

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9423 OF 2017
(Satish s/o Madhukar Bhawsar Vs. The State of Maharashtra and
others)

WITH WRIT PETITION NO.9424 OF 2017
WITH WRIT PETITION NO.9425 OF 2017
WITH WRIT PETITION NO.9426 OF 2017
WITH WRIT PETITION NO.9427 OF 2017
WITH WRIT PETITION NO.9428 OF 2017
WITH WRIT PETITION NO.9429 OF 2017
WITH WRIT PETITION NO.9430 OF 2017
WITH WRIT PETITION NO.9431 OF 2017
WITH WRIT PETITION NO.9432 OF 2017
WITH WRIT PETITION NO.9433 OF 2017

Mr.Paresh B.Patil, Advocate for the petitioners.
Mr.B.A.Shinde, AGP for respondent No.1.
Mr.Vijay Sharma, Advocate for respondent No.2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 28/06/2018

PER COURT :

1. I have heard the strenuous submissions of the learned Advocate for the identically placed petitioners, the learned Advocate appearing on behalf of the Zilla Parishad respondent No.2 and the learned AGP on behalf of the state

2. The undisputed factors which are common to all these identical petitions are as under :-

[a] All these petitioners claim to have been working on the

Water Supply Scheme with the Zilla Parishad, Jalgaon on daily wages in between 13/02/1999 till 28/06/2002.

[b] All alleged oral terminations are w.e.f. 29/06/2002.

[c] All raised an industrial dispute in 2009 before the Conciliation Officer under the Industrial Disputes Act.

[d] Pursuant to the failure report submitted by the Conciliation Officer, the appropriate Government referred the industrial disputes u/s 2-A r/w 10 and 12 of the I.D.Act, to the Labour Court at Jalgaon.

[e] Each of these petitioners filed their statements of claims in January 2010.

[f] On 15/03/2010, each of these petitioners entered a purshis in their individual reference cases stating that the petitioners/second party workmen did not desire to prosecute the reference and prayed that the reference be disposed of.

[g] The Labour Court called for the say of the respondent/Zilla Parishad which was the first party employer in the proceedings.

[h] The matter was then placed before the Lokadalat on 01/05/2010 and these petitioners voluntarily withdrew the reference cases by signing on the compromise memo alongwith their Advocates.

[i] The Zilla Parishad was not a party to the said withdrawal.

[j] The Labour Court noted on 01/05/2010 in the Lokadalat that though the first party employer and its Advocate are absent, the second party workmen and their advocate desire to seek disposal of the reference cases.

[k] The panel members of the Lokadalat verified the

contents of the purshis and the signatures and disposed of the reference for want of prosecution in the presence of these petitioners.

[l] These petitioners approached the Additional Divisional Commissioner, Nasik on 30/04/2013 claiming that the elected Chairman of the Zilla Parishad has assured these petitioners that they would be reinstated in employment and would be granted permanency.

[m] The Executive Engineer of the Water Supply Section had issued a letter dated 31/10/2009 mentioning that the Chairman of the Zilla Parishad had made a telephonic call and directed that these 11 persons should be reinstated in the service of the Zilla Parishad and as 17 workers of the Zilla Parishad have been deputed with the Water Supply Scheme at Muktai Nagar, these persons can be inducted in their vacant positions.

[n] By the impugned order dated 10/11/2016, the Additional Commissioner, Nasik has rejected the appeals of these petitioners on the following grounds :-

[i] These petitioners cannot be inducted in service without following the due procedure.

[ii] In public employment, these petitioners cannot be employed on the telephonic directions of the Chairman of the Zilla Parishad.

[iii] The appeal preferred by them is not maintainable under the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules 1964 and Rule 14 does not apply to such persons who have neither been appointed by the Zilla Parishad nor are they in employment.

3. The learned Advocate for the petitioners has strenuously canvassed that they have trusted the then Chair Person of the Zilla Parishad who assured them that they would be recruited and would be made permanent. They have obtained a copy of the legal opinion issued by the learned Advocate dated 02/11/2009 opining that these petitioners can be considered only if they withdraw their cases from the Labour Court. It is, therefore, canvassed that these petitioners can be appointed in the Zilla Parishad based on the legal opinion expressed by the Panel Advocate of the Zilla Parishad.

4. I am not impressed by the submissions of these petitioners in view of the law laid down by the Hon'ble Apex Court in Secretary, State of Karnataka Vs. Umadevi [2006 (4) SCC 1 : AIR 2006 SC 1806]. These petitioners, who have worked in between 2 years to 3 years intermittently, cannot be considered for reinstatement, much less for regularization in service as it would amount to a back door entry in public employment.

5. The petitioners contend that by virtue of the Government Resolution dated 08/12/2017, 42 workers working in the Water Supply Department of the Zilla Parishad, Jalgaon have been granted

benefits of the Kalelkar Settlement. This submission is also fallacious since the Kalelkar Settlement primarily requires a daily wage to work with the Zilla Parishad or other State instrumentalities covered thereunder, for an initial period of 5 consecutive years, notwithstanding whether he completes 240 days in continuous employment in each calendar year. After fulfilling this condition, they are taken on converted regular temporary establishment (CRTE) and after working for further 5 consecutive years on CRTE, they can be considered for being absorbed in regular employment depending upon the availability of permanent posts. These petitioners have worked in between 2 to 3 years and are out of employment for the past 16 years. Even the Kalelkar Settlement would not cover these petitioners.

6. Considering the above, I do not find that the impugned order of the Additional Commissioner could be termed as being perverse or erroneous. These petitions, being devoid of merit, are therefore, dismissed.

(Ravindra V.Ghuge, J.)