IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.296 OF 2005

Sahebrao Bhujangrao Chavan,
Age-34 years, Occu-Service,
R/o Choramba, Post : Nimgaon,
Tq. Hadgaon, Dist.Nanded -- PETITIONER

VERSUS

1. Zilla Parishad, Nanded,
   Through its Chief Officer,
   At and Dist. Nanded

2. Head Master,
   Zilla Parishad Kendriya Prathamik
   Shala, Choramba, Post : Nimgaon,
   Tq. Hadgaon, Dist. Nanded -- RESPONDENTS

WITH
WRIT PETITION NO.297 OF 2005

Baban s/o Maroti Talware,
Age-38 years, Occu-Service,
R/o Nimgaon, Tq.Hadgaon,
Dist. Nanded -- PETITIONER

VERSUS

1. Zilla Parishad, Nanded,
   Through its Chief Officer,
   At and Dist. Nanded

2. Head Master,
   Zilla Parishad Kendriya Prathamik
   Shala, Nimgaon, Tq.Hadgaon,
   dist.Nanded -- RESPONDENTS

Mr.M.D.Godhamgaonkar h/f Mr.P.G.Godhamgaonkar, Advocate for the petitioners.
Mrs.Y.M.Kshirsagar, Advocate for respondent Nos.1 and 2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 03/07/2018

ORAL JUDGMENT :

1. In both these petitions, the petitioners are aggrieved by the common judgment dated 29/06/2004 by which complaint (ULP) Nos.144/1999 and 103/1999 filed by these petitioners seeking regularization in employment, have been rejected.

2. I have heard the strenuous submissions of the learned Advocates for the respective sides and have gone through the record available.

3. The petitioners have taken a common stand in their complaints before the Industrial Court that they were employed in 1984 by the Head Master as a Peon-cum-sweeper. They completed 240 days in the uninterrupted service of the Zilla Parishad at its Central Primary Schools at Choramba and Nimgaon respectively. They tendered several representations from 1992 till 1996 and finally were constrained to file their ULP complaints before the Industrial Court. They are working even today and as such the Zilla Parishad has to

regularize their services. Reliance is placed upon an experience certificate issued by the Head Master of the school stating that these petitioners were working since June 1992 as a Peon.

4. The respondent/Zilla Parishad has consistently taken a stand that these petitioners are temporarily engaged under a scheme operated by the Central Government through the Zilla Parishads for serving mid day meals to the under privileged students in such schools. No appointment order was issued by the Zilla Parishad. Reliance is placed upon the judgment of the Hon'ble Apex Court in the matter of Upendra Singh Vs. State of Bihar and others [2018(3) SCC 680].

5. The record reveals that the respondents herein had initially taken a stand in its' written statement that none of these petitioners are appointed by the Zilla Parishad on daily wages. The appointment was not as per the recruitment rules prescribed under the Zilla Parishad Service Recruitment Rules, 1967. Considering the evidence on record, these petitioners have not produced any evidence to indicate that a recruitment procedure was followed for filling in permanent vacant posts and that they had applied for such posts. There is no evidence as regards vacant sanctioned posts. It is a

matter of speculation as to how did these petitioners enter the Zilla Parishad and were allotted work.

6. A communication is tendered across the bar today dated 02/07/2018 addressed to the learned Advocate for the Zilla Parishad by the Education Officer (Primary) Incharge of the mid day meals scheme wherein it is stated that these two petitioners were never in the service of the Zilla Parishad. They were engaged as a Cook/Helper under the mid day meals programme. Their engagement is purely based on the said project and their consolidated pay is of Rs.1,000/- per month. Reliance is also placed upon a Government Resolution dated 02/02/2011 pertaining to the mid day meals wherein partly amounts are apportioned for sustaining the expenses. The monthly stipend for the Cooks and the Helpers has been prescribed. The communication dated 02/07/2018 and the G.R. dated 02/05/2011 are taken on record and collectively marked as “Exhibit X” for identification.

7. In Upendra Singh (supra), the Hon'ble Apex Court has opined that notwithstanding the length of service of a daily wager, who has entered employment through the back door, no relief can be granted. However, the view taken by the Court in Secretary, State of

Karnataka & Ors. vs. Uma Devi (3) & Ors., [2006(4) SCC 1] is that a one time scheme for considering the daily wagers, who have worked for more than 10 years, to be regularized as a one time measure, is held to be applicable for a one time scheme.

8. Though the Zilla Parishad has informed the Court that these petitioners were working as a Cook/Helper in the said scheme, this aspect was suppressed by the petitioners before the Industrial Court. Nevertheless, as these petitioners are still in employment, the Central Government or the State, if has introduced any scheme for the benefits of such daily wagers, the appropriate authorities can consider the cases of these petitioners.

9. In view of the above observations, both these petitions are disposed of and Rule is discharged. It is, however, clarified that the aforesaid observation would not create any hurdle for these petitioners in the event of any scheme being introduced and if these petitioners feel that they have been superseded while being considered, they may take recourse to a remedy as would be permissible in law.

(Ravindra V.Ghuge, J.)