

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.1239 OF 2018

Bhausahab s/o Sukhdeo Thorat,
Age-58 years, Occu:Service,
Resident of Jawalke, Tq-Kopargaon,
Dist-Ahmednagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Employment Guarantee Scheme,
Public Works Department,
Maharashtra State,
Mantralaya, Mumbai 400032,
- 2) The Superintending Engineer,
Ahmednagar Irrigation Circle,
Ahmednagar, Dist-Ahmednagar,
- 3) The Executive Engineer,
Ahmednagar Irrigation Division,
Ahmednagar, Dist-Ahmednagar,
- 4) The Sub Divisional Engineer,
Minor Irrigation (EGS) Sub Division,
Shrirampur, Dist-Ahmednagar,
- 5) The Collector, Ahmednagar,
Dist-Ahmednagar,
- 6) The Tahsildar, Rahuri,
Tq-Rahuri, Dist-Ahmednagar.

...RESPONDENTS

...
Mr.Suresh P. Pandav Advocate with Mr.A.N.
Walujkar Advocate for Petitioner.
Mr.P.K. Lakhotiya A.G.P. for Respondent
Nos. 1 to 6.

...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 14TH FEBRUARY, 2018

DATE OF PRONOUNCING JUDGMENT: 22ND FEBRUARY, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. Initially the Petitioner was appointed as Muster Assistant in Irrigation Division, Ahmednagar. The services of the Petitioner came to be terminated with effect from 1st August, 1985 vide order dated 31st July, 1985, passed by the Sub Divisional Engineer, Shrirampur. The

Petitioner filed Complaint (ULP) No.44 of 1985 before the Labour Court, Ahmednagar praying that his termination be declared as illegal and he be reinstated in service with consequential benefits, back wages and continuity of service. The Labour Court, Ahmednagar, vide Judgment and order dated 31st August, 1987 set aside the termination order dated 31st July, 1985 and directed Respondent No.4 to reinstate the Petitioner and give the benefit of continuity of service along with back wages from the date of termination till the date of reinstatement. Aggrieved by the said Judgment and order, the Respondents preferred Revision (ULP) No.25 of 1987 before the Industrial Court, Ahmednagar. Learned Member of the Industrial Court, Ahmednagar vide its Judgment and order dated 13th April, 1988 dismissed the said Revision Petition. The Respondents challenged both the orders passed by the learned Labour Court and Industrial Court before this Court by filing Writ Petition No.4227 of 1988, and this Court after

hearing the parties, rejected the said Petition vide order dated 25th August, 1988. The Respondents challenged the said orders before the Hon'ble Supreme Court by filing Special Leave Petition No.51181 of 1988 and other Petitions. The Hon'ble Supreme Court dismissed the said Special Leave Petitions vide its order dated 22nd January, 1990.

3. In the meantime the Government of Maharashtra prepared scheme of absorption of muster assistants into regular service to be governed by the Government Resolution dated 1st December, 1995 as modified from time to time. In view of the said scheme, the Petitioner was absorbed as Watchman in District Supply Office, Ahmednagar. Though the Petitioners became permanent employee as Muster Assistant from 1988 as per the order of the Labour Court and Industrial Court, the entry in his service record as a permanent employee was taken from the date of

his absorption i.e. from 4th November, 2004.

4. It is contended that similarly situated employees like the Petitioner filed Writ Petition No.8359 of 2013 and 8391 of 2013 before this Court and the Division Bench of this Court, by placing reliance on the earlier Judgment and order passed in Writ Petition Nos. 2946 of 1997 and 2236 of 1997, allowed the said Writ Petitions by Judgment and Order dated 13th August, 2015 and directed to grant benefits of permanency and pensionary benefits from the date of filing of the complaint by the Petitioners. It is contended that, the action on the part of the Respondents in not treating the Petitioner as permanent employee with effect from 1st October, 1988, is illegal, arbitrary, discriminatory and violative of principles of natural justice. Hence this Petition.

5. Learned counsel appearing for the

Petitioner invites our attention to the Judgment and order passed by the Division Bench of this Court (CORAM: S.S. SHINDE & SANGITRAO S. PATIL, JJ.) on 7th April, 2016, in Writ Petition No.11183 of 2015 (Arun s/o Baburao More vs. State of Maharashtra and others) and other two Writ Petitions. It is submitted that the Petitioners therein were also working as muster assistants and they have filed complaints before the Industrial Court, Ahmednagar. In the said complaints directions were given by the Industrial Court to the Respondents therein to confer status and privileges of permanency and other consequential benefits from the date of complaints filed in the Industrial Court. In the said group of Petitions, the Division Bench of this Court passed order that, the Petitioners shall be treated as permanent employees with effect from the date of filing the respective complaints till the respective dates of superannuation. Learned counsel further submits that the same relief is

being claimed by the Petitioners in the present Writ Petitions.

6. Learned A.G.P. submits that the Government of Maharashtra vide G.R. dated 1st December, 1995 has framed the scheme to absorb muster assistants in Government service. In the said G.R., muster assistants who were working as on 31st May, 1993 were to be included in the seniority list for their further absorption in the Government service. According to the above said G.R., the services of the Petitioners were absorbed. Hence principle of waiver will apply in this case as the Petitioner waived his right for counting of earlier service while absorbing in the Government service therefore the prayer made by the Petitioner for counting service as muster assistant is not permissible under service jurisprudence. It is submitted that there is no substance in the contentions raised by the Petitioner. Hence it is prayed that the Writ

Petition may be rejected.

7. We have carefully considered the submissions of the learned counsel appearing for the Petitioners and learned A.G.P. appearing for the State. With their able assistance, we have perused the grounds taken in the Petition the annexures thereto, and the Judgments delivered by this Court, copies of which are placed on record.

8. In the similar fact situation, the Division Bench of this Court (CORAM: S.S. SHINDE & SANGITRAO S. PATIL, JJ.), in Writ Petition No.11183 of 2015 and other two Writ Petitions, referred above, on 7th April, 2016, has passed following 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. Rule is made partly absolute on above terms with no order as to costs."

9. Taking the same view and for the same reasons as stated in the Judgment and order dated

7th April, 2016 passed in Writ Petition No.11183 of 2015 and other connected Writ Petitions, referred above, we pass following order:

O R D E R

I) In view of the Judgment and Order dated 31st August, 1987 passed by the Labour Court, Ahmednagar, for the purpose of considering the grant of pensionary benefits, the Petitioner shall be treated as Permanent Employee with effect from the date of his filing complaint, till the date of superannuation.

II) In case the Petitioner is already superannuated, it will be open for him to make a representation to the concerned Authorities for grant of pensionary benefits.

III) 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 representation is made.

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

V) Rule is made partly absolute on above terms with no order as to costs.

IV) The Writ Petition stands disposed of, accordingly.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]