

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10719 OF 2018

1. The State of Maharashtra,
Through Secretary,
Government of Maharashtra,
Forest Department, Mantralaya,
Mumbai.
2. The Chief Conservator of Forest,
Van Parimandal Nashik, Vanbhavan,
Old Agra Road, Nashik.
3. The Deputy Conservator of Forest,
Forest Department, Ahmednagar,
Nagar Aurangabad Road, Ahmednagar,
Dist. Ahmednagar. ...Petitioners.

Versus

Asarabai Dashrath Bhagat,
Age. 35 years, Occ. Service,
R/o. At Shendi, Tq. Nagar,
Dist. Ahmednagar. ...Respondent.

WITH
WRIT PETITION NO. 10720 OF 2018

1. The State of Maharashtra,
Through Secretary,
Government of Maharashtra,
Forest Department, Mantralaya,
Mumbai.
2. The Chief Conservator of Forest,
Van Parimandal Nashik, Vanbhavan,
Old Agra Road, Nashik.
3. The Deputy Conservator of Forest,
Forest Department, Ahmednagar,
Nagar Aurangabad Road, Ahmednagar,
Dist. Ahmednagar. ...Petitioners.

Versus

Mandabai Vitthal Hingurde,
Age. 40 years, Occ. Service,
R/o. At Post. Shende, Tq. Nagar,
Dist. Ahmednagar.

...Respondent.

WITH
WRIT PETITION NO. 10730 OF 2018

1. The State of Maharashtra,
Through Secretary,
Government of Maharashtra,
Forest Department, Mantralaya,
Mumbai.
 2. The Chief Conservator of Forest,
Van Parimandal Nashik, Vanbhavan,
Old Agra Road, Nashik.
 3. The Deputy Conservator of Forest,
Forest Department, Ahmednagar,
Nagar Aurangabad Road, Ahmednagar,
Dist. Ahmednagar.
- ...Petitioners.

Versus

Raju Tukaram Fasate,
Age. 35 years, Occ. Service,
R/o. At Post. Burhannagar,
Tq. Nagar, Dist. Ahmednagar.

...Respondent.

WITH
WRIT PETITION NO. 10731 OF 2018

1. The State of Maharashtra,
Through Secretary,
Government of Maharashtra,
Forest Department, Mantralaya,
Mumbai.
2. The Chief Conservator of Forest,
Van Parimandal Nashik, Vanbhavan,
Old Agra Road, Nashik.

3. The Deputy Conservator of Forest,
Forest Department, Ahmednagar,
Nagar Aurangabad Road, Ahmednagar,
Dist. Ahmednagar. ...Petitioners.

Versus

Chabubai Pandurang Shinde,
Age. 45 years, Occ. Service,
R/o. At Post. Pimpalgaon Malavi,
Tq. Nagar, Dist. Ahmednagar. ...Respondent.

WITH
WRIT PETITION NO. 10732 OF 2018

1. The State of Maharashtra,
Through Secretary,
Government of Maharashtra,
Forest Department, Mantralaya,
Mumbai.
2. The Chief Conservator of Forest,
Van Parimandal Nashik, Vanbhavan,
Old Agra Road, Nashik.
3. The Deputy Conservator of Forest,
Forest Department, Ahmednagar,
Nagar Aurangabad Road, Ahmednagar,
Dist. Ahmednagar. ...Petitioners.

Versus

Bhamabai Raoji Dethe,
Age. 40 years, Occ. Service,
R/o. At Phokardi,
Tq. Nagar, Dist. Ahmednagar. ...Respondent.

AGP for Petitioners : Mr. P.N. Kutti, Mr. K.S. Patil
and Mr. B.A. Shinde.
Advocate for Respondent : Mr. M.S. Kulkarni
h/f. Mr. P.V. Barde.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 26th September, 2018.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. All these petitions preferred by the State and the Chief Conservator of Forest, being identical, are taken up together for hearing by the consent of the parties. The petitioners are aggrieved by the identical judgments dated 21/03/2017 in Complaint (ULP) No. 142/2013, dated 18/03/2017 in Complaint (ULP) No. 140/2013, dated 18/03/2017 in Complaint (ULP) No. 139/2013, dated 22/03/2017 in Complaint (ULP) No. 143/2013 and dated 21/03/2017 in Complaint (ULP) No. 141/2013.

3. It is pointed out that identical directions are issued by the Industrial Court and such directions issued in Complaint (ULP) No. 142/2013 is reproduced here under for reference :

“(i) The complaint is partly allowed.

(ii) The respondent nos. 2 an 3 hereby directed to submit within three months from today, a proposal to the State

Government in respect of grant of permanency to the complainant, except by following due process of law, as said in paragraph no. 23 herein above.

(iii) In the facts and circumstances of the case, there shall be no order as to costs.”

4. The learned AGP appearing on behalf of the petitioners has strenuously criticized the impugned judgments. My attention is drawn to the seven grounds formulated in the memo of the petition. It is, further, contended that these respondents have secured appointments in EGS schemes. They have not been subjected to any selection process. The view taken by the Hon'ble Apex Court in Secretary, Karnataka State Versus Uma Devi [(2006) 4 SCC 1], is squarely applicable. Such back door entries cannot be regularized. When these respondents were working on EGS, there complaints before the Industrial Court were not maintainable. The Government Resolution dated 31/01/1996 and 16/10/2012, are not applicable and the impugned judgment and the directions deserve to be quashed and set aside.

5. Learned Counsel appearing on behalf of the identically placed respondents/original complainants points out that the

petitioner had conceded before the Industrial Court that they do not have any documents to indicate that these complainants were working on EGS. Paragraph No. 11 onwards, the Industrial Court has analyzed the evidence led by these petitioners. In the absence of any proof or evidence that these respondents were working on EGS, the Industrial Court has rightly concluded that there cannot be an assumption or presumption in view of the contention of the petitioner that these respondents were working on EGS.

6. There can be no debate that the Hon'ble Apex Court (Three Judges Bench) passed an order on 02/12/1996 in Civil Appeal No. 15339/1996, State of Maharashtra and another Versus Subhash Narayan Hampshire, thereby accepting the scheme set out by the State Government in the GR dated 01/12/1995, for regularization of the services of Muster Assistants and such daily wagers who are covered by the GR dated 01/12/1995. Based on the said order, hundreds of workers who are covered by the GR dated 01/12/1995, were granted benefits as were provided under the GR.

7. However, in the instant case, I find that a witness was examined by the petitioner namely Shri Ramesh Genu Devkhile,

Range Forest Officer, before the Industrial Court. Though, he asserted that these respondents were working on EGS, he admitted that the department had not prepared the seniority list for more than 10 years. He admitted in cross-examination that one seniority list dated 01/01/2009, placed on record at Exhibit U-12 A is the information given by the Information Officer of the petitioner. The service period of these respondents was admitted by the RFO, which indicates that they have worked for 240 days in each year.

8. The RFO then admitted that no EGS identity card was issued to the respondents. He contended that their names were registered with the Tahsildar under the EGS, but could not produce any document to support his contention. The RFO plainly admitted that there was no evidence before the Industrial Court to show that the complainant was working under the EGS. The RFO then stated that these six persons, who are engaged on daily wagers, are never subject matter of an advertisement calling for applications. He, further, admitted that these workers were allotted the works under particular scheme.

9. Considering the above, the Industrial Court concluded that

these respondents/original complainants were working continuously with the petitioner. The Industrial Court, therefore, directed the petitioner to prepare a proposal of these original complainants and forward them to the Government for granting permanency.

10. The learned AGP makes a grievance that the Industrial Court could not have directed the petitioner to consider the complainants for the benefits of permanency. I do not find that the said contention is sustainable in view of the fact that Standing order 4 C and 4 D of the Model Standing Orders, framed under the Industrial Employment (Standing Orders) Act, 1946, are not applicable to State Authorities or State Instrumentalities or Departments of the State. Merely because, a daily wager has completed 240 days in any of such departments cannot entitle him to the benefits of permanency. The State has to sanction posts and has to grant a financial sanction and based on the availability of the permanent posts, such daily wagers can be appointed on regular basis depending upon their seniority.

11. The learned AGP then submits that some time may be granted to the petitioners to forward the proposals of these

complainants for considering them for grant of permanency. Learned advocate for the complainants submits that as these complainants are working for more than two decades, the State will have to take steps for creation of posts, if it does not have sanctioned or vacant posts to absorb them as per their seniority.

12. In view of the above, these petitions are disposed of with the following directions :

(A) The petitioner No. 3 shall prepare the proposals of these respondents specifically stating therein that they have been held to be daily wagers and not on EGS by the Industrial Court, their total years of service and their last drawn wages.

(B) Such proposals would be forwarded to the Secretary Revenue and Forest Department, Government of Maharashtra, within a period of three months from today and no further extension of time shall be sought for any reason.

(C) The concerned department shall consider the cases of these respondent as per their seniority and grant them

regularization depending on the availability of sanctioned vacant permanent posts. The proposals shall be on the basis of the GR dated 16/10/2012.

(D) If the posts are not available, such cases of the respondents shall be considered as and when the posts are created.

(E) Until then, these respondents shall not be terminated from service merely on the ground that they are daily wagers, save and accept for disciplinary action/reasons.

13. Rule is therefore, discharged.

(RAVINDRA V. GHUGE, J.)