

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

WRIT PETITION NO. 2617 OF 2008
WITH
CIVIL APPLICATION NO. 6841 OF 2013
WITH
CIVIL APPLICATION NO. 4051 OF 2018
WITH
CIVIL APPLICATION NO. 4052 OF 2018

Zilla Parishad, Nanded,
Through its Chief Executive
Officer.

... **Petitioner.**

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Water Supply and
Sanitation Department,
Mantralaya-32.
2. Sudhakar s/o Gangaram Gunjatkar,
Age 53 years, Occ. Service and
District President, Zilla Parishad
Pani Purvatha Sanghatana,
R/o. House No. P-1, 20/N-5, D-42,
HUDCO, New Nanded, Nanded,
Dist. Nanded.

... **Respondents.**

...

Mr. R.K. Ingole Patil, learned advocate for petitioner.
Mr. S.P. Sonpawale, A.G.P., for respondent No.1.
Mr. Vivek Dhage & D.A. Karnik, learned advocate
for respondent No. 2.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 08th May, 2018

JUDGMENT :

1. The Zilla Parishad Nanded is aggrieved by the judgment

and order dated 21.06.2007 delivered by the Industrial Court, Jalna, by which Complaint (ULP) No. 04/2005 has been partly allowed and 46 workmen represented by the complainant union were granted the benefits of the Kalelkar settlement and the various government resolutions applicable.

2. This petition was admitted by order dated 23.01.2009 and this Court prima-facie concluded that the case of the petitioner is covered by the Government resolution dated 10.07.1974. The Zilla Parishad was directed to implement the judgment of the Industrial Court in respect of bringing the concerned employees on converted regular temporary establishment (CRTE) and extend the benefits to them.

3. Pursuant to the above, the petitioner Zilla Parishad deposited an amount of Rs. 34,43,846/- in this Court towards the wages of these daily wagers. Zilla Parishad informed this Court that total salary of Rs. 55,20,000/- is to be received from the Government. Therefore, by a detailed order dated 09.03.2012 passed on Civil Application No. 9951/2011, the 46 employees were permitted to withdraw the amount of Rs. 34,43,846/- towards their wages.

4. I have considered the strenuous submissions of the learned counsel for the petitioner Zilla Parishad, respondent No.

2/original complainant Union and the learned A.G.P. on behalf of respondent No. 1. With their assistance, I have gone through the record available. There is no dispute that the issue involved in this case is with regard to the daily wagers, working with the Zilla Parishad, in various departments, including Water Supply and Sanitation. An affidavit-in-reply has been filed by Mr. Pravin Bajrang Nalawade, dated 10.12.2008, by which it is informed that the Water Supply and Sanitation Departments initially were part of the Rural Development Department. This Department was created by Government notification dated 09.11.1995. It is stated that these 46 daily rated employees were appointed on daily wages. It is however canvassed that the government resolution dated 10.07.1974 would not be applicable to these 46 employees.

5. I have perused the government resolution dated 10.07.1974, in the light of the affidavit-in-reply filed by the State. The resolution clearly indicates that the issue of bringing the employees working on the work-charge establishments, daily- rated establishments and contingency-paid establishments under the Zilla Parishads on CRTE was under the consideration of the Government for some time. The Government has since decided that the said employees would be brought on regular establishment with effect from 01.04.1974 after they have put in total service of 05 years. Those who have put in 10 years would be brought on permanent

establishment. The Zilla Parishads were requested by the Government to create required number of suitable posts for bringing these persons on regular establishment and submit the proposals for sanction of additional posts to the Government under section 243 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

6. It is therefore obvious that such daily-rated employees are given the benefits akin to those benefits which are available under the Kalelkar settlement. The learned Division Bench of this Court while dealing with Writ Petition No. 2883 of 1992 in the matter of Sudhakar Gangaram Gunjatkar, President of Zilla Parishad Pani Puravatha Karmachari Sanghatana (respondent No. 2 herein, who is the original complainant before the Industrial Court) V/s. The Zilla Parishad, Nanded, has extensively dealt with the issue of such daily rated workmen in the light of the government resolution dated 10.07.1974. This Court, therefore, approved the scheme of bringing these daily-rated workmen working in the various water supply departments under the Zilla Parishads on CRTE after completion of five years and then to be brought on permanent establishment after completion of ten years.

7. In paragraph 11 of the judgment, the learned Division Bench concluded that the state was not justified in contending that

the Zilla Parishad will have to bear the expenditure towards salaries and allowances as also pensionary benefits from its funds and that the State will not release any grants for the purpose. It would be apposite to reproduce paragraph 11 of the judgment dated 19.01.2005 delivered in Sudhakar Gangaram Gunjatkar case (supra) herein under :

“11. State, therefore, was not justified in laying down by paras (2) and (3) of the notification dated 03.09.1991 that Zilla Parishad will have to bear the expenditure towards salaries and allowances as also pensionary benefits from its funds and that the State will not release any grants for the purpose. Nothing is placed before us to indicate that these are the posts in respect of which expenditure is debited to provisions of such works and schemes. Thus, in any case, the State has a statutory responsibility to provide grants for salaries and allowances, including pensionary and such other charges (read explanation (b) to Section 183) by virtue of Section 183(b) or 182 in the present case. Bar created by executive orders to that extent being against the statute, ought to be ignored.”

8. This Court (Coram : Myself) dealt with the applicability of Kalelkar Award in the matter of *Zilla Parishad Aurangabad and another V/s. State of Maharashtra and another.*, 2017(2) Mh.L.J., 837. The government resolution dated 10.07.1974 which promotes the Kalelkar settlement was considered by me and it was concluded that Kalelkar Award therefore would apply to such daily rated

employees. Paragraph No. 11 to 13 of the *Zilla Parishad Aurangabad case (supra)* read as under :

“11. The terms set out in the Kalelkar Award and the Bhole Commission recommendations have been long standing and have been implemented for the past about more than four decades. The Government Resolution dated 10.07.1974 infact promotes the Kalelkar Settlement and makes it mandatory to all such Establishments which are covered by the settlement that the daily wagers, who have been working for five years continuously are brought on CRTE and after completion of five years on CRTE, they are required to be regularized. There has been no change in this policy and the law applicable.

12. By the order of this Court dated 14.12.2006, the Employees have been brought on CRTE. The observations of this Court in paragraph 4 of the said order are reproduced herein below for clarity :-

4. *Hence Rule. Rule made returnable early. Ad interim stay to the impugned order so far as it directs the petitioner to pay the benefits to the employees after they are brought on CRTE with effect from the date on which they have completed five years of continuous service. Though the consequential benefits flowing from the order are not payable to the respondent till the date of passing of the impugned order on 1.7.2006, the petitioner is liable to bring the respondent on CRTE with effect from the date of the impugned order i.e. 1.7.2006. The respondent would, therefore, also be entitled to the benefits flowing therefrom from the date of the impugned order i.e. 1.7.2006. This*

arrangement is an interim one and would however, not affect the rights of the parties. The petitioner is therefore directed to immediately bring the respondent on CRTE within a period of three (3) weeks from today and pay him all the consequential benefits within a period of one month from the date of this order.”

13. Insofar as the submissions of Shri. Shah are concerned that the daily rated establishment is not a specific department created under the law, it is an establishment in which the daily rated workers are utilized by a different State instrumentalities. For common understanding, it has been defined as daily rated establishment and the wages of these daily rated employees are accordingly paid. The Kalelkar Award is squarely applicable to such daily rated employees for the past about more than four decades.

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 Annexure-A 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.”

10. The above said judgment was challenged by the Zilla Parishad Aurangabad before the Hon'ble Supreme Court in Special Leave to Appeal (CC Nos. 7303 and 7304 of 2017). By the order dated 16.03.2018, the said SLP was dismissed and the view taken by this Court in Zilla Parishad Aurangabad was sustained. Consequently, this issue is no-longer *res-integra*.

11. Considering the above, the challenge by the Zilla Parishad Nanded to the impugned judgment of the Industrial Court fails and this petition stands dismissed. Rule is discharged.

12. It is however made clear that the petitioner would initiate appropriate steps for implementing the judgment of the Industrial Court within a period of four months from today. Any issue as regards the financial responsibility for making the payments of arrears and regular wages to such workers would be covered by paragraph No. 11 of the judgment of the learned Division Bench in case of Sudhakar Gangaram Gunjatkar (supra) dated 19.01.2005. The amount of Rs. 34,43,846/-, withdrawn by the concerned workers under the order of this Court dated 09.03.2010 would be taken into account while calculating the arrears to be paid to these workers.

13. At this juncture, learned counsel for the petitioner points out a communication dated 11.01.2018 issued by the Desk Officer, Government of Maharashtra addressed to the Divisional Commissioner and Chief Executive Officers of Zilla Parishads excluding Dhule, Jalgaon, Pune, Satara, Nagpur, Vardha, Puldhana, Gondiya, Chandrapur, Osmanabad, Jalna, Latur, Hingoli, Beed, and Palghar, that the data, with regard to bringing daily rated employees on CRTE, should be submitted urgently. He further points out a

communication issued by the Zilla Parishad Nanded dated 13.02.2017 to the Principal Secretary, Rural Development and Water Conservation Department of the Government of Maharashtra by which details about pending cases and the proposals of such daily rated workmen has been submitted.

14. Needless to state, the competent department of the State Government is bound to consider the cases of all such similarly situated daily rated employees working in Zilla Parishads of the State Government, on parity, in view of the settled law, subject to their entitlement, in order to avoid a situation of compelling these daily rated workers to approach Courts and litigate.

15. Pending Civil Applications stand disposed of.

(RAVINDRA V. GHUGE, J.)

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