right to the post, more so, when there are no sanctioned posts of Muster Assistants under the Employment Guarantee Scheme. To substantiate the submission that in the absence of sanctioned post, no right to the post can be claimed, reliance is placed on the judgment of the Apex Court, in the case of **Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and Ors. Etc. (AIR 1994 SC 1638.)***

The learned counsel for the respondents have tried to counter the said submission by placing reliance on an unreported decision of this Court (Coram : B. N. Deshmukh & K. N. Patil, JJ.) in Writ Petition No.413/1991.

(C) Lastly, it is submitted that the appointments of the Muster Assistants were made on various sites/works/projects and their appointment was coterminous with the termination of the said work or project.

Whereas it is the submission of the respondents that the work was of a permanent and perennial nature and the appointments were not for a fixed term.”

18. The authority relied on by the petitioner in the matter of ***Jagannath Maruti Kondhare (supra)*** is not applicable in the facts and circumstances of the present case. In that case, whether the workman was appointed under the Maharashtra Employment Guarantee Act, 1977 was itself a disputed fact. That is not a case in the present matter. In the present matter, the petitioner has placed on record Office Order No.191/1985 which shows that the petitioners were appointed for EGS work.

19. The Authority cited by the petitioner in the matter of Mukund Ashokrao Shewale (*supra*) is not applicable in the facts and circumstances of the present case. In that case, the dispute was whether the Labour Court was right in accepting the version of the workman that he was not gainfully employed during the period of litigation. In that case, the issue was whether the workman was entitled to full back wages. That is not a case in the matter in hand. In the present case, the issue is whether the petitioner is entitled to

benefit of permanency in job or not. As the petitioner was appointed for EGS work, he is not entitled to any benefit in view of the judgment of this court in the matter of Kakashaeb Bhausaheb Khandagale (Supra) with connected matters.

20. The third authority relied on by the petitioner is in the matter of Ramchandra Kondiba Mahajan (Supra), wherein the issue was, whether the workman was entitled to the pensionary benefits or not. That is not a case in the matter in hand. Hence, all the authorities cited by the petitioner are not applicable in the present case.

21. As the issue is already covered by the earlier judgment of this court, I do not find any reason to interfere with the well reasoned order passed by the Industrial Court.

22. Considering the above mentioned facts that the petitioner was appointed exclusively under EGS and considering the judgment in Kakashaeb Bhausaheb Khandagale (Supra), I am of the opinion that the petitioners have failed to make out any case to interfere with the well reasoned common judgment dated 26.02.2001 passed by the Industrial Court Nasik in Revision Applications (ULP) No.64/2000, 65/2000 and 77/2000.

23. The writ petitions stand dismissed.

24. No order as to costs.

(K. K. TATED, J.)