

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

WRIT PETITION NO. 3502 OF 2009
WITH
CIVIL APPLICATION NO.6765 OF 2018
IN
WRIT PETITION NO.3502 OF 2009

Gopinath s/o Narsingrao Biradar,
Age : 48 years, Occupation : Nil,
R/o Vishnu Nagar, Nanded,
Taluka and District Nanded.

...PETITIONER

-versus-

Zilla Parishad, Nanded,
Taluka and District Nanded.
Through it's Chief Executive Officer.

...RESPONDENT

**WITH
WRIT PETITION NO.2118 OF 2009**

Sudhakar s/o Gangaram Gunjatkar,
Age : 56 years, Occupation : Service and
District President, Zilla Parishad Pani
Purwatha Karmachari Sanghatna,
R/o House No.P-1, 20/N-5, D-43,
HUDCO, New Nanded,
Taluka and District Nanded.

...PETITIONER

-VERSUS-

Zilla Parishad, Nanded,
Taluka and District Nanded.
Through its Chief Executive Officer.

...RESPONDENT

...
Advocate for the Petitioners : Shri Vivek Dhage.
Advocate for the Respondent : Shri R.K.Ingole Patil.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th June, 2018

Oral Judgment :

1 Insofar as the first Writ Petition No.3502/2009 is concerned, the Petitioner is aggrieved by the judgment of the Industrial Court dated 21.06.2007 by which, though Complaint (ULP) No.4/2005 filed by the Union on behalf of 51 employees has been allowed, the name of this Petitioner has been ignored for grant of such benefits as the Industrial Court developed an impression that he has been terminated from services and therefore, he will not be entitled for any benefits under the Kalelkar Settlement.

2 I have considered the submissions of the learned Advocates for the respective sides.

3 The learned Advocate for the Respondent has strenuously supported the impugned impugned and prays that this petition be dismissed with heavy costs as the Zilla Parishad is unnecessarily dragged into litigation for the past about 13 years.

4 Notwithstanding the strenuous submissions of the learned

Advocate for the Respondent, the record reveals that this Petitioner was reinstated in service by the judgment of the Labour Court and accordingly, he was taken back into employment. This aspect was lost sight of by the Industrial Court. So also, this Petitioner was issued with an order dated 12.04.2012 by the Respondent by which, he was taken on Converted Regular Temporary Establishment (CRTE) w.e.f. 01.04.1995 when he completed five years of employment as a daily wager and was entitled to be taken on CRTE after completion of this period. The only rider imposed by the Respondent is that as the Zilla Parishad has challenged the judgment of the Industrial Court dated 21.06.2007 (same judgment impugned in this petition) in Writ Petition No.2617/2008 by which, the Industrial Court had granted the benefits of CRTE to 46 employees, the decision of granting benefits of CRTE to this Petitioner would be subject to the result in Writ Petition No.2617/2008. This Court has delivered the judgment in Writ Petition No.2617/2008 on 08.05.2018 and the said petition was dismissed. Consequentially, the directions of this Court in paragraphs 12 to 14 of the judgment dated 08.05.2018 would be applicable to the Respondent even in this case.

5 While delivering the judgment in Writ Petition No.2617/2008 on 08.05.2018, this Court has referred to its earlier judgment in the matter of Zilla Parishad, Aurangabad and another vs. State of Maharashtra and another, 2017 (2) Mh.L.J. 837 and has observed in paragraph 9 as

under :-

"9. *It was finally concluded that the Industrial Court had rightly directed that the daily wagers be brought in CRTE. The conclusions in the said Zilla Parishad Aurangabad and Another case (supra) in paragraphs No. 19 and 20 read as under :*

"19. Considering the above, I do not find that the direction of the Industrial Court to bring the daily wagers on CRTE after having worked for five years continuously could be faulted. It is settled law that such daily wagers are not required to complete 240 days in continuous employment in each calender year and for five consecutive calender years so as to be entitled for the benefits under the Kalelkar Award. With the law in place, the impugned judgment cannot be termed as being perverse. This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

20. It needs mention that the representative of the respondent/Union representing these Employees has filed an additional affidavit dated 28.1.2016 stating that 15 employees amongst those mentioned in AnnexureA to the complaints have passed away. Their names are set out below paragraph 6 of the additional affidavit at page 179. The petitioner/Zilla Parishad would be under an obligation to calculate the deemed dates for bringing these deceased employees on CRTE notionally and the deemed dates on which they would stand to gain the benefits of regularization as per the Kalelkar Award and accordingly, calculate their monetary benefits which shall be paid to the legal heirs of the deceased employees. For the said purpose, the respondent/Union shall forthwith submit the names and addresses of the legal heirs of the deceased employees and shall ensure that there shall be no mistake in indicating the names of the legal heirs. After receiving such list, the petitioner/Zilla Parishad shall comply with the directions set out herein above within six weeks."

6 Considering the above, I find that the instant petition deserves to be allowed as the Industrial Court had excluded the Petitioner from the list of 46 eligible employees on the misconception that he was not in employment.

7 In the light of the above, this Writ Petition No.3502/2009 is partly allowed. The benefits of CRTE granted by the Respondent vide order dated 12.04.2012 to the Petitioner herein stand sustained in view of the judgment of this Court dated 08.05.2018 in Writ Petition No.2617/2008. The impugned judgment of the Industrial Court to the extent of this Petitioner (Gopinath Narsingrao Biradar), therefore, stands modified and the Petitioner's name stands included in the list of eligible employees.

8 Rule is made partly absolute in the above terms.

9 The pending Civil Application No.6765/2018 does not survive and stands disposed of.

10 Insofar as the second Writ Petition No.2118/2009 is concerned, by the same judgment dated 21.06.2007, the Industrial Court has deprived the deceased employee Suryakant Dattatraya Bodke, who is at Sr.No.28 in the list of employees mentioned by the Industrial Court in it's judgment dated 21.06.2007, for the reason that he had passed away when the complaint was decided by the Industrial Court.

11 However, since the deceased employee Suryakant Bodke was entitled to the benefits of CRTE while he was alive and in employment, the deceased employee was covered in the order dated 12.04.2012 by the State and was, accordingly, granted inclusion on CRTE after completion of five years in employment as a daily wager. As such, though Suryakant Bodke is no more, his legal heirs would be entitled for the monetary benefits as like the Petitioner (Gopinath Biradar) in the first petition, strictly in accordance with the scheme set out in the Kalelkar Settlement.

12 In the light of the above, the judgment of the Industrial Court dated 21.06.2007 stands modified only to the extent of including Suryakant Bodke in the list of beneficiaries. The second Writ Petition No.2118/2009 is, therefore, partly allowed. Rule is made partly absolute in these terms.