

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.1240 OF 2018

Govind s/o Abaji Borude,
Age-65 years, Occu:Nil,
Residing at Amalner, Post-Karajgaon,
Tq-Newasa, Dist-Ahmednagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Public Works Department
Maharashtra State,
Mantralaya, Mumbai 400032,
- 2) The Executive Engineer,
Public Works Division,
Sangamner, Dist-Ahmednagar,
- 3) The Sub Divisional Engineer,
Minor Irrigation (EGS) Sub Division,
Kopargaon, Dist-Ahmednagar,
- 4) The Collector, Ahmednagar,
Dist-Ahmednagar.
- 5) The Zilla Parishad, Nashik,
Through Chief Executive Officer.

...RESPONDENTS

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Mr.Suresh P. Pandav Advocate with Mr.A.N.
Walujkar Advocate for Petitioner.
Mr.A.B. Girase Government Pleader for
Respondent Nos. 1 to 4.

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WITH

WRIT PETITION NO.1591 OF 2018

Bhikaji s/o Bhaurao Thorat,
Age-62 years, Occu:Retired,
Resident of Gondegaon, Tq-Shrirampur,
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 Executive Engineer,
Public Works Division, Sangamner,
Tq-Sangamner, Dist-Ahmednagar,
- 3) The Sub Divisional Engineer,
Public Works Sub Division,
Shrirampur, Dist-Ahmednagar,
- 4) The Collector, Ahmednagar,
Dist-Ahmednagar,
- 5) The Tahsildar, Shevgaon,
Tq-Shevgaon, Dist-Ahmednagar.

...RESPONDENTS

...

Mr.Suresh P. Pandav Advocate with Mr.A.N.
Walujkar Advocate for Petitioner.
Mr.A.B. Girase Government Pleader for
Respondent Nos. 1 to 5.

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**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 Petitioners were appointed as Muster Assistants in Minor Irrigation Division, Ahmednagar and Public Works Division, Sangamner, respectively. The Petitioners worked as muster assistants for considerable period but their services were not made permanent and therefore, the Petitioners filed Complaint (ULP) No.548 of 1988 and 561 of 1988 before the Industrial Court, Ahmednagar alleging commission of unfair labour practices covered by Item No. 9 of Schedule IV of

the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "MRTU & PULP Act, 1971). The said complaints were allowed by the Industrial Court, Ahmednagar by Judgment and Order dated 29th December, 1994. The learned Member, Industrial Court, Ahmednagar directed that status and privileges of permanency with consequential benefits from the date of filing of the complaints be conferred on the Petitioners. The said order passed by the Industrial Court was not challenged by the Respondents.

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 Petitioners were absorbed as muster assistants and they were given the pay scale. Though the Petitioners became

permanent employees as Muster Assistants from 1988 as per the order of the Industrial Court, the entry in their service record as a permanent employee was taken from the date of his absorption i.e. from 1st December, 2004.

4. It is contended that in similar set of facts and circumstances wherein the complaints were allowed by the Labour Court, the Revision was preferred before the Industrial Court and the said orders of both the Courts below were challenged before the High 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 in the said Writ Petition challenged the said orders before the Hon'ble Supreme Court by filing Special Leave Petition No.5181 and others of 1988. The Hon'ble Supreme Court was pleased to dismiss the said Special Leave Petitions vide its order dated 22nd January, 1990. It is further contended that

the similarly situated employees like the Petitioners have been conferred with the benefits of permanency and other benefits with effect from 1st October, 1988 and the Petitioners are not conferred with the status of permanency. Therefore the action on the part of the Respondents is illegal, arbitrary, discriminatory and violative of principles of natural justice. Hence these Petitions.

5. Learned counsel appearing for the Petitioners 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 Government Pleader 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 these cases as the Petitioners waived their right for counting of earlier service while absorbing in the Government service therefore the prayer made by the Petitioners 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 Petitioners. Hence it is prayed that the Writ Petitions may be rejected.

7. We have carefully considered the submissions of the learned counsel appearing for the Petitioners and learned Government Pleader 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 29th December, 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 Employee with effect from the date of their filing complaints, till the date of superannuation.

II) In case the Petitioners are already superannuated, it will be open for them 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 representations are made.

IV) 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.

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

IV) The Writ Petitions stand disposed of, accordingly.

[S.M. GAVHANE, J.]

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[S.S. SHINDE, J.]