

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

WRIT PETITION NO. 2779 OF 2016

Mirza Subhan Baig s/o Wahed Baig,
Age-48 years, Occu-Service as Sweeper,
At Ayurvedic Dispensary Bhavur, Tq.Vaijapur,
R/o Jama Masjid, Sunder Ganpati Galli,
H.No.163, Vaijapur,
Dist. Aurangabad

.. Petitioner

Versus

1. The State of Maharashtra,
The Department of Rural Development,
Mantralaya Mumbai.

2. The Zilla Parishad, Aurangabad,
Through the Chief Executive Officer. .. Respondents

Shri C. V. Dharurkar, Advocate h/f Mrs. Vinaya Dharurkar
(Muley), Advocate for the petitioner.

Mrs. R. P. Gour, A.G.P. for the Respondent No. 1.

Shri U. B. Bondar, Advocate for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA AND
S. M. GAVHANE, JJ.**

RESERVED ON : 04/12/2017

PRONOUNCED ON : 20/03/2017

JUDGMENT (Per S. V. Gangapurwala, J.) : -

. The petitioner in this petition has put forth prayer clause

40-B as under :-

"B. By passing appropriate writ, order or direction the respondent No.2 Zilla Parishad may kindly be directed to appoint the petitioner as 'Peon' and grant him regularization of service as 'Peon' w.e.f. 1994 and consequently pay to the petitioner regular salary and arrears of salary other benefits and emoluments accordingly."

2. The learned Advocates for the respective sides have canvassed their submissions at length. Considering their submissions, the record available and the Law applicable, we are not required to advert to their entire submissions in this order.

3. The material aspects canvassed by the learned Advocate for the petitioner can be summarized as under :-

- [a] The petitioner's father was appointed as a '*Khidmati*' in the department of Medical and Public Health, Marathwada and was confirmed in employment on 25/11/1957.
- [b] On 04/10/1991, the petitioner was appointed as an '*Anshakalin Parichar*' with the Zilla Parishad at Aurangabad and was posted at Ladgaon Aayurvedic Dawakhana.
- [c] He retired on 31/01/1993.
- [d] He claims to be working as a 'Peon', though appointed as a 'Parichar' and was not being paid the salary of a Peon. He approached this Court in W.P. No. 2934 of 1995 and by interim orders of this Court, the Zilla Parishad was directed to pay the petitioner half of the pay scale that was

payable to the post of a 'Peon'.

- [e] On 11/03/1995, two persons namely Ramesh Laxman Rajput and Sayed Ibrahim Mohd. Shah were appointed as 'Peon-Class IV' at Vaijapur and Gangapur in place of their father in the Class-IV category.
- [f] The petitioner filed civil application in the pending W.P. No. 2934 of 1995 and this Court disposed of the application by permitting the petitioner to move a representation to the C.E.O. for making a request to be appointed as a 'Peon'.
- [g] By communication dated 13/02/2001, the District Health Officer rejected the representation of the petitioner.
- [h] By order dated 18/12/2003, W.P. No. 2934 of 1995 was disposed of by this Court with liberty to the petitioner to put forth all his claims before the Industrial Court.
- [i] The petitioner filed Complaint (ULP) No. 12/2004 before the Industrial Court and claimed reliefs under Items 5, 6 and 7 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.
- [j] The petitioner, therefore, prayed for a declaration of unfair labour practices against the Zilla Parishad and prayed for regularization as a 'Peon' with the Zilla Parishad.
- [k] The Industrial Court, by judgment dated 18/10/2007, directed the Zilla Parishad to pay the petitioner the wages payable to a 'Part Time Mehtar' as per the minimum wages applicable w. e. f. 10/10/1991 and in the event of any vacant post of '*Parichar*' being available, the petitioner be

considered for appointment by relaxing the age condition, if he otherwise fulfills all other conditions for appointment.

- [l] The Zilla Parishad has not challenged the said judgment and it has attained finality.
- [m] The order of the Industrial Court was implemented to the extent of payment of part time '*Safai Kamgar*' by communication dated 30/06/2014.
- [n] An advertisement was published on 10/06/2009 by the Zilla Parishad calling for the applications from the candidates seeking appointment to the Class-IV post. 124 posts were advertised.
- [o] The petitioner along with some co-workers filed W. P. No. 5014 of 2009.
- [p] This Court issued Rule and declined interim relief.
- [q] On 15/10/2015, W. P. No.5014 of 2009 was disposed off and the petitioners were granted liberty to file a fresh petition for seeking regularization.
- [r] The petitioner has been working as a part time 'Sweeper' as well as a 'Peon' for 25 years.
- [s] The Regional Animal Husbandry Department has granted regularization to an employee, who had worked continuously.
- [t] The C.E.O. Zilla Parishad, Aurangabad had granted regularization to 10 employees in the Class-IV category on 19/08/1988, 01/04/1989 and 16/06/2003.
- [u] The Zilla Parishad, Jalna granted permanency to 2 Class

IV employees by order dated 10/12/2015 and did not insist that they should appear for any examination.

- [v] The law laid down by the Hon'ble Apex Court in State of Karnataka Vs. M.L.Kesari is squarely applicable and this petition deserves to be allowed.
- [w] Rule 12 under Part-II Appendix 12 of the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967 provide for giving preference to those who have been in service for more than 3 years, while recruiting candidates to the Class-IV category posts.

4. Respondent No.2 / Zilla Parishad has opposed this petition by contending that the petitioner had earlier approached the Industrial Court seeking similar reliefs. The entire complaint was adjudicated upon and a judgment was delivered. The Zilla Parishad has accepted the said judgment. It is further submitted that a writ petition was earlier filed by this petitioner in 1995 within 4 years of his engagement as a part time employee. That petition was also disposed of. Another writ petition was filed in 2009 claiming the same reliefs and that petition was also disposed off. In the present petition, same reliefs are being sought.

5. It is then submitted that the claim of the petitioner cannot be entertained in the light of the Law laid down by the Hon'ble Apex Court in the matter of A.Umarani Vs. Registrar, Co-operative Society, Tamilnadu, based on which the State

Government issued a circular dated 25/08/2005, salient features of which have been reproduced in paragraph No. 4 of the first affidavit in reply dated 22/07/2016.

6. It is then contended that the Hon'ble Apex Court by judgment dated 18/02/2003, in the matter of **Dr.Chanchal Goyal Vs. State of Rajasthan** in Civil Appeal No. 7744 of 1997 has laid down the Law that ad-hoc employees have no vested right for regular employment and unless they are initially appointed in a regular employment by following the due procedure of law, no claim can be entertained for regularization in service *de-hors* the rules.

7. The above contention is reiterated on the basis of the judgment of the Hon'ble Apex Court in the matter of **Secretary to Government, School Education Department, Chennai Vs. Thiru R. Govindswamy and others [2014 AIR SCW 1643]**.

8. An additional affidavit was filed by the Zilla Parishad on 02/02/2017 contending that the part-time sweepers, who were earlier working on a consolidated salary, were paid 60% of the basic and special allowance of the post of 'Full Time Sweeper' as per the Government Notification dated 15/02/2003 keeping in view the judgment of the Industrial Court. It is further contended that the petitioner had appeared for the examination for appointment of a 'Peon' pursuant to the Industrial Court

directions on two occasions and he failed in both of his attempts. The Zilla Parishad had relaxed the age while permitting the petitioner to appear for the examination when he was 46 years.

9. It is then contended that when the Complaint (ULP) filed by the petitioner seeking same reliefs has been adjudicated upon by the Industrial Court and when 2 writ petitions have been disposed off earlier, the attempt of the petitioner in this petition is a repetition of his claim and hence cannot be entertained.

10. Learned Advocate for the Zilla Parishad then submits that this Court had issued a notice dated 20/03/2017 to the C.E.O., Zilla Parishad, Aurangabad to explain as to why action should not be initiated against him for not complying with the directions of the Industrial Court issued vide its judgment dated 18/10/2007. A detailed affidavit was filed on 20/04/2017 by the C.E.O. setting forth the facts and attending circumstances by which the petitioner could not be regularized as a '*Parichar*'.

11. Having considered the facts, circumstances and the submissions of the learned Advocates as above, we find that the petitioner had approached the Industrial Court by filing a ULP Complaint pursuant to the leave granted by this Court when his first writ petition was disposed of. It is apparent that this Court noticed that a mixed question of facts and Law was involved and the claim of the petitioner had to be properly adjudicated upon. It was, while deciding the ULP Complaint that the Industrial

Court concluded in paragraph No.21 that a Part time Sweeper/Parichar could be given preference under the Rules applicable to the Zilla Parishad, provided he qualifies himself for appointment by appearing for the test as is provided. In paragraph 22 of the Industrial Court's judgment, it was concluded that the age can be relaxed in order to give preference to the Part-Time employees. In paragraph No. 23, it was held that the claims of the part-time employees for regularization *dehors* the rules, was impermissible. It was only that the age limit could be relaxed for them, while competing with the other applicants.

12. It was in the above backdrop that the Industrial Court dealt with the entire claim of the petitioner and concluded that he would be entitled to the part-time payment available as per minimum wages applicable to the post of '*Mehtar*' from 10/10/1991 and in the event of a Full-Time post of '*Parichar*' being vacant and advertised, the petitioner would be entitled to apply for the said post. While considering the application, the age limit could be relaxed.

13. We do not find from the rules cited before us any such provision by which we could issue a mandate to the Zilla Parishad to give a complete go-bye to the recruitment procedure and appoint the petitioner as a '*Full Time Parichar*' with regularization. We also find that the said claim for absorption

and regularization as a '*Full Time Parichar*' has been put forth by the petitioner in two petitions previously and the ULP complaint. As the two petitions were disposed off earlier, it would reflect that this Court has applied its mind to the claim put forth by the petitioner. So also, a complete adjudication of the claims of the petitioner has been done by virtue of the judgment of the Industrial Court. If the petitioner was aggrieved by the directions of the Industrial Court vide which his claim was to be considered preferentially only to the extent of the relaxation of the age limit subject to he competing with all other candidates, the petitioner should have challenged the said direction before the learned Single Judge Bench of this Court. When the petitioner canvasses that the judgment of the Industrial Court has attained finality, it would so mean not only to the Zilla Parishad, but also the petitioner himself.

14. It also cannot be ignored that the petitioner has appeared for the written test on two occasions pursuant to the advertisements published by the Zilla Parishad and has been unsuccessful. He was permitted to appear for the recruitment test by granting relaxation of age pursuant to the directions of the Industrial Court. We do not think that we could grant any such relief of appointment and regularization as a '*Full Time Parichar*' to the petitioner in this petition, which he failed to secure directly by appearing for the two recruitment tests.

15. We are conscious of the observations of the Hon'ble Apex

Court in paragraph No.44 in the matter of Secretary, Karnataka State Vs. Uma Devi & Ors., 2006(4) SCC 1 by which it is held that a scheme for regularization of daily wagers who are working for decades be introduced for considering them for regularization.

16. Considering the above, we deem it appropriate to dispose of this petition by directing the respondent / Zilla Parishad to ensure that the judgment of the Industrial Court dated 18/10/2007 is scrupulously implemented. So also, the respondent / Zilla Parishad may refer the proposal of the petitioner to Divisional Commissioner for considering the claim of the petitioner for regularization on the strength of his long service as a 'part time Parichar-cum-Peon', on the lines of the permanency, if any granted by the Zilla Parishad, Jalna by relaxing the age limit. So also, the competent department is expected to prepare a scheme for regularizing the services of the petitioner and employees similarly situated as Full Time Parichar.

Sd/-

[S. M. GAVHANE, J.]

bsb/March 18

Sd/-

[S. V. GANGAPURWALA, J.]