

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4629 OF 2012

- 1) Dashrath S/o Ambadas Paulbudhe,
Age : 60 years, Retired Driver,
R/o. Malipura, Old Jalna,
Dist. Jalna
 - 2) Janardhan S/o Gopalrao Kapse,
Age : 56 years, Occu.: Driver,
R/o. Jangda Nagar, Bhokardan Road,
Dist. Jalna
- .. Petitioners

Versus

- 1) The State of Maharashtra,
Secretary, Municipal Administration,
Mantralaya, Mumbai - 32.
 - 2) The Director,
Municipal Administration,
Pune
 - 3) The Divisional Commissioner,
Aurangabad Division, Aurangabad
 - 4) The Collector, Jalna
 - 5) The Municipal Council, Jalna
through its Chief Officer
- .. Respondents

...

Mr. S.M. Kulkarni, Advocate for petitioners
Mr. S.D. Ghayal, AGP for respondent-State
Mr. H.K. Munde, Advocate for respondent no.5

...

CORAM : SUNIL P. DESHMUKH &
P. R. BORA, JJ.

DATE : 08-01-2018

ORAL JUDGMENT (PER - SUNIL P. DESHMUKH, J.) :

1. Learned counsel for the petitioner submits that as a matter of fact, present petition was directed to be heard along with writ petition no. 8535 of 2011 under order dated 03-12-2013, however, while writ petition no. 8535 of 2011 had been placed on board, this petition had not appeared along with writ petition no. 8535 of 2011. He submits that the petitioners in present matter are exactly similarly situated as the ones, who were concerned in writ petition no. 8535 of 2011.

2. Petitioners were initially appointed for a period of one year and on temporary posts, their appointments have been on vacant and/or on newly created posts pursuant to communication issued by State Selection Board dated 21-03-1983. However, procedure for making regular appointments could not be subsequently followed and the State Selection Board ultimately had been dissolved.

3. In 1990, the State Government had issued a resolution for regularization of appointments made prior to 18-06-1983 referring to certain criteria.

4. According to learned counsel for petitioners, petitioners in present writ petition, as in writ petition no. 8535 of 2011, fulfill the criteria referred to under said resolution. The petitioners have continued in service, however, approval to their appointments had been pending before various authorities and around 2000, respondent no. 1 purportedly passed an order since appointments of petitioners have not been made by following due procedure, pursuant to provisions of Maharashtra Municipal Council, Nagar Panchayats and Industrial Townships Act, 1965 and in exercise of power under Sections 76 (2) and 337, purported to regularize the services as a one time measure subject to the conditions enumerated therein, *inter alia*, condition no. 2, reading thus,

" (२) सदर कर्मचाऱ्याची प्रथम ५ वर्षांची सेवा कोणत्याही सेवाविषयक म्हणजे सेवाजेष्ठता, वेतनवाढ, पदोन्नतीसाठी ग्राह्य धरता येणार नाही (निवृत्तीवेतन वगळून)"

5. Against aforesaid condition, various representations had been made by Municipal Council Employees' Union of Jalna, however, an order came to be passed on 07-07-2007 rejecting their request. The petitioners are thus before this Court.

6. Learned counsel points out order dated 13-11-2017 passed by a Division Bench of this Court, wherein in the similar set

of circumstances, this court had allowed the writ petition granting request made under the writ petition in terms of prayer clauses (A) and (B).

7. Learned A.G.P. Mr. S.D. Ghayal appearing for respondent submits that the factual matrix involved in the present petition may be similar to the one involved in writ petition no. 8535 of 2011. Learned A.G.P. fairly refers to communication in respect of one of the petitioners that the subject matter involved in the present writ petition is similar to the one in writ petition no. 8535 of 2011 and tenders across copy of communication dated 05-09-2012, which is marked as "X" for the purpose of identification. However, he submits that it may not be that the criteria referred to in the resolution can be said to have been satisfied. He, therefore, requests that a different view may be possible and the same be taken.

8. Although learned A.G.P. has argued so, he has not been able to point out any distinguishing factor which shall differentiate consideration in present petition from the ones considered while deciding writ petition no. 8535 of 2011.

9. In view of the reasons which have weighed with this court, as contained in paragraphs no. 14 to 16 of order dated 13-11-2017, reading thus,

" 14. Petitioners have referred to that while they were appointed in 1983, their ages and other qualifications were in accordance with the prevailing recruitment rules. Further, their appointments have been made on recommendation from Employment Exchange. It further appears that respondents have not been able to meet with the submission of the petitioners that under High Court's order, it has been considered that fulfillment of even one of the criteria would be sufficient for regularization of their services pursuant to the Government Resolution dated 05-02-1990, referred to hereinabove.

15. State Government on 15-02-1990 had resolved to regularize the services of petitioners who were employed purportedly without following regular process of selection prescribing certain criteria therefor. While the petitioners fulfilled all the requisite criteria, order/decision being taken amounts to second round decision being taken where a formal endorsement of regularization had been required, but making regularization subject to condition thereunder, has been an exercise of power which is colourable one, particularly while the Government decision had been taken embracing the cases of similarly situated persons, singling out the petitioners of the Municipal Council, Jalna, under impugned order is discriminatory.

16. Perusal of impugned orders does not depict that said Government Resolution had ever been taken into account. The order appears to have been passed without taking into account the Government Resolution specifically taking under its focus appointments by the Municipal Council prior to 18-06-1983. "

we consider it expedient to allow the present writ petition as well similarly.

10. In the circumstances, writ petition is allowed in terms of prayer clauses (A) and (B) and is disposed of.

11. Rule is made absolute accordingly.

[P. R. BORA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/