

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.8892 OF 2016

Pralhad Anand Tibile	Petitioner
Versus	
Chief Executive Officer, Zilha Parishad, Kolhapur	Respondent

WITH
WRIT PETITION NO.6295 OF 2016

Maruti Sattappa Sapate	Petitioner
Versus	
Chief Executive Officer, Zilha Parishad, Kolhapur	Respondent

WITH
WRIT PETITION NO.7333 OF 2016

Sou. Kanchan Mahadev Chavan	Petitioner
Versus	
Chief Executive Officer, Zilha Parishad, Kolhapur	Respondent

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Mr. Kedar Pralhad Lad for the Petitioners.
None for the Respondents.

CORAM : PRASANNA B. VARALE, J.

DATED: 19th SEPTEMBER, 2017

P.C. :

1. Learned Counsel appearing for the Petitioner invited my

attention to the order of this Court dated 06.02.2017. Learned Counsel submits that the matter was to be placed before this Court on 28.06.2017 as per the CMIS date, but the matter could not be placed. As such, the circulation is sought for admission of the bunch of these petitions. Considering the issue and controversy involved in the bunch of these petitions is a limited one, the petitions, namely, Writ Petition Nos.8892 of 2016, 6295 of 2016 and 7333 of 2016 are taken up for hearing at the admission stage itself by consent of Learned Counsel appearing for the Petitioner.

2. The Petitioner challenges the order passed by the Learned Presiding Officer, Labour Court No.1, Kolhapur. The Petitioner had approached the Learned Labour Court with the grievance that the Petitioner was working as Safai Kamgar in a residential school as a daily rated employee. The Petitioner worked in the school from the year 1988 to 1995 continuously without there being any break in his services. It was the submission that the said residential school was closed on 24.07.1995 and it was assured to the Petitioner at the closure of the school that the Petitioner would be accommodated. It was then submitted that there were other employees working with the Petitioner, namely, Smt. Bhat, Smt. Patil, Smt. Samudre etc. It was submitted that though these employees were similarly situated and are daily rated employees, the respondent Zilla Parishad accommodated these daily rated employees in the cadre of Class IV employees and inspite of issuance of notice, the Petitioner was neither reinstated, nor was accommodated as per the assurance given to him. Thus, it was submitted that the Petitioner had completed his service for 240 days in a

calendar year till the closure of the school and without issuing any notice or without awarding any notice pay or compensation, the services of the petitioner were terminated.

3. The claim of the Petitioner was opposed by filing Written Statement. It was submitted that the claim of Petitioner was hopelessly time barred as the contention of the Petitioner was that the school was closed in the year 1995, whereas the proceeding was of the year 2010, there was no justifiable reason coming forward for explaining the inordinate delay. The claim was also opposed on the ground that the Petitioner was on a clearly temporary post and was a daily rated employee. The closure of the school was as per the Government policy and the accommodation of the other employees in the closed school was also in view of the Government policy.

4. The Labour Court below framed two points for consideration, namely, Whether the termination of the Petitioner effected from 24.07.1995 was illegal ? and Whether the Petitioner is entitled for the benefits, namely, continuity of service, reinstatement and back wages? Though, Learned Labour Court below recorded its finding in affirmative on the first issue, considering the fact that it was not possible to issue directions for reinstatement of the Petitioner and grant of back wages to the Petitioner, the Court below protected the interest of the Petitioner by awarding the compensation at the rate of Rs.20,000/-. The evidence was considered by the Court below, which was in the form of documentary evidence as well as the oral evidence. The documentary evidence was in the form of copies of attendance-sheet/muster roll. The

oral evidence formed the evidence of the Petitioner himself and one of the witness of the respondent, namely, Prakash Nalawade. The Petitioner failed to substantiate the contention either by way of the documentary evidence or by way of oral evidence that there was an assurance given to the Petitioner for accommodating him. The closure of the school was by under a policy of the Government. The oral evidence in the form of the witness Prakash Nalawade assessed by the Court below and finding that though it was an admission that the other employees were accommodated in the Class IV cadre, it was as per the statement and a resolution passed on 05.07.1993. The Resolution clearly states that such accommodation of those workers, namely, Cook, Kitchen Made (Kamati) is only of those employees, who were working as the permanent employees. The Petitioner was never a permanent employee, but a daily rated employee i.e. a Safai Kamgar, drawing a daily wages at the rate of Rs.10/- per day plus two times meal. Learned Court below also considered the factual aspect that the power for appointment of a post in Class IV Cadre possessed by the Chief Executive Officer of the Zilla Parishad and the Chief Executive Officer can exercise this power in respect of the permanent employees. Accordingly, the power was exercised and those who were working as permanent, were accommodated either as Peon or in the cadre of Class IV employees.

5. Learned Court below arrived at a conclusion that the material placed on record clearly show that the Petitioner worked in the school for a period i.e. 18.10.1988 to 24.07.1995. The period of the Petitioner was of nearly six years including the period of Diwali Vacation and Summer Vacation in the school. Learned Court below also

considered the fact that it was not possible for issuing the directions of reinstatement of the Petitioner or accommodating the Petitioner in some other Class IV cadre. The only relief which could have been granted was of the appropriate compensation. Considering this very aspect of the matter, Learned Court below thought it fit to award the compensation at the rate of Rs.20,000/-. Considering the aspect that the Petitioner was a daily rated employee, drawing a wages at the rate of Rs.10/- per day and considering the span of his service, namely, from 18.08.1988 to 24.07.1995 inclusive of the vacations, compensation awarded by the Learned Presiding Officer cannot be said to be a mere compensation or inadequate compensation or it cannot be said that the compensation amount arrived at by the Learned Court was on a fanciful consideration.

6. The Tribunal also took into consideration the submission of the other side opposing the claim of the Petitioner was lodged at a belated stage. Considering all these aspects, in my opinion, no error is committed by the Learned Labour Court. Order impugned in the petition cannot be stated an illegal order or an erroneous order. The Petition thus being merit-less, deserves to be dismissed at the threshold and the same is accordingly dismissed.

7. As the facts involved in Writ Petition No.6295 of 2016 are identical facts in the earlier petition decided, Petition No.6295 of 2016 is also dismissed.

8. In Writ Petition No.7333 of 2016 though the facts of this petition are nearly identical in the earlier two petitions, the Learned

Court below recorded a negative finding even on the first point for consideration, namely, Whether the termination of the Petitioner from 25.11.1986 was illegal? The Learned Court below on perusal of the material arrived at a finding that the claim of the petitioner was on misrepresentation of facts and the Petitioner even approached the Court on the basis of an untrue affidavit. Considering these facts, the Court below passed the order dated 19.09.2015 neither any error nor illegality is found in the order impugned in the petition. The petition thus being merit-less, deserves to be dismissed and the same is accordingly dismissed.

(PRASANNA B. VARALE, J.)