

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

WRIT PETITION NO.915 OF 2008

1. Narsing s/o Ganapati Kolhapure,
Age : 60 years, Occupation : Nil,
R/o At Post Chimbhala, Tq.Shrigonda,
Dist. Ahmednagar.
2. Kushaji s/o Sakharam Kumbhar,
Age : 65 years, Occupation : Nil,
R/o C/o Narsing Ganapati Kolhapure,
At Post Chimbhala, Tq.Shrigonda,
Dist. Ahmednagar.
3. Baburao s/o Ganapat Borage,
R/o C/o Narsing Ganapati Kolhapure,
At Post Chimbhala, Tq.Shrigonda,
Dist. Ahmednagar.
4. Appasaheb Jairam Dhenge,
Age : 62 years, Occupation : Nil,
R/o At Post Chanekuppi, Tq.Gadh Hinglas,
Dist. Kolhapur.
5. Siddhahappa s/o Kallappa Chinchewadi,
Age : 63 years, R/o At. Post Bhadgaon,
Tq.Gadh Hinglas, Dist. Kolhapur.
6. Rajgonda s/o Ramchandra Patil,
Age : 63 years, R/o At Post Chinchwad,
Tq.Karvir, Dist. Kolhapur.
7. Maroti s/o Dattatraya Patil,
Age : 64 years, R/o C/o Narsing Ganapati
Kolhapure, At Post Chimbhala, Tq.Shrigonda,
Dist. Ahmednagar.

...PETITIONERS

-VERSUS-

1. The Secretary,
Government of Maharashtra.
Irrigation Department, Mantralaya,
Mumbai.
2. The Executive Engineer,
Krushna Khore Development
Corporation, Sinchan Bhawan,
Pune.
3. The Executive Engineer,
Pune Irrigation Division,
Pune.

...RESPONDENTS

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Advocate for the Petitioners : Shri P.L.Shahane
AGP for the Respondents 1 and 3 : Ms.V.S. Chaudhari

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th March, 2022

ORAL JUDGMENT :

1. By this Writ Petition, the petitioners have put forth prayer
clauses A, B, C and D as under :-

- A) *Rule may please be granted and record and proceedings of complaint ULP No.37/1997 may please be called for from the Court of Hon'ble Member Industrial Court at Ahmednagar by writ of certiorari or any other order, writ, or direction.*
- B) *After calling the record and going through the record and judgment passed by the Hon'ble Member Industrial Court at Ahmednagar dated 29.07.2006 in Complaint ULP No.37/1997 may please be quashed and set aside by appropriate writ or certiorari or any other like writ, order or direction.*
- C) *It be held and declare that the orders of termination*

from service issued to the petitioners dated 31.07.1974, 30.06.1974, 31.07.1974, 31.07.1974, 31.07.1974 and 31.07.1974 are illegal, improper, unjust, legally untenable and bad in law and therefore the said orders may please be quashed and set aside by this Hon'ble Court by appropriate writ order or direction and the services of the petitioners may be treated as continuous service without any break for the period from 30.06.1974 and 31.07.1974 till the date of reemployment of the petitioners with the respondents i.e. 06.07.1976, 09.07.1976, 03.07.1976, 12.07.1976, 03.07.1976, 01.07.1976 and 01.07.1976 and the petitioners may be granted all the benefits of continuity of service including the wages for the continuous service period of the petitioners by appropriate writ, order or directions.

- D) It be held and declared that the petitioners are entitled for continuous service from the date of their joining the service with the Soil Conservation Department which dates may be noted as 01.02.1966, 31.01.1967, 06.05.1966, 29.12.1965, 29.12.1965, 01.07.1966 and 25.01.1966 and till the date of their superannuation i.e. 31.07.1997, 30.06.2004, 31.12.2003, 30.09.2001, 30.04.2002 and 31.05.1999 and their pay fixation and their retirement benefits may be counted by condoning the breaks in two services and all the monitory benefits of continuous service may kindly be given and granted to the petitioners including all retirement benefits with the interest @ 18% p.a. on the said amount by appropriate writ order or direction."*

2. These nine petitioners had been before the Industrial Court vide Complaint (ULP) No.37/1997 alleging that the respondents have indulged in unfair labour practices under Items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 (hereinafter referred to as "the State Act"). The petitioners had raised several issues before the Industrial Court. Primarily, their case was that their retrenchment has occurred on various

dates as mentioned in annexure-A to the complaint (in between June, 1974 till July, 1976). It was prayed that the retrenchment be quashed and set aside and the gap in service between the date of retrenchment and their fresh employment by virtue of which, they have worked continuously with different departments, be bridged . These petitioners were working at various places like Aurangabad, Sangli, Kolhapur, Jalna, etc.. In 1976, they were issued with fresh appointment orders along with two increments on account of the break in service and loss of the earlier part of their service while reckoning their total service for retiral benefits. The Industrial Court, vide it's impugned judgment dated 29.07.2006, has dismissed the complaint on the ground that the complainants had approached the Court with delay of 21 years when the limitation was of only 90 days in the light of the Industrial Court Regulations, 1975.

3. The learned advocate for the petitioners has strenuously contended that the judgment delivered by the Hon'ble Supreme Court in ***S.G. Chemicals and Dyes Trading Employees Union vs. S.G. Chemicals and Dyes Trading Ltd., 1986(2) SCC 624***, enables the petitioners to approach the Industrial Court under Items 5 and 9 for questioning/ assailing their retrenchment and therefore, the Industrial Court should have considered the complaints.

4. It is now a settled position of law for almost four decades that cause of action like termination, discharge, dismissal, retrenchment,

removal from service, etc. would fall under Item 1 of Schedule IV, in the light of Sections 6 and 7 of the State Act, exclusively within the jurisdiction of the Labour Court. Therefore, I am not required to deal with the submissions of Shri Shahane that the Industrial Court should have considered the case of retrenchment, more for the reason that it would be futile exercise keeping in view that the petitioners had approached the Industrial Court after a delay of 21 years. The explanation strenuously put forth by Shri Shahane that they were constantly making representations, is not a reason which would convince any court that the delay of 21 years should be condoned.

5. The respondents/ State Authorities have filed an affidavit in reply through Shri Subhash Namdeo Koli, Sub Divisional Engineer, Ghod Irrigation Sub Division No.2, Madhevadgaon, Tq.Shrigonda, District Ahmednagar, in which, they have stated in paragraphs 3, 5 and 10 as under :-

“3. I further say and submit that the delay is more than 20 years in filing the Complaint before the Industrial Court. Two increments are allotted by Government for break in service and their break in service is already counted for the sake of pensionary benefit, in view of the Government Resolution dated 29.09.1980. The copy of Government Resolution dated 29.09.1980 is annexed herewith and marked as Exhibit R-I.”

“5. I further say and submit that the complainant must have to file complaint against Agricultural Department in 1974 against termination. It is not true to say that the Respondent have not given and paid

the wages for break period. Allotment of two increments is equal to benefit for break of service and there for continuity in service.”

“10. In reply to para No.8 of the petition, I say and submit that the petitioners have never challenged illegality of their retrenchment up to 20 years. Allotment of 2 increments against break of service of 2 years is legal. Therefore, the findings recorded by the Ld. Industrial Court is legal and proper.”

6. Considering the above averments in the affidavit in reply, I have perused the Government Resolution dated 29.09.1980 issued by the Agriculture and Irrigation Department, which pertains to the schemes that were operated by the Department of Agriculture and which have been shut down leading to the retrenchment of employees working in the said department. It is the statement of the respondent authorities that this Government Resolution is applicable to these petitioners and two extra increments have been given to them when they were issued with fresh appointment orders in different departments in 1976. However, this ground was not raised before the Industrial Court by the respondents and neither was this Government Resolution cited.

7. Nevertheless, since the Industrial Court rightly concluded that the delay of 21 years does not deserve to be condoned, I have no reason to cause any interference in the impugned order.

8. However, as the State has now taken the stand that the Government Resolution dated 29.09.1980 applies to the cases of the

petitioners and they were granted two extra increments for compensating the break in service, it would be appropriate to let the petitioners, as a last resort, make an application purely on sympathetic ground to the State Government as to whether, the break in service of two years could be bridged.

9. It is made clear that this Court is not creating any alternate remedy for the petitioners. The decision of the Government, if favourable to the petitioners, would redress their grievance. However, if this request on sympathetic ground is turned down, it would not amount to a fresh cause of action to enable the petitioners to start a new journey of litigation.

10. With the above directions/ observations, this Writ Petition is disposed off. Rule is discharged accordingly.

11. The petitioners are at liberty to make a representation as noted above purely on sympathetic ground within 30 days from today.