

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7553 OF 2018

Gajanan Hanmantrao Deshmukh,
Age - about 32 years, Occu. Service,
R/o Hanumangad Road, Keshve Nagar,
Nanded, Dist. Nanded

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Rural Development & Water Conservation
Department, Mantralaya,
Mumbai
2. The President,
The District Selection Committee at
Parbhani & The District Collector
at Parbhani
3. Agriculture Development Officer (ADO),
Zilla Parishad, Parbhani, Dist. Parbhani
4. Chief Executive Officer of Zilla Parishad
Parbhani at Parbhani, Dist. Parbhani
5. The Divisional Commissioner,
Aurangabad, Dist. Aurangabad
6. Principal Secretary,
Planning Department,
Mantralaya, Mumbai

..RESPONDENTS

Mr S.S. Thombre, Advocate for the petitioner;
Mr S.B. Yawalkar, AGP for respondent Nos.1, 2, 5 & 6

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

DATE : 5th August, 2021

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has preferred this petition for challenging his disengagement vide order dated 2.7.2018. It is undisputed that he was engaged by the order dated 14.3.2016 as an ad hoc Special Technical Officer, Mahatma Gandhi National Rural Employees Guarantee Authority (for short "MGNREGA"). His appointment was for an initial period of two years. He was entitled for an extension subject to the continuation of the scheme or the selection of a regularly selected employee. As like the petitioner, two more employees for the Parbhani region were appointed under the said scheme. Mr Vishal Dattatraya Kadam was one amongst these three ad hoc appointees, who was engaged as a Junior Engineer in the Construction Division of the Zilla Parishad,

Parbhani.

3. The contention of the petitioner is that as he was an ad hoc employee and was engaged under a scheme, the duration of which is a matter of speculation, he could not be disengaged to be replaced by another ad hoc employee. He, therefore, submits that he is completely aware that he has no right to the position in which he has been engaged as an ad hoc employee under the scheme. However, he does have a right to be engaged as an ad hoc employee until a regularly selected candidate is appointed or the scheme is aborted or brought to an end. He cannot be replaced by an ad hoc employee.

4. Shri Bhavthankar, the learned Advocate representing respondent nos.3 and 4 submits that under the said scheme, the Parbhani District was allotted three positions. One such position was allotted to the petitioner and another position was allotted to Mr Vishal Kadam. The third position went to Shri Divekar, who was also appointed for the second time, but thereafter he has resigned from the said post. He then submits that as the petitioner was an ad hoc employee, he

was disengaged and a permanent employee of the Zilla Parishad was deputed in his place, though a regular selected candidate is still not available.

5. A copy of the appointment order dated 15.6.2021 issued in favour of Shri Vishal Kadam, as an order of continuation under the said scheme, is placed before us. The same is taken on record and marked as "X" for identification. Shri Bhavthankar submits that along with the petitioner, Shri Kadam was also disengaged. However, he approached the Additional Commissioner by preferring an appeal in which he questioned his disengagement. By order dated 23.1.2019, the Additional Divisional Commissioner, Aurangabad partly allowed the appeal and directed the Chief Executive Officer, Zilla Parishad, Parbhani to grant a further tenure of temporary engagement to Shri Kadam on the same position which he had occupied as an ad hoc employee under the said scheme two years ago. The Zilla Parishad has accepted the order of the Additional Divisional Commissioner and by implementing the same, the continuation order dated 15.6.2021 has been issued to Shri Kadam.

6. In the light of the above, we see no difference between the case put forth by the petitioner and that of Shri Kadam. Both were engaged under the "MGNREGA". Both are ad hoc employees. Both were aware that they have no right to seek regularization or absorption in employment and that they can be continued as ad hoc employees till the scheme lasts, or a regular selected candidate is available, unless any of them commits any misconduct. The Additional Divisional Commissioner has passed an order granting continuation to Shri Kadam. The petitioner is before us since 4.7.2018. In these facts, we do not find it appropriate to direct the petitioner to approach the same Additional Divisional Commissioner as like Shri Kadam for seeking the same relief. He would have to spend further time before the said authority for seeking the same relief, which he has sought from this Court.

7. In view of the above, we are exercising our extraordinary jurisdiction and we are entertaining this petition. The same is, therefore, partly allowed. Since the appointment granted to the petitioner was an ad hoc engagement and as

he is out of employment since July, 2018, we would not be directing reinstatement with continuity and back wages as the petitioner was an ad hoc employee and we do not wish to tax the State Exchequer by granting back wages by applying the principle of 'no work - no pay'. However, akin to the order granted in favour of Shri Vishal Kadam, we direct respondent no.4 to issue a similar order to the petitioner within 15 days from today.

8. The petitioner makes a statement that as he is an ad hoc employee, he would not be seeking regularization in employment, save and except being subject to any decision in this context taken by the Government. Needless to state, all the three employees engaged for the Parbhani region shall be treated alike.

9. Rule is made absolute in the above terms. No order as to costs.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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