

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

WRIT PETITION NO.7520 OF 2022

1. Sharad s/o Prahakar Sonwane
Age: 30 Years, Occu: Service
R/o: Panchayat Samiti, Ambad
Tq. Ambad, Dist: Jalna
 2. Ganesh s/o Sitaram Chavan
Age: 37 Years, Occu: Service,
R/o.: Panchayat Samiti, Ghansangvi,
Tq. Ghansawangi, Dist: Jalna
 3. Sunil s/o Digambar Palaskar
Age: 38 Years, Occu: Service,
R/o: Panchayat Samiti, Partur,
Tq. Partur, Dist: Jalna
- .. Petitioners**

Verus

1. The State of Maharashtra
Through its Principal Secretary
Rural Development Department
Mantralaya, Mumbai
 2. The Cheif Executive Officer,
And District Program Co-ordinator (MGNREGA)
Zilla Parishad, Jalna
- .. Respondents**

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Advocate for Petitioners:

- Ms. P. S. Talekar i/b. M/s. Talekar and Associates
AGP for Respondent No.1: Mr. S. G. Sangle
Advocate for Respondent No.2: Mr. S. S. Tope

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AND

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WRIT PETITION NO.7578 OF 2022

1. Chetan s/o Nivrutti Mahajan
Age: 31 Years, Occu: Service
R/o: Plot No.11, Anand Society,

Shastrinagar, Tq. Chalisgaon,
Dist: Jalgaon

2. Sushilkumar s/o Prakash Patil
Age: 32 years, Occu: Service,
R/o: At. Ghumawal kd.,
Post-Tavase, Tq.Chopda
Dist: Jalgaon

.. Petitioners

Verus

1. The State of Maharashtra
Through its Principal Secretary
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Mantralaya, Mumbai

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Ms. P. S. Talekar i/b. M/s. Talekar and Associates
AGP for Respondent No.1: Mr. S. G. Sangle

Advocate for Respondent No.2:

Mr. Maheshkumar S. Sonawane

...

CORAM: RAVINDRA V. GHUGE

AND

ARUN R. PEDNEKER, JJ.

Reserved for Judgment on:	29.07.2022
Judgment Pronounced on:	12.08.2022

JUDGMENT (Per Arun R. Pedneker, J.):

1. Rule. Rule made returnable forthwith.

With consent of the parties, the Writ Petitions
are taken up for final hearing.

2. Both these Writ Petitions are heard together as the issues involved in both the Petitions are identical. In both the Writ Petitions the Petitioners are challenging the communication dated 05.05.2022 issued by the State Government refusing to regularise the services of the Petitioners on the posts of Junior Engineers and Agriculture Officers. In Writ Petition No.7520 of 2022, Petitioner Nos.1 and 3 were working as Junior Engineers (Special Trained Officer, MGNREGA), whereas Petitioner No.2 was working as an Agriculture Officer (Special Technical Officer MGNREGA) in the establishment of Zilla Parishad, Jalna since 2016. While in Writ Petition No.7578 of 2022, Petitioner No.1 was working as a Junior Engineer whereas Petitioner No.2 was working as an Agriculture Officer (Special Technical Officer, MGNREGA) in the establishment of the Zilla Parishad, Jalgaon since 2016.

3. The brief facts in the case leading to the filing of the Petitions are as under:-

[I] By the Government Resolution dated 24.07.2015, the State Government created 96 posts in the establishments of Zilla Parishad throughout Maharashtra for Special Technical Officers. This post were to be called as Special Technical Officer, MGNREGA [Mahatma Gandhi National Rural Employment Guarantee Scheme]. The said posts were created temporarily, initially for a period of two years.

[II] In pursuance of the aforesaid Government Resolution, the Zilla Parishad, Jalna advertised two posts of Junior Engineers and one post of Agriculture Officer on temporary basis. Similarly, one post of Junior Engineer and one post of Agriculture Officer was advertised vide Advertisement dated 31.10.2015 for Zilla Parishad, Jalgaon. Pursuant to the Advertisements, the Petitioners applied for the said posts and were initially selected and appointed in

their respective Zilla Parishads for a period of two years.

[III] Subsequently, by a Government Resolution dated 28.08.2017, the Government granted 5 years extension till 31.07.2022 to all the 96 post created in the establishments of the Zilla Parishads under the MGNREGA scheme.

[IV] In the interregnum, the Petitioners filed Writ Petitions Nos.12706 of 2018 and 4682 of 2019 before the Hon'ble High Court of Bombay alleging that they were discontinued from services in the year 2018. The Hon'ble High Court by an interim order protected the Petitioners and finally by order dated 24.01.2020 extended their tenure till 31.07.2022 as per the Government Resolution dated 28.08.2017 whereby the State had given extension to all the aforesaid 96 post till 31.07.2022.

[V] As far as the Petitioners claim for regularisation is concerned, they were permitted to move the State Government and the State was directed to take a decision on their representation on its own merits. Pursuant to the orders passed by the High Court, the Petitioners preferred representation dated 24.06.2021 before the State Government seeking regularisation of their services. The State Government by its communication dated 05.05.2022, refused to regularise the services of the Petitioners and hence they are before this Hon'ble Court.

4. The contentions of the Petitioners before this Court are primarily two fold:-

(a) The Petitioners contend that the posts are permanent posts and the State is barred from seeking contractual employment on the said post and the filling up of the vacancies temporarily is without authority of law. The Petitioners ought to have been selected

on the permanent post. They contend that even if the Advertisements were called for appointment on temporary posts, that should be considered for the permanent posts as they are fully equipped and qualified for the said posts.

The Petitioners, prayed for a direction to the State Government to absorb the present Petitioners on sanctioned vacant posts of Junior Engineer and Agriculture Officers available at Zilla Parishad Jalna and Parbhani. The Petitioners also contend that sanctioned vacant posts are available with the Zilla Parishad.

(b) The Petitioners further submit that the another similarly placed Zilla Parishad employee Mr. Kadam's representation was considered by the Additional Commissioner and he was granted permanency. Writ Petition filed to implement the order of granting

permanency to Mr. Kadam, was also allowed by the High Court subject to right of the Zilla Parishad / State to challenge the same. Similarly, another employee Mr. Deshmukh was also granted regularisation based on the order passed in the case of Mr. Kadam. The Petitioners thus contend that their services should also be regularised.

5. The Respondents by their reply submit that the Government Resolution dated 24.07.2015 created temporary post in the Zilla Parishads and were accordingly advertised and filled up on temporary basis for the period of two years only and, thereafter, an extension was granted for a period of 5 years purely on temporary basis. The posts were listed at Serial No.15 and 16, of the Advertisement, which had highlighted, "सदर पद हे अस्थायी स्वरूपाचे असून ती तदर्थ तत्वावर (Adhoc Basis) प्रथमतः दोन वर्षासाठी निर्माण करण्यात आले आहे. सदर पदाची मुदत दिनांक ३१.०७.२०१७ पर्यंतच राहिल. The English translation is as under-

"Said post is of temporary nature and has been created on Ad-hoc basis for a period of two years, initially. The term of the post is upto 31.07.2017 only."

6. The Respondents further submits that the proposals of the Petitioners were considered by the Government and by its communication dated 05.05.2022, rejected the same. The said communication dated 05.05.2022 states that the Petitioners cannot be regularised as the post occupied by the Petitioners has to be filled up through deputation only and as per the policy decision those posts cannot be regularised. The communication dated 05.05.2022 has reasoned that these post are temporary and of Ad hoc nature and would lapse in the event extension is not given. The posts are to be filled by deputation from the Zilla Parishad cadre and are not from sanctioned staffing pattern of the EGS establishment, hence claim for regularization cannot be considered.

7. The State further contends that the Petitioners cannot seek any parity with orders passed in respect of Gajanan Hanumantrao Deshmukh or Vishal Kadam by Zilla Parishad, Parbhani. The said orders are against the spirit of scheme promulgated by G.R. dated 24.07.2015. The State further submits that, the Commissioner, MGNREGA-Maharashtra, Nagpur is the competent authority and said fact would be brought to notice of it and necessary remedial measures, in accordance with law would be taken.

8. Having considered the rival submissions and on perusal of the documents filed alongwith the Petition and the reply, it is clear from the Advertisement that the posts are to be filled in on temporary basis for a period of two years and the Petitioners had applied for the said posts. The Petitioners were selected on temporary basis initially for a period of two years which was further extended for a period of 5 years till 31.07.2022. On completion of their tenure no further extension was granted by the State and

thus appointments were automatically terminated on the final day.

9. As regards granting regularisation to the Petitioners is concerned, the law applicable is laid down in the case of **Secretary, State of Karnataka and others Vs. Umadevi and others** reported in (2006) 4 SCC 1. The Hon'ble Supreme Court in the case of Umadevi (*surpa*) at para 43 has held as under-

"43...

Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee would not claim to be made

permanent on the expiry of his term of appointment.

..."

10. Thus, in view of the law laid down in the case of Umadevi (*supra*), the Petitioners cannot be directed to be regularised as their posts were purely temporary and their employment automatically got terminated on efflux of time, once the period of appointment was over. The Petitioners cannot also be directed to be regularised on the permanent post, even if available with the State, as they have been originally selected on temporary posts.

11. On the ground of parity, the Petitioners have put-forth a case of one Mr. Vishal Dattatray Kadam, who was a similarly situated employee of Zilla Parishad, Parbhani. He approached the Additional Divisional Commissioner, Aurangabad challenging his discontinuation of service and prayed for regularisation. The Additional Divisional Commissioner, Aurangabad by order dated 23.01.2019 allowed the representation of Mr.

Vishal Dattatray Kadam and regularised his services. By the said order the Additional Divisional Commissioner set aside the termination of Mr. Vishal Dattatray Kadam and continued his employment and directed the Respondent State to regularise his services as per the Rules.

12. In pursuance of the said order dated 23.01.2019 of the Additional Commissioner and failure on part of the Zilla Parishad to implement it, Mr. Vishal Dattatray Kadam approached the Hon'ble High Court by filing Writ Petition No. 4683 of 2019 for implementation of the said order. The Hon'ble High Court by an order dated 25.02.2020 was pleased to direct the Chief Executive Officer, Zilla Parishad, Parbhani to implement the said order dated 23.01.2019 passed by the Additional Divisional Commissioner within 4 weeks and further observed that the same would be without prejudice to the right of the Zilla Parishad to contest the said order of the Additional Commissioner. However, the Zilla Parishad only filed a Review Petition against the

order passed by the Additional Divisional Commissioner and did not prefer any Appeal against the said order. The fate of the Review is not known.

13. Similarly, on the basis of the order passed in the case of Kadam, another similarly placed employee Mr. Gajanan Hanmantrao Deshmukh was also directed reinstatement by the Hon'ble High Court by order dated 05.08.2021 with a condition that he would not seek regularisation in employment except being subject to any decision taken by the State Government. By the said order dated 05.08.2021, the High Court had also recorded statement of Mr. Deshmukh as under-

"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. "

14. The Petitioners contention that they are similarly situated as that of Mr. Vishal Dattatray Kadam and Gajanan Hanmantrao Deshmukh

cannot be accepted, as there is no policy decision of the State to regularise the services of the Petitioners on permanent posts. Erroneous regularisation of Mr. Kadam and reinstatement of Mr. Deshmukh cannot be the basis of parity, as Mr. Kadam's appointment is by virtue of an erroneous order of the Additional Divisional Commissioner which the Zilla Parishad failed to Appeal against while Mr. Deshmukh's continuance is subject to an undertaking given by him not to seek regularisation, exception being any Government decision in that regard.

15. In the case of **State of Rajasthan and others Vs. Jagdish Narain Chaturvedi** reported in (2009) 12 SCC 49, the Hon'ble Supreme Court at Paragraph No.11 has observed that, "Wrong decision does not create a right. There is no question of negative equality". The law laid down in the case of Jagdish Narain Chaturvedi (*supra*) is clearly applicable to the facts of this case.

16. The benefit of parity thus cannot be granted to the present Petitioners.

17. Hence the Writ Petitions fail and are dismissed. No order as to costs. Rule is discharged.

[ARUN R. PEDNEKER, J.]

[RAVINDRA V. GHUGE, J.]

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