

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION***

**WRIT PETITION NO. 11906 OF 2013**

1 Karbhari Parshuram Nikam & Ors. ... Petitioners

Vs

1. The State of Maharashtra & Ors. ... Respondents

Ms. Leena Patil for the Petitioner.

Mrs. M.S. Bane, 'B' Panel Counsel for the Respondent Nos.1 and 2.

Ms. Ashwini Selukar i/b Ms. Anamika Malhotra for the Respondent No.3.

**CORAM : S.C. DHARMADHIKARI &  
B.P. COLABAWALLA, JJ.**

**THURSDAY, 23RD MARCH, 2017**

**P.C. :**

1           The petitioners, who were initially appointed as Muster Assistants on the establishment of the Irrigation Department and later on as Parichars with the respondent No.3 - Nashik Zilla Parishad, are before us claiming two reliefs. The first relief is that they should be granted pensionary benefits. Those benefits should be granted on par with other Muster Assistants who obtained similar benefit and employment with the Zilla

Parishad. The only difference is that these petitioners did not approach the Industrial Court. The Industrial Court order, therefore, benefitted those complainants who had filed a complaint alleging commission of unfair labour practice under Items 5, 6, 9 and 10 of Schedule IV of The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. If the complainants had worked similarly with the Irrigation Department earlier and then later on with the Zilla Parishad, then, on par with such complainants the pensionary benefits be extended even to the present petitioners. Reliance is placed upon an order passed on 19<sup>th</sup> July, 2012 in the case of *Ramchandra Kondiba Mahajan vs. The State of Maharashtra & Ors.* Civil Writ Petition No. 2946 of 1997.

2           On the other hand, the respondent No.3, who is contesting the writ petition, claims that the petitioners were not entitled to any pensionary benefits. In each of the petitioners case, it was pointed out as to how they have not fulfilled the criteria of qualifying service to obtain pensionary benefits. The requirement of such qualifying service is ten years uninterrupted service. Each of these petitioners have obtained an appointment

order and issued by the Zilla Parishad in the year 2004. All of them have retired without rendering the qualifying service of ten years.

3           After perusing the papers with the assistance of Ms. Patil and the learned advocate for the Zilla Parishad, we are unable to agree with Ms. Patil. The petitioners have not shown any stipulation to us in their appointment orders which would enable them to obtain pensionary benefits without fulfilling the requirement of the ten years qualifying service. That their earlier service as Muster Assistants should be counted and together with the service rendered with the Zilla Parishad, the requirement of qualifying service is fulfilled, is a common argument in the case of the petitioners. That fails to impress us. The petitioners admittedly have not approached the Industrial Court like *Ramchandra Kondiba Mahajan* in whose case the Division Bench judgment (supra) was delivered. There, the petitioner specifically alleged that he joined the services as Muster Assistant in the Irrigation Department of the State. He filed a complaint alleging unfair labour practice and he alleges that the benefits of permanency were not made available to him. In the

complaint of such a petitioner which was decided along with another complaint, by a common judgment delivered on 19<sup>th</sup> September, 1996, the learned Member, Industrial Court, Solapur held that there was an unfair labour practice and the commission of which was established and proved. Therefore, the status and privileges of permanent employees be conferred and extended to both the petitioners with effect from 1<sup>st</sup> October, 1988. It is in these circumstances that even though on 3<sup>rd</sup> June, 1997, the Zilla Parishad passed an order appointing the petitioner in that petition to the post of Parichar on a temporary ad-hoc basis, having retired, he could obtain pension. That was because of the clear direction in his favour by the Industrial Court. The order of the Industrial Court was unsuccessfully challenged. The observations in paragraph 4 of the order passed by the Division Bench and relied upon by Ms. Patil, therefore, must be read in the context of the background facts. There, the continuity of service was established and proved. The petitioner may have been appointed and substantively on the establishment of the Zilla Parishad in the year 1997, but his prior service as Muster Assistant could not be wiped out. The wiping out of that service was not possible in the light of the clear declaration of the

Industrial Court. Therefore, the requirement of qualifying service should be reckoned from the date stipulated in the Industrial Court order. It is on these facts that the Division Bench upheld the argument of the petitioner in that case and granted the benefit.

4           Such is not the case before us. Each of the petitioners before us have not fulfilled the requirement of qualifying service. They are not granted any benefit and in the form of a declaration of the Industrial Court so as to enable counting of their prior service as Muster Assistants. Unfortunately for them, the Division Bench order does not have binding effect. It cannot be applied to them and the benefit of the order can be obtained only by the petitioner in that petition. Once there is a clear distinction on facts and the petitioners' substantive appointments itself do not enable them to obtain pension and it was not an employment for minimal ten years, then, prayer clause (a) of the writ petition cannot be granted.

5           However in the peculiar facts and circumstances and when pensionary benefits cannot be obtained by the petitioners,

let there be no recovery from them as apprehended by the petitioners. It is stated by Ms. Patil, on instructions, that though the Chief Executive Officer of the Zilla Parishad, Nashik has addressed communication seeking to recover some amounts from the retiral / terminal benefits, such recovery is yet not effected. In the circumstances, we direct that the Chief Executive Officer should not effect any such recoveries as contemplated by him. This order is passed in the peculiar facts of the petitioners' case. Nobody else will be able to obtain any benefit on the basis of this direction and which is peculiar to the petitioners' case alone.

6                      Clarifying as above, the writ petition is disposed of. There shall be no order as to costs.

***B.P. COLABAWALLA, J.                      S.C. DHARMADHIKARI, J.***