

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4492 OF 2019**

Sachin s/o Ramnath Kasar
Age: 39 years, Occu: Service,
R/o Pipeline, HUDCO, H. No.69/418,
Savedi, Tq. & Dist. Ahmednagar. ..PETITIONER

VERSUS

1. The State of Maharashtra,
Through the State Excise
Department, Mantralaya,
Mumbai-32.
2. The Superintendent of State Excise
Opp. to Bus Stand No.3
Gunj Depot, Station Road,
Ahmednagar.
3. The Inspector of State Excise
Flying Squad No.1, Opp. to Bus Stand
No.3, Gunj Depot, Station Road,
Ahmednagar, Dist. Ahmednagar.
4. The Collector,
State Excise, Opp. to Bus Stand
No.3, Gunj Depot, Station Road,
Ahmednagar, Dist. Ahmednagar. ..RESPONDENTS

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Mr. Rahul A. Tambe, Advocate for the Petitioner.
Mrs. V. C. Chaudhary, AGP for Respondent Nos.1 to
4.

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

Closed for Orders on : 05.03.2020.

Order Pronounced on : 30.04.2020.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The petitioner had filed Original
Application before the Maharashtra Administrative

Tribunal, Aurangabad claiming permanency and salary from the year 2006. The Original Application is dismissed. Aggrieved thereby, the present petition.

2. Mr. Tambe, learned counsel for the petitioner strenuously contends that the petitioner is appointed as driver in respondent no.2 to 4 department in the year 2006 on clear and vacant post. The petitioner possesses the necessary qualification. The petitioner worked with respondent as a driver from the year 2006 till October 2018. The respondents have not paid due salary and wages to the petitioner, so also other benefits. The respondents also did not issue the permanency order. The petitioner since the year 2006 was driving vehicle bearing No. MH-16-N-172. The log book clearly depicts the name of the petitioner as a driver. On 22.12.2008, respondent no.2 forwarded letter to respondent no.3 for issuing appointment order to the petitioner. The respondent no.3 in turn forwarded the said letter to the higher authority on 06.01.2011. No further orders are issued. The respondents have also issued experience certificate to the petitioner. Time to time letters are issued by the Inspector, State Excise Department, Ahmednagar to substantiate that the petitioner is consistently working as driver with the Department. The learned counsel submits that only on the ground that the appointment order is not issued, the case of the

petitioner is not considered. On 06.07.2014, respondent no.2 issued letter to P.W.D., Solapur. The said letter clarifies that the petitioner alongwith other constable is in duty of Crime Branch. The petitioner is not paid the salary as applicable to the post of driver. The petitioner is also entitled to be issued with the permanency order. The respondents have extracted work from the petitioner for more than 12 years. The learned counsel places reliance on the judgment of the Apex Court in a case of **Sheo Narain Nagar and Others Vs. State of Uttar Pradesh and Others** reported in 2018 AIR (SC) 233 and submits that an action of keeping an employee on paltry system is unfair.

3. The learned A.G.P. contends that the petitioner was never issued with appointment order. No selection process is followed. The petitioner as and when required by the Department was called for outstation duty. It is not the case of regular employment, only when the department had to go outstation the services of the petitioner were solicited and he was paid from time to time. The selection process was conducted in the year 2012 for the post of driver by the respondent-Department. The petitioner participated in the selection process. The petitioner secured less marks and he was not selected. The petitioner is not entitled for regularization. The Tribunal has rightly considered the said aspects.

4. We have considered the submissions canvassed by the learned counsel for the petitioner and the learned A.G.P.

5. From the material placed on record, it appears that, the petitioner has worked with the Department. The petitioner has worked as a driver, but it does not appear that the petitioner has worked as driver all the year round since the year 2006. Admittedly, the appointment order was never issued to the petitioner. The petitioner was not appointed on ad-hoc basis nor on temporary or contract basis. It appears as per the contention of the respondent that when the officer of the department had to go outstation, the petitioner was called. It is not clear the number of days the petitioner worked with the respondents in the year. It appears that, it was as per the choice of the officer concerned, the petitioner was called for driving vehicle out of the station. The affidavit filed by the respondent clarifies that the letter dated 06.01.2011 issued by the Inspector, State Excise Department, Flying Squad No.1, Ahmednagar to Superintendent, State Excise, Ahmednagar asking for payment of the present petitioner was subsequently withdrawn. The Show Cause Notice was issued by the Superintendent, State Excise, Ahmednagar to concerned Inspector, State Excise, Flying Squad No.1 on 22.03.2013.

6. The petitioner on his own volition appeared for the selection process to the post of driver in the year 2012. The petitioner was not selected as he secured less marks. No grievance was made by the petitioner even at that time.

7. In view of all the aforesaid facts we do not find any error committed by the Tribunal in negating the prayer of the petitioner.

8. The petitioner also seeks arrears of salary. The record does not exist of number of days the petitioner has worked nor it is clear whether the engagement of the petitioner was on daily wages or on job work as and when his services were required.

9. In light of that, no case for interference is made out. Writ Petition as such is dismissed. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE