

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
137 WRIT PETITION NO.1738 OF 2020**

THE STATE OF MAHARASHTRA THROUGH PRINCIPAL
SECRETARY FOREST AND OTHERS ..PETITIONER

VERSUS

SUNIL PRABHAKAR WAKCHAURE ..RESPONDENT

...

Mr. R. P. Gour, A.G.P for the Petitioner.

Mr. Avishkar S. Shelke, Advocate for Respondent.

...

**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATED : 02nd MARCH, 2020.

PER COURT:-

1. The present respondent had filed Original Application before the Maharashtra Administrative Tribunal with the following reliefs:

"B) By appropriate order, direction, the impugned order dated 24.11.2015 be held to be illegal and contrary to the G.R. dated 19.10.1996 and the same be quashed and set aside

C) By appropriate order, the respondent authorities be directed to issue the order of regularization of the applicant on the basis of Government Resolution dated 19.10.1996 with effect from 1.11.1994 with all consequential benefits."

2. The Government under Government Resolution dated 19.10.1996 took decision to regularize the services of the Social Forest Labourers who had worked for 240 days in each year as on 01.11.1994. The present respondent was terminated from service. The respondent is the member of the Union. The

Union approached this Court. The stay was granted to the termination. The contention of the respondent is that though stay was granted by this Court, he was not allowed to join. He was required to file a Contempt Petition. The respondent was allowed to join subsequently on 27.10.1993. The Maharashtra Administrative Tribunal allowed the Original Application filed by present respondent directing the present petitioner to take decision on the line of the observations made and extend the applicant benefits of regularization from 01.11.1994 as per the Government Resolution dated 19.10.1996.

3. The learned A.G.P. submits that the petitioner did not work for 240 days. Though the stay was granted to the termination of the respondent, he did not join immediately and joined services on 27.10.1993. The other persons alongwith respondent joined on 16.08.1993. As the respondent did not join on 16.08.1993, he failed to work for 240 days. In view of that, the condition incorporated in the Government Resolution dated 19.10.1996 does not stand satisfied. The Tribunal committed an error in ignoring the said fact.

4. It is not disputed that the respondent has worked up to 01.11.1994. Only the dispute appears to be that, in the year 1993 the respondent did not work for 240 days. The respondent was terminated. The Writ Petition was filed by the Union of which

respondent is a member. The stay was granted by this Court. It appears that, the respondent was not allowed to join the duties though stay was granted. He filed Contempt Petition bearing No.199/1993. In the said Contempt Petition affidavit is filed by the present petitioner. Paragraph 5 and 6 of the affidavit reads thus:

"5. In reply to the contents of para nos.2 and 3 of the petition, I say that, it is true that the order passed by this Hon'ble Court was communicated to this respondent and got knowledge in the month of April, 93. It is also true that certain representations were made by the petitioner by filing application requesting therein for compliance of this Court order. The notice was also issued by them in respect of going on hunger strike on 30.08.1993. It is incorrect to say that on the basis of the notice, the respondent did not pay any heed to the request of the petitioner. It is true that in pursuance of notice of hunger strike and seating the petitioner on hunger strike, this respondent met the petitioners and assured them that there will be compliance of the Court order and they should not continue further hunger strike. To that effect certain written agreement is also executed by this respondent i.e. placed at Exh.P4 to the contempt petition.

6. In reply to the contents of para nos.4 and 5 of the petition, I say that, it is not correct to say that inspite of the application and the promise given in compliance of the Court order, the authorities have not made compliance deliberately. I say that, this respondent has to get the order complied with as there order within a short time as there was no availability of work at the place where the petitioner were working before the

termination. It is incorrect to say that the respondent has not complied Court orders intentionally or with a malafide intention, as alleged by the petitioner. Therefore, I say and submit that the contents to that effect are denied by this deponent."

5. Reading the said affidavit it is manifest that, it is the present petitioner who did not allow the present respondent to join the duty and only assurance was given to him. The present respondent had also given notice of going on hunger strike on 30.08.1993 itself. The defence of the present petitioner in the affidavit filed in the Contempt Petition is that because of the administrative difficulties within a short time the order could not be complied.

6. For the fault of the present petitioner the respondent cannot be penalized. It is not that the present respondent on his own volition failed to join as per the order of the stay.

7. In light of the above, Tribunal has not committed any error in passing the impugned order.

8. Writ Petition as such is dismissed. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE