

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

WRIT PETITION NO. 554 OF 2017

Bhausahab Bhikaji Navthar
and others

.. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri A. D. Sugdare, Advocate for Petitioners.

Mrs. A. V. Gondhalekar, Addl.G.P. for Respondent Nos. 1 to 9

**CORAM : S. V. GANGAPURWALA AND
SUNIL K. KOTWAL, JJ.**

Closed for orders on : 12.07.2018

Order pronounced on : 24.08.2018

FINAL ORDER (*Per S. V. Gangapurwala, J.*) :-

. The petitioners seek directions against the respondents to treat the petitioners as permanent employees as per the judgment and order dated 29.12.1994 passed by the Industrial Court at Ahmednagar in the complaints. They also assail the judgment and order of the Maharashtra Administrative Tribunal dismissing the original application.

2. Mr. Sugdare, the learned counsel for petitioners submits that, the petitioners were appointed as Mustering Assistants in

the years 1982 to 1984 and they all worked till their absorption. They had filed complaints seeking permanency. The said complaints are allowed and respondents were directed to treat the petitioners permanent from the date of complaints. As per the policy, the petitioners came to be absorbed from 23rd July, 2004 on Group - C posts in the office of the respondent No. 3. According to the learned counsel, the petitioners are entitled for pensionary benefits by counting their service rendered as Mustering Assistants for the purpose of qualifying service. The learned counsel relies on the judgment dated 07.04.2016 of this Court in Writ Petition No. 11183 of 2015 with other connected writ petitions.

3. Mrs. Gondhalekar, the learned Additional Government Pleader for respondent Nos. 1 to 9 submits that, the services rendered by petitioners as Mustering Assistants cannot be considered in view of the policy formulated by the Government under Government Resolution dated 01.12.1995. The said G. R. is approved by the Apex Court. The judgment of the Industrial Court granting permanency to the petitioners would stand merged in the order of the Supreme Court. The learned Addl. G. P. relies on the judgment dated 16.07.2018 of this Court in Writ Petition No. 619 of 2006 and Writ Petition No. 1029 of 2006. The learned Addl. G. P. further submits that, the benefits of permanency as directed by the Industrial Court were never extended to the petitioners. Under Government Circular dated

15.04.2009, the Government has declared that, the Mustering Assistants will not get benefit of past service for pension.

4. We have considered the contentions canvassed by the learned counsel for respective parties.

5. It is a matter of record that, the petitioners' Complaints ULP filed before the Industrial Court, Ahmednagar have been allowed and the Industrial Court has directed the respondents to grant the petitioners status and privileges of permanency and consequential benefits from the date of filing complaints. The said judgment and order of the Industrial Court is not assailed and the same has become final. Subsequent scheme evolved under G. R. dated 01.12.1995 is with regard to absorption of all the Mustering Assistants in the Government service. The Division Bench of this Court at it's Principal seat in various writ petitions bearing Writ Petition No. 2946 of 1997 and other connected writ petitions had passed the following order :

"1. In view of the Judgment and Order dated 08th April, 1997 passed by the learned Industrial Court, Solapur, for the purpose of considering the grant of pensionary benefits, the Petitioners shall be treated as Permanent Employees with effect from 01st October, 1988 till the respective dates of superannuation.

2. In case of the Petitioners who were already superannuated, it will be open for them to make a representation to the concerned Authorities for grant of pensionary benefits.

3. If such representation is made, same shall be decided as expeditiously as possible and preferably within a period of four months from the date on which the representations are made.

4. We make it clear that, apart from issuing directions regarding the date of permanent employment of the respective Petitioners, we have not examined the case of the Petitioners as regards the eligibility of pensionary benefits.

5. Rule is made partly absolute on both terms with no order as to costs.

6. The Special Leave Petition filed against the said judgment and order is also dismissed.

7. In case of similarly situated employees, this Court has also passed orders on similar lines. Even this Court in Writ Petition No. 11183 of 2015 with other connected writ petitions under judgment and order dated 07.04.2016 was dealing with similar set of employees whose complaints were allowed under same order dated 29.12.1994 by the Industrial Court thereby granting privileges of permanency. This Court also allowed the same. The respondents have not represented that the said judgment has been assailed by them.

8. In the light of the above, there is no reason for us to take a different view, in view of the consistent judgments of this Court in case of similarly situated employees.

9. In the result we pass following order.

ORDER

1. In view of the Judgment and Order dated 29.12.1994 passed by the learned Industrial Court, Ahmednagar, for the purpose of considering the grant of pensionary benefits, the petitioners shall be treated as Permanent Employees with effect from the date of their complaints i. e. from the date of filing of their respective ULP's till the respective dates of superannuation.

2. In case of the petitioners who were already superannuated, it will be open for them to make a representation to the concerned authorities for grant of pensionary benefits.

3. If, such representation is made, same shall be decided as expeditiously as possible and preferably within a period of four months from the date on which the representations are made.

4. We make it clear that, apart from issuing directions regarding the date of permanent employment of the respective petitioners, we have not examined the case of the petitioners as regards the eligibility of pensionary benefits.

5. The order of the Maharashtra Administrative Tribunal also stands modified in above terms.
6. The writ petition is disposed of in the above terms.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

bsb/Aug. 18

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Sudhakar
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