

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 581 OF 2008

1. The State of Maharashtra
Through Secretary,
Social Forestry Department,
Mantralaya, Mumbai 32.
2. The Secretary,
Rural Development and Water
Conservation Department,
Mantralaya, Mumbai 32.
3. The Director of Social Forestry,
Maharashtra State, Pune.
4. The Deputy Director,
Social Forestry Division,
Ahmednagar.

Petitioners

Versus

1. Tulshidas Vishwanath Dhanwade
Age major, occ. service
r/o At post Kaprewadi, Tq. Karjat
Dist. Ahmednagar.
2. Bhaskar Shankar Thete
Age major, occ. service
r/o At post Kolhar, Tq. Rahata
Dist. Ahmednagar.
3. Aasraji Gahininath Ghule

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age major, occ. service
c/o Plantation Officers Social Forestry
Kopergaon, Ahmednagar.

4. Thakaji Kondiba Kolekar
age major, occ. service
r/o c/o Plantation Officers Social Forestry
Kopargaon, Ahmednagar. Respondents

Mr. S.G. Karlekar, AGP for the petitioners.
Mr. S.D. Dhongade, Advocate for respondents.

**CORAM: PRADEEP NANDRAJOG, CJ &
R.G. AVACHAT, J.**

DATE: 23.09.2019

PER COURT :

1] Heard learned counsel for the parties. At the outset, a fact though subsidiary but relevant for the consequence of the present decision may be noted. Four respondents who were the applicants before the Maharashtra Administrative Tribunal have superannuated from service on 31.05.2017, 31.03.2017, 31.05.2015 and 31.05.2015 respectively.

2] Since operation of the impugned order dated 27.06.2007 was not stayed by this Court, the respondents have received the benefits ensuing from the directions issued by the Tribunal and if the writ petitioners succeed, recovery to be made would be prohibited in view of the law

declared by the Supreme Court in the decision reported as 2015 AIR SCW 501 State of Punjab & Ors. v. Rafiq Masih (White Washer) etc.

3] With the afore-noted preamble statement, we proceed now with our judgment.

4] Either under the National Rural Employment Program or under the Social Forestry Project, the four respondents were employed on daily wage as Class IV employees on 26.11.1984. Funds being available each year, their employment on daily waged post was continued till when for the financial year 1987-1988 the Government being of the view that the afforestation undertaken in the State would take a long time, a decision was taken to create temporary posts in the regular pay scale and thus, the four respondents were appointed on 23.02.1988 as Class IV employees against temporary posts but in the regular scale of pay. The letter offering appointment records that the appointment was against temporary posts and would be liable to be terminated without any notice, meaning thereby, as and when temporary posts would be abolished, the employment would cease. Unfortunately, in the next financial year i.e. financial year 1988-

1989, no financial sanction being accorded to afforestation scheme, on 08.01.1989, services of the respondents were terminated. They rushed to the forum under the Industrial Disputes Act, 1947. They obtained protective orders in their favour and thus continued to serve.

5] The said order was stayed till the year 1995, when the Rural Development Department and Water Conservation Department thought it better not to litigate. On 28/29.09.1995 issued letters giving permanent employment to the respondents but upon condition that further service benefits would be governed by the said letter of appointment which was based on the Government Resolution dated 15.06.1995 were issued. This closes one chapter of litigation.

6] Respondents who were earlier appointed against temporary posts but under the regular pay scale, came to be appointed against permanent posts on regular basis. The second round of litigation, with which we are concerned today commenced when the respondents sought the benefit of *in situ* time bound promotion scheme. Under the scheme, if a Government employee did not earn any promotion after rendering service

of twelve years, he becomes entitled to be paid salary in the promotional post scale or the next above scale.

7] Whereas the respondents claim said benefit from the date they were appointed on regular pay scale against the temporary posts, the Government took the view that since permanent employment on permanent post was pursuant to the Government Resolution dated 15.06.1995, when appointment order was issued on 28/29.09.1995, the period of twelve years would reckon from the said date.

8] The view taken by the Tribunal is that the time bound promotion scheme envisages the period to reckon from the date when permanent appointment by placing the incumbent in the pay scale applicable was made. Thus, relief has been granted to the respondents.

9] The contention of learned AGP is that unless appointment on permanent post coupled with the existence of permanent post is made, the benefits under the time bound promotion scheme cannot be granted, meaning thereby, it is only when the respondents were given permanent

employment against permanents posts in the year 1995 time bound promotion benefits could be antedated.

10] The contention is without any sound legal basis for the reason the settled law is that unless a person is accorded permanent employment, the benefits of permanent employment have to be denied. The law does not draw any distinction between the post being a temporary post or a permanent post. As long as the appointment is permanent with benefit of increments in the pay scale being granted, if a temporary post is subsequently made a permanent post and the appointee on the permanent post against a temporary post becomes permanent appointee on a permanent post, the benefit would be from the date of initial appointment.

11] Thus, we dismiss the writ petition on merits.

12] Rule discharged. No costs.

(R.G. AVACHAT, J.)

CHIEF JUSTICE