

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

901 WRIT PETITION NO.12706 OF 2018

SHARAD PRABHAKAR SONAWANE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Ms. P. S. Talekar h/f Mr. S. B. Talekar.
AGP for Respondents-State : Mr. P. S. Patil.
Advocate for Respondent Nos.4 & 5 : Mr. Joshi Milind M.
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**CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.**

DATE : 21.08.2021

PER COURT :-

1. By this petition, the three petitioners have put forth prayer clauses "A, B, C and D", which read as under :

*"(A) To quash and set aside the termination order dated 13.11.2018 issued by the Chief Executive Officer (**Exhibit-"L"**), by issuing a writ of certiorari, or any other writ or order as the case may be;"*

*"(B) To grant interim stay to the termination order dated 13.11.2018 issued by the Chief Executive Officer (**Exhibit-"L"**), pending hearing and final disposal of the present petition;"*

"(C) To grant ad-interim stay in terms of prayer clause "B";"

"(D) To direct the respondents to continue the petitioners till 31.07.2022 as per the Government Resolution dated 28.8.2017, and regularise the services of the petitioners with all the consequential benefits; by issuing a writ of mandamus or any other writ, order or direction as the case may be;"

2. The petitioners had specifically contended on the basis of the photostat copies of the muster roll for the month of November 2018 at Page Nos.110 to 112 of the petition paper book that though the petitioners were issued with the impugned termination order, the said order was not actually effected and they had continued in employment. Their signatures on the muster roll as well as the alphabet "T" meaning that they were travelling on job assignment, would indicate that they were in employment when the petition was filed on 20.11.2018. Looking at these pleadings, this Court had passed an order on 22.11.2018 directing respondent Nos.5 and 6 to maintain *status-quo* as regards the employment / services of the petitioners as on the said date. The said interim order was continued from time to time.

3. The petitioners further submit that on 27.02.2019, this Court had passed an order that if the petitioners are working on the posts, they would be entitled for salary and the concerned authority shall take effective steps.

4. On 03.04.2019, this Court considered the pleadings of the petitioners and directed that if the petitioners are working on the posts, then the respondents shall not withhold their salary.

5. The learned advocate for the petitioners then points out the order dated 30.04.2019 passed by this Court, wherein this Court directed the said respondents to pay the salaries of the petitioners. It is then submitted that on 13.06.2019, respondent Nos.4 and 5 disengaged the petitioners on the ground that their contract had come to an end. They were working as Special Technical Officers. Without seeking leave of the Court, they were disengaged.

6. By a communication dated 11.12.2019, the Chief Executive Officer, Zilla Parishad, Jalna had informed these three petitioners that as this Court had directed to continue their employment and pay their salaries, they were continued until 02.06.2019 and since the contract with the Zilla Parishad came to an end by efflux of time, they were disengaged with effect from 03.06.2019.

7. The learned advocate then draws our attention to an order passed by a Co-ordinate Bench on 29.01.2020 in Writ Petition No.4682 of 2019 filed by Chetan Nivrutti Mahajan and another Vs. The State of Maharashtra, wherein this Court directed, while disposing of the petition that the said petitioners should be continued in employment and having regard to the Government Resolution dated 28.08.2017, they should not discontinue the said petitioners till 31.07.2022, which is the period of their contract. Liberty was granted to the said petitioners to approach the State Government or the respondents for seeking regularization.

8. The learned advocate for Zilla Parishad points out that the petitioners were disengaged on 13.11.2018. As this Court directed that they should be paid their salary if they were working, that the petitioners were allowed to join duties from April 2019. As the contract of employment came to an end, they were disengaged with effect from 03.06.2019. It is then pointed out that this Court has delivered a judgment on 05.08.2021 in Writ Petition No.7553 of 2018 filed by Gajanan Hanmantrao Deshmukh Vs. The State of Maharashtra and others. Since similarly placed employees were reinstated by

the Parbhani Zilla Parishad, this Court also granted the same relief to Gajanan. As he was not in employment till this Court delivered its judgment, he was deprived of back wages.

9. We find from the record before us that the muster roll would indicate that the petitioners have signed in token of attending duties till 20.11.2018. On 22.11.2018, they were granted interim protection. However, it reflects from the contentions of the Zilla Parishad that they were disengaged after November only to be reinstated in April 2019.

10. In our view, once they were in employment notwithstanding under the orders of this Court, if they were to be disengaged thereafter, the Zilla Parishad should have approached this Court by preferring an application setting out reasons for disengaging the petitioners. In the backdrop of the Court orders directing payment of salary and on recording that they are in employment, the Zilla Parishad should have refrained from unilaterally disengaging the petitioners without praying for the vacating of the interim orders or without seeking permission from the Court. To the extent of such disengagement from 03.06.2019 onwards, the petitioners will

have to be given the benefit of salary since they were disengaged despite our orders.

11. In Chetan Nivrutti Mahajan (*supra*), this Court had considered the Government Resolution dated 28.08.2017 by which such Special Technical Officers were engaged and the Government Resolution indicates that the services of such officers has been continued till 31.07.2022. Even in Gajanan Hanmantrao Deshmukh an identically placed employee namely Mr. Vishal Dattatraya Kadam was granted reinstatement under the orders of the Additional Commissioner before whom he had questioned his disengagement. A third employee similarly situated, namely Mr. Divekar was also granted reinstatement, though he subsequently resigned from the said post. This Court, therefore, partly allowed the petition filed by Gajanan Hanmantrao Deshmukh and while granting him reinstatement, back wages were denied since he admittedly was not granted any relief by this Court and he was never in employment till the judgment dated 05.08.2021 was delivered in his case. In the case in hand, the petitioners were reinstated in April 2019 and when the orders of this Court directing wages to be paid if they were working, the Zilla Parishad ought not to have

unilaterally terminated them.

12. In the above backdrop, we are of the view that these petitioners would be entitled for back wages from June 2019. We have considered the submissions of the learned advocates for the respective parties on the quantum of back wages. The petitioners were kept away from work from June 2019. This was in-voluntary unemployment. In the affidavit filed by Anandkumar Saudagar Mirgane, B.D.O. (MGNREGA) Zilla Parishad, Jalna, it is submitted that these petitioners did not report for duties after June 2019.

13. Considering the above factors in totality and keeping in view that the tax payers' money is being utilized in making payments of salaries of these persons, that we find it equitable to grant 60 % back wages from June 2019 / from the day they have been discontinued in 2019 till their reinstatement.

14. As such, this petition is partly allowed.

15. Similar to the directions in Chetan Nivrutti Mahajan (*supra*), these petitioners would be reinstated in service on or before 01.09.2021 and they would continue in accordance with

the Government Resolution dated 28.08.2017 till 31.07.2022 or till the Government extends such employment by issuance of further Government Resolution. 60% of their unpaid wages shall be paid till 31.08.2021, towards back wages.

16. We further direct that in the event, the Government takes a decision with regard to the regularization of similar employees, these petitioners would be entitled to seek such benefits depending upon the policy decision of the State Government.

17. The learned advocate for the petitioners submits that she would circulate the Contempt Petition No.106 of 2020 before the appropriate Bench and the petitioners would withdraw the same within two weeks from today.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-