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

910 WRIT PETITION NO.5238 OF 2018

**SHRIDHAR SADASHIV SAKHARE
VERSUS
STATE OF MAHARASHTRA AND OTHERS**

**AND
WRIT PETITION NO.5261 OF 2018**

**JAGANNATH SURYABHAN MARKAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Mr P. V. Barde, Advocate for petitioners;
Mr S. B. Yawalkar, A.G.P. for respondents/State

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 28th September, 2021

PER COURT:

1. The petitioners in both these petitions are similarly situated. Both have put forth a prayer for issuance of directions to the respondents to consider the temporary services put in by these petitioners prior to their regularization, for the purpose of calculating their pensionary benefits and accordingly direct disbursements of pensionary benefits. It is also prayed that during the pendency of these petitions, provisional pension may be paid.

(2)

2. We have heard the learned Advocate for the petitioners and the learned A.G.P. on behalf of the respondents.

3. There is no dispute that these petitioners were working as Mustering Assistants in the Public Works Department, State of Maharashtra. Their dates of commencing their services as daily wagers are mentioned as being 02/09/1978 and 01/02/1981. The petitioner in the first petition, namely, Shridhar Sadashiv Sakhare had approached the Industrial Court by filing Complaint (ULP) No.105/1989 for seeking permanency. The second petitioner, namely, Jagannath Suryabhan Markad was terminated on 31/03/1988 after working for about seven years. He approached the Labour Court in Reference (IDA) No.66/1989 and was granted reinstatement with continuity and full back wages by the award delivered by the Labour Court on 15/12/1995.

4. Shridhar Sadashiv Sakhare superannuated on 31/05/2012 and Jagannath Suryabhan Markad superannuated on 31/05/2015. Shridhar Sadashiv Sakhare did not satisfy the requirements of pensionary service of 10 years. Shri. Jagannath Suryabhan Markad completed the said period.

5. The issue of Mustering Assistants was in litigation for almost a decade until the State Government introduced the Government Resolution dated 01/12/1995 and produced it before the Hon'ble Apex Court on 01/12/1996 by way of a scheme for absorbing Mustering Assistants on fulfilling the conditions set out in the said Government Resolution. The Hon'ble Apex Court accepted the Government Resolution as being a scheme for such absorption. It is based on these developments, that Mustering Assistants like these petitioners, depending on the fulfillment of the requirements set out in the Government Resolution dated 01/12/1995, acquired regularization in service.

6. The learned Advocate for the petitioners has relied upon two judgments delivered by this Court, dated 13/08/2015 in Writ Petition No.8359/2013, filed by Asaram Vithhal Shitre and another Vs. State of Maharashtra and another and other connected matters; and dated 06/09/2017 delivered in Writ Petition No.12043/2016, filed by Kadu Mahadu Bhawar Vs. the State of Maharashtra and others and a group of connected matters, wherein this Court has taken a view that the earlier service of the

(4)

Mustering Assistant, i.e. prior to their regularization, may be considered by the Government upon making a representation. Pursuant to such directions, the State Government passed the orders accepting the representations and granted pensionary benefits to such Mustering Assistants by reckoning their earlier service along with the service put in as regular employees.

7. The learned A.G.P. has vehemently opposed both the petitions contending that in a judgment delivered by this Court at the Principal Seat on 13/11/2017 in Writ Petition No.10471/2014, filed by Shri. Vikar Ansar Shaikh and others Vs. the State of Maharashtra and another, it has been concluded that the earlier services of such Mustering Assistants on daily wages cannot be reckoned with, as they were not occupying posts in Government service and they were purely working on daily wages in the absence of availability of such posts. Regularization can be granted only after a person occupies a vacant post and pensionary benefits are in connection with a permanent post available. He also points out that the Principal Seat had relied upon an earlier judgment delivered by this Court at the Aurangabad Bench on 16/07/2007 in Writ Petition No.619/2006, filed by Shivhar and

(5)

another Vs. State of Maharashtra.

8. The petitioners before us pray that they be permitted to forward a representation to the State Government and there is a possibility that the State Government may consider the said representation favourably in view of the order dated 15/02/2018, issued by the Chief Executive Officer, Zilla Parishad, Ahmednagar, in the light of the decision of the Government.

9. In view of the above, we permit the petitioners to tender a representation to respondent No.2, on or before 30/10/2021. The said representation would be considered by the said authority in the light of the earlier decision taken by the Desk Officer, Rural Development and Water Conservation Development Department, State of Maharashtra, dated 26/09/2017, as expeditiously as possible and preferably, on or before 28/02/2022.

10. We make it clear that while issuing these orders, we have not considered the merits of the claims of the petitioners as regards grant of pensionary benefits. In the event the petitioners are aggrieved by the order of respondent No.2, which would be

(6)

passed in the light of the above directions, they shall be at liberty to assail the said orders by availing of a remedy as permissible in law.

11. These petitions are therefore, disposed off with the above directions.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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