

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

WRIT PETITION No. 3497 of 2009

Mir Nisar Ali S/o Mir Himayat Ali
age 39 years occupation service R/o
Chaitanya Nagar, Taroda (Bk.)
behind Sunna High School, Naned
Taluka and Dist. Nanded (died)
through: legal representatives :

- A. Tabassum Begam Wd./o Mir Nisar Ali,
age 40 years occupation housewife,
R/o 796, Chaitanya Nagar, near Sana School,
K.M. Foundation Hall, Nanded Tal. & Dist. Nanded.
- B. Mir Soheli Ali S/o Mir Nisar Ali,
age 19 years occupation education R/o as above.
- C. Mir Saif Ali S/o Mir Nisar Ali,
age 17 years occupation education,
minor, U/G. of real mother Tabassum Begum
Wd/o Mir Nisar Ali, No. A R/o as above.
- D. Mir Saeed Ali S/o Mir Nisar Ali,
age 14 years occupation education,
minor, U/G. As above. ...Petitioners

VERSUS

Zilla Parishad, Nanded
Taluka and District Nanded
Through its Chief Executive Officer ...Respondent

*Mr. Vivek Dhage, Advocate for petitioner
Mr. R.K. Ingole Patil, Advocate for respondent.*

CORAM : RAVINDRA V. GHUGE, J.

DATE : 27th June, 2019

ORAL JUDGMENT:

1. The petitioner is aggrieved by the judgment of the Industrial Court, Jalna, dated 21st June, 2007, by which, Complaint (ULP) No. 4 of 2005 filed by Sudhakar Gangaram Gunjatkar on behalf of the Union for representing a cause of 51 employees, was allowed only to the extent of 46 employees and the petitioner (Ser.No. 37) was excluded from the said judgment on the ground that he has already been absorbed in regular service.

2. I have considered the submissions of the learned Advocate for the petitioner and the learned Advocate appearing on behalf of the respondent- Zilla Parishad.

3. This Court has dealt with cases with similar set of facts in the matter of *Zilla Parishad, Aurangabad Vs. State of Maharashtra and another, 2017(2) Mh.L.J. 837*, judgment dated 8th May, 2018 delivered in Writ petition No. 2617 of 2008 in the matter of *Zilla Parishad, Nanded Vs. State of Maharashtra and Sudhakar Gangaram Gunjatkar* and by the judgment dated 13th June, 2018 delivered in writ petition No. 3502 of 2009 and Writ Petition No. 2118 of 2009 in the matter of Gopinath Narsingrao Biradar Vs. Zilla Parishad, Nanded.

4. It is pointed out that though 51 employees are mentioned in Annexure A, 46 employees were given the benefits

by the Industrial Court and five employees were excluded on different grounds. The petitioner was excluded on the ground that he had already been regularised. Order in Writ Petition No. 2118 of 2009 passed by this Court by the judgment dated 13th June, 2018 would apply identically to the case of the petitioner. The learned Advocates for the respective sides, therefore, submit that the same order will have to be passed.

5. In view of the above, this petition is allowed, as the Industrial Court has excluded the petitioner from the list of 46 eligible employees on the misconception that he was regularised strictly as per the terms of the Kalelkar Settlement.

6. In view of the above, this petition is partly allowed. The benefits of Converted Regular Temporary Establishment granted by the respondent, vide order dated 12th April, 2012 to the petitioner herein, namely, Mir Nisar Ali S/o Mir Himayat Ali stands sustained. In view of the judgment of this Court, dated 8th May, 2018 in Writ Petition No. 2617 of 2008, the impugned judgment of the Industrial Court to the extent of this petitioner (Mir Nisar Ali S/o Mir Himayat Ali), therefore, stands modified and the petitioner's name stands included in the list of the eligible candidates.

7. It is made clear that if the Zilla Parishad, Nanded,

while conferring the benefits to be paid to the petitioner, notices that he is already paid some of the benefits, it shall be at liberty to exclude the benefits already paid to the petitioner so as to avoid double payment.

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

(RAVINDRA V. GHUGE)
JUDGE

Madkar