

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

933 WRIT PETITION NO.12678 OF 2018

PRAKASH GULABRAO GOSAWAI AND OTHERS ..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

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Mr. Santosh S. Dambe, Advocate for the Petitioners.
Mr. S. M. Ganachari, AGP for Respondents-State.
Mr. A. D. Aghav, Advocate for Respondent Nos.2 and 3.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATED : 10th JANUARY, 2019.

PER COURT:-

1. We have heard learned counsel for respective parties.

2. The petitioner nos.1 and 3 had filed complaints bearing ULP No.518/1988 and ULP No.653/1988 respectively. The said complaints are allowed. Permanency is granted to them. The petitioners seek direction to treat petitioners as permanent employees as per order of ULP with effect from the date of their complaint and grant pensionary and consequential benefits.

3. As far as petitioner no.2 is concerned, his name does not appear in the final order passed by the Industrial Court. As such, the present

petition is not entertained to the extent of petitioner no.2. If the petitioner no.2 produces any order granting him permanency by the Industrial Court, he may agitate his claim afresh.

4. This Court in writ petition no. 8359 of 2013 with connected writ petitions under order dated 13.08.2015 and the another Division Bench of this Court in writ petition no. 11183 of 2015 with connected writ petitions under order dated 07.04.2016 in respect of similarly situated employees' who had filed complaint U.L.P. had passed the order, as passed in writ petition nos.2946 of 1997, 2236 of 1997 and 2246 of 1997 at Principal seat. The S.L.P. filed against the order in writ petition 2946/1997 is also dismissed.

5. The learned counsel for respective petitioners submit that, one of the mustering assistant filed writ petition No. 2946 of 1997 before this Court at it's Principal seat at Bombay. The Division Bench of this Court gave directions in the said writ petition to consider the past services for grant of pension in view of the judgment and order passed by the Industrial Court. The same relief is being claimed by these petitioners in the present writ petitions. The learned counsel submit that, the special leave petition filed against the said judgment and order of this Court is also dismissed.

6. The learned Additional Government Pleader states that, the past service cannot be considered of the petitioners in view of the scheme framed by the Government and approved by the Apex Court vide Government Resolution dated 01.12.1995 and the subsequent Government Resolution of the year 1999. The learned A.G.P. further submits that, it is only after the mustering assistants are absorbed in Government service, they can be considered as Government employees and benefits of Government service can be accorded to them. As these petitioners after absorption did not complete the period of qualifying service, they are not entitled for pensionary benefits.

7. It is not disputed that in this matter, the petitioners had approached the Industrial Court by filing complaint ULP. The said complaints are allowed and Industrial Court directed present respondent/State to accord those complainants/petitioner nos.1 and 3 herein status and privileges of permanency and consequential benefits from the date of filing of complaints. As the pensionary benefits are not being accorded, one of such complainants filed writ petitions bearing Writ Petition No. 2946 of 1997, Writ Petition No. 2236 of 1997 and Writ Petition No. 2246 of 1997. The Division Bench of this Court partly allowed the said petitions and passed the following order.

"1. In view of the Judgment and Order dated 08th April, 1997 passed by the learned Industrial Court, Solapur, for the purpose of considering the grant of pensionary benefits, the Petitioners shall be treated as Permanent Employees with effect from 01st October, 1988 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 both terms with no order as to costs."

8. The Special Leave Petition filed against the said judgment and order is also dismissed. In the light of that, we adopt the same course as adopted by this Court in the above said writ petitions and pass the following order.

I) In view of the Judgment and Order passed by the learned Industrial Court for the purpose of considering the grant of pensionary benefits, the petitioner nos.1 and 3 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.

II) In case of the petitioner nos.1 and 3 who were 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 petitioner nos.1 and 3, we have not examined the case of the petitioner nos.1 and 3 as regards the eligibility of pensionary benefits.

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

VI) Writ petition accordingly partly allowed of petitioner nos.1 and 3 only.

(A. M. DHAVALA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE