

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.4301 OF 2004

The State of Maharashtra  
Through:-

1. Range Forest Officer,  
Taloda Forest Division,  
Taloda, Dist. Dhule.

2. The Dy.Conservator of Forest,  
Forest Division Taloda (Mevani Div.)  
Tq. Taloda, Dist. Dhule.

..Petitioners

Versus

Deelip Chandulal Gurav,  
Age 32 years, R/o Shani Galli,  
Taloda, Tq. Taloda, Dist. Dhule.

..Respondent

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AGP Petitioners : Shri Bhagat N.T.  
Advocate for Respondent : Shri Sanap R.D.

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CORAM : RAVINDRA V. GHUGE, J.  
Dated: February 28, 2019

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ORAL JUDGMENT:-

1. The petitioners are aggrieved by the judgment and order dated 1.1.2004, delivered by the Industrial Court in Complaint (ULP) No.1473 of 1999.

2. On 21.2.2019, this Court had passed the following order:-

"1. This matter is heard finally at length. It is informed that

*the respondent workman has been working as a driver with the petitioners from 1995 and he has been removed on 12/02/2015. He has thus worked admittedly from 08/08/1995 till 12/02/2015.*

*2. The learned Advocate for the workman submits that he is now suffering involuntary unemployment. If he is held to have put in 20 years in service, by over-looking the shortfall of five months and twenty six days due to the disengagement order issued by the petitioners on 12/02/2015, he would accept such retirement and pensionary benefits. Only if there is any vacancy, he can be continued, since he has four years to attain superannuation. He would be open for this option.*

*3. He relies upon the internal communication dated 12/05/2015 of the Deputy Forest Officer Mevasi Forest Department, by which, it would indicate that there are two vehicles available and the department is searching for engaging drivers on such vehicles.*

*4. Copy of the said communication is taken on record and marked as 'X' for identification.*

*5. The learned AGP prays for some time to take instructions on this aspect.*

*6. Stand over to 28/02/2019 for passing orders."*

*3. Learned AGP appearing on behalf of the petitioners tenders a photostat copy of the communication dated 27.2.2019, received by*

him from the Deputy Conservator of Forests, Newasi Forests Division, that the department would require three months to consider the observations of this Court in its order dated 21.2.2019. The photostat copy of the said communication is taken on record and marked as Exhibit "Y" for identification.

4. On 5.8.2004, this Court had directed the petitioner to continue the services of the respondent, keeping in view that a vacancy was created due to the retirement of Shri R.C. Shaikh, who was a Driver, on 8.8.1995. The learned AGP submits that an incorrect statement was made on behalf of the State on 5.8.2014 that Shri Shaikh was retired. In fact, he was transferred and he subsequently retired on 30.4.1996.

5. This Court had directed the State to apply the law laid down in Dhirendra Chamoli and another [(1986) 1 SCC 637]. I find that the view taken by the Honourable Apex Court in Surinder Singh and another Vs. Engineer in Chief CPWD and others [(1986) 1 SCC 639] would also be applicable as the Doctrine of '*Equal Pay for Equal Work*' becomes applicable in such establishments.

6. In view of the above, the respondent could not have been discontinued by the petitioner on 12.5.2015 without seeking the

permission from this Court.

7. Notwithstanding the above, the respondent has placed on record a compilation of 16 pages, which are collectively marked as Exhibit "Z" for identification.

8. I find from page No.1 of the said compilation dated 19.3.2016 that the respondent was paid the VI Pay Commission's difference of wages, considering his Application No.1 of 2015 filed before the Industrial Court at Dhule. Page No.6 contains the details of the 35 Drivers and their dates of retirement, which were supplied to the respondent under the Right to Information Act. It indicates that amongst these Drivers, especially E.P.Pardeshi has retired in January 2019, G.O.Deore would retire in March 2019 and K.B.Pinjari would retire in April 2019. The respondent is 52 years of age approximately and has another six years for retirement. He is willing to waive the backwages for the period 12.2.2015, if he is reinstated with continuity in service in place of Shri Deore or Shri Pinjari.

9. Learned counsel for the petitioners submits that the proposal of the respondent would be forwarded to the Government for approval and pursuant thereto a decision as regards his reinstatement could be taken.

10. I find from the earlier order dated 5.8.2004 that in similar circumstances, this Court had directed the continuance of the respondent in place of Shri R.C.Shaikh. So also, the document at page No.8 in the compilation Exhibit "Z", dated 4.1.2002, indicates that two persons, namely, Shri P.V.Bhambre and Shri D.H.Patil, who were Drivers on temporary basis for the period 24.4.1995 upto 31.3.1997, were regularized and their names are included in the list of 35 Drivers at page No.6. Shri Bhambre retired in June, 2018 and Shri Patil would retire in August 2023. In the light of this factual information, I find that this petition can be partly allowed, with certain directions.

11. Hence, this petition filed by the State and the Forest Department is partly allowed. The impugned judgment of the Industrial Court, dated 1.1.2004, in Complaint (ULP) No. 1473 of 1999 is modified as under:-

**(A) The declaration of ULP against the petitioners is set aside.**

**(B) The petitioner shall regularize the services of the respondent in place of Shri Pardeshi or Shri Deore or Shri Pinjari in view of their retirements in January, March and April 2019.**

(C) The direction to regularize the respondent shall be issued on/or before 30.4.2019.

(D) The statement of the respondent that he would not claim backwages from 12.2.2015 till 30.4.2019 is recorded and he is granted continuity for the said period.

(E) Needless to state, at the time of superannuation of the respondent, he would be entitled for pensionary benefits considering the entire length of his service.

12. Rule is made partly absolute in the above terms.

( RAVINDRA V. GHUGE, J. )

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akl/d