

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10961 OF 2014

Vijaya
Gourishankar
Yadav

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Mrs. Vijaya Jayram Shembekar
Age 49, Occupation – Service
Residing at : B-11, Nav Anuradha
Ayodhya Nagari, Manpada Road
Dombivali (East) – 421 201.

... Petitioner

V E R S U S

1. Chief Executive Officer
Zilla Parishad, Thane
Thane – 400 602.
2. Chief Executive Officer
Zilla Parishad, Ratnagiri
Ratnagiri – 415 612.
3. The Divisional Commissioner
Konkan Division, Konkan Bhavan
CBD Belapur, Navi Mumbai – 416 007.
4. State of Maharashtra
through the Secretary, Rural Development
Government of Maharashtra, Mantralaya,
Mumbai – 400 032.

... Respondents

Mr. S. G. Deshmukh a/w Mr. R. M. Hardas for Petitioner.
Mr. S. P. Thorat for Respondent No.2.
Mr. Sandeep Babar, AGP for Respondent Nos.3 and 4.

**CORAM : SHANTANU KEMKAR AND
NITIN W. SAMBRE, JJ.**

RESERVED ON : JULY 5, 2018.

PRONOUNCED ON : JULY 17, 2018.

JUDGMENT [PER : NITIN W. SAMBRE, J.]

. This Petition is by an employee of the Respondent No.2 – Zilla Parishad, Ratnagiri, wherein she was appointed as Junior Engineer in the year 1985.

2. It is the claim of the Petitioner that on December 11, 1989 the Petitioner was sent on deputation to Respondent No.1 – Zilla Parishad, Thane and accordingly an order of deputation came to be issued on March 13, 1990. The Petitioner as such joined at Zilla Parishad, Thane.

3. On 17th July 1992 Respondent No.2 – Zilla Parishad, Ratnagiri passed a resolution recalling the Petitioner and two other Junior Engineers as their services were required with the Zilla Parishad, Ratnagiri – their parent employer.

4. It appears that the repatriation to the Respondent No.2 – Zilla

Parishad, Ratnagiri was not carried out in the backdrop of operation of certain interim order in the proceedings which were pending before this Court. It is the case of the Petitioner that since 1999 to 2014 Petitioner repeatedly requested the Respondent No.1 – Zilla Parisha, Thane to convert her deputation from Respondent No.2 to Respondent No.1 into that of permanent employment with Respondent No.1 – Zilla Parishad, Thane.

5. On 24th November 2014 Respondent No.1 – Zilla Parishad, Thane issued an order thereby relieving the Petitioner from Respondent No.1 with effect from 29th November 2014 so as to enable her to join her parent employer i.e. Respondent No.2 – Zilla Parishad, Ratnagiri.

6. It is this order of repatriation which is impugned in the Petition on the following grounds :

(A) That Petitioner having worked with Respondent No.1 – Zilla Parishad, Thane for a period of 24 years, the Respondent No.1, without any authority cannot cancel her deputation and repatriate her to her parent employer particularly when the equities can be considered in favour of the Petitioner.

(B) It is by virtue of the Government Resolution dated 11th December 1989, particularly clause – (5) the Petitioner's services were taken by the Respondent No.1 and as such it is not open for the Respondent No.1 to cancel her deputation.

(C) Unless her application for regularization of her service with Respondent No.1 is decided by the Respondent No.1, her deputation cannot be cancelled.

(D) The powers vest with the Government to transfer the services from one Zilla Parishad to another and as such considering the 24 years of service of the Petitioner with Respondent No.1, direction needs to be issued to all the Respondents to transfer her services to Respondent No.1 – Zilla Parishad, Thane.

7. The claim put-forth by the Petitioner is opposed by the Respondent No.2. The Respondent No.2 in categorical terms stated that way back in the year 1992 and thereafter, services of the Petitioner were required with it being her parent employer. Even though the Petitioner can claim permanency in the employment of Respondent No.1 unless her services are transferred to Respondent No.1 in lawful manner, Petitioner cannot insist upon retaining her service with Respondent No.1 - Zilla

Parishad, Thane. According to Respondent No.2, services of Petitioner are still on its roll as she was appointed against a sanctioned post with Respondent No.2 and not Respondent No.1.

8. The Respondent No.1 in its reply claimed that after deputation the effect was given by virtue of order dated 5th April 1990, Petitioner was to be repatriated to her parent employer i.e. Respondent No.2 in view of Government Resolution dated 11th December 1989. According to the Respondent No.1, it was waiting for some Government instructions, as such the Petitioner continued in the service of the Respondent No.1. According to him, by virtue of this Petition services of Petitioner cannot be regularized with it.

9. In the backdrop of aforesaid factual matrix, the Division Bench of this Court passed an order on 27th February 2015 with following direction :

“Status quo as of today shall be maintained till the next date”.

10. Affidavit in-reply is filed by the Respondent Nos. 3 and 4 through Under Secretary, Rural Development and Water Conservation

Department, Mantralaya, Mumbai and brought to the notice of this Court that the claim of the Petitioner was considered in the aforesaid factual background. Petitioner was appointed from open category. In future if any post felt vacant in the open category with the Respondent No.1, her services can be transferred to Respondent No.1, pursuant to her request in this Petition, provided same is recommended by the Respondent No.2. If such request is made by the Petitioner and recommended by the Respondent No.2 for transferring her services to Respondent No.1, this Court may pass an appropriate order to the aforesaid effect.

11. When the Petitioner was confronted with the aforesaid proposition, the Petitioner in categorical terms declined and rather submitted that she be permitted to apply for VRS. This Court is not dwelling on the issue as to the Petitioner can apply for grant of VRS, and if yes, to which of the Respondents and whether Respondents can grant such prayer for VRS. Said issue is left to the discretion of the Petitioner and the Respondents.

12. However, for the reasons recorded hereinafter, in our opinion, the Petitioner is not entitled for the relief claimed in the Petition.

13. It is not in dispute that the provisions of Maharashtra Civil Services (Joining Time, Foreign Service and Payment during Suspension, Dismissal and Removal) Rules, 1981 governs the services of the Petitioner on deputation. The guidelines pursuant to Rule 40 provides for maximum period of deputation of four years and in case if deputation of more than four years is prayed for approval of Chief Minister is required to be obtained. Admittedly, in the present case from the date of order of joining i.e. 16th April 1990 till she was relieved from the service of Respondent No.1 i.e. 24th November 2014, there is no sanction from the Chief Minister to continue the Petitioner on deputation for the period of 24 years.

14. Apart from above, the communications which are brought on record, particularly Resolution dated 11th December 1989 in categorical terms speaks of repatriation of the employees. Apart from above, the Respondent No.2 vide request made way back in 1992 has already requested for repatriation which was time and again repeated by the Respondent No.2, as the services of the candidates like the Petitioner is very much required with Respondent No.2. She having been appointed against a post felt vacant at relevant time with Respondent No.2.

15. It appears that in certain Writ Petition before this Court, the interim orders were read to the benefits of the Petitioner which has stalled her repatriation in 1992. Apart from above, the Respondent Nos. 1 and 2 are in agreement as is apparent from the impugned order dated 24th November 2014 that the service of the Petitioner needs to be repatriated to the Respondent No.2. In the aforesaid background, the claim of the Petitioner that her employment should be regularized with Respondent No.1 cannot be accepted, particularly when there is no such recognized right in law about the regularization of the service of an employee, who is on deputation with the Respondent No.1.

16. The fact remains that the Respondent No.1 has relieved the Petitioner so as to enable her to join her parent employment i.e. Respondent no.2, however, instead of joining the service of Respondent No.2 for last four years for the reasons best known to the Petitioner she had kept herself in limbo and has not joined her parent employer.

17. Though a support is drawn from the order of status-quo passed in the Petition, however, the fact remains that the other two similarly placed employees whose deputation was also cancelled by the

Respondent No.2 have joined their parent department i.e. Respondent No.2 by honouring the impugned order dated 24th November 2014. There is no special circumstances which warrants the consideration of the case of the Petitioner in a different manner than the one that the other two employees namely, Narendra Bhagwat Ahire and Vidya Rajaram Sawantdesai who were repatriated and joined their services with Respondent No.2.

18. In any case, neither the Respondent No.1 nor the State Government is ready and willing to grant request of the Petitioner of absorption of her services in the Respondent No.1 – Zilla Parishad, Thane for want of clear vacancy.

19. In the aforesaid background, we hardly noticed any cause which warrants interference in the extraordinary jurisdiction.

20. As such, the Writ Petition stands dismissed.

21. It is clarified that if the Petitioner fails to take any steps to resume her services with Respondent No.2 i.e. her employer, Respondent

No.2 is at liberty to take such steps in accordance with law against
Petitioner.

(NITIN W. SAMBRE, J.)

(SHANTANU KEMKAR, J.)