

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

WRIT PETITION NO.2149 OF 2011

Ashok Bhikanrao Deshmukh
Age: 47 years, Occ. Nil,
R/o Betawad Tq. Sindkheda, Dist. Dhule **... PETITIONER**

VERSUS

1. The State of Maharashtra
 Through Secretary, Public Works
 Dept. Mantralaya, Mumbai
2. The Executive Engineer
 Public Works Division,
 Division Officer Dist. Nandurbar
3. The Deputy Engineer
 Public Works Dept. Taloda,
 Tq. Taloda, Dist. Nandurbar
4. The Divisional Commissioner,
 Nashik Region, Nashik
5. District Collector, Dhule
 Dist. Dhule
6. The District Collector, Nandurbar,
 Dist. Nandurbar

... RESPONDENTS

....
Mr. B. R. Warma, Advocate for Petitioner
Mr. P. S. Patil, AGP for Respondent – State
....

**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 28.11.2023

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

1. By an order dated 26.09.2011, this Petition was admitted.
No interim relief was granted.

2. The Petitioner has put forth prayer clauses (B), (C) and
(D) as under:-

“(B) By issuing Writ of Certiorari or any other Writ, Order or Direction in the like nature, impugned intimation at Exh. G may please be quashed and set aside as illegal, untenable and unjustified;

(C) By issuing Writ of Mandamus or any other appropriate Writ, order or directions in the like nature, the respondents may pleased be directed to extend the benefit of Government Resolution dated 01.12.1995 by absorbing the petitioner in service with all consequential benefits within stipulated period;

(D) Pending hearing and final disposal of this Writ Petition the respondent No.1 may please be directed to provide work to the petitioner.”

3. The Petitioner is around 60 years of age today.

4. The admitted events are as under:-

- (a) The Petitioner was appointed on the Employment Guarantee Scheme (EGS).
- (b) He claimed that he was taken on the EGS on daily wages w.e.f. 01.11.1985 as a Mustering Assistant.
- (c) He was orally terminated from his daily wages service on EGS w.e.f. 11.02.1987.
- (d) He raised an Industrial Dispute in 1994 and the reference to the Labour Court at Jalgaon was recorded as Reference (IDA) No.01/1994.
- (e) By an award dated 29.03.1996, the Labour Court partly answered the Reference in the affirmative and by quashing the termination order dated 11.02.1987, granted reinstatement in service with continuity w.e.f. 11.02.1987.
- (f) The State of Maharashtra, through the Deputy Engineer (Employment Guarantee Scheme) preferred Writ Petition No.589 of 1997, challenging the award of the Labour Court.
- (g) By judgment dated 16.07.2009, the learned Single Judge Bench of this Court **allowed the Writ Petition and quashed and set aside the impugned award of the Labour Court.** It was, however, recorded that the case of the Petitioner may be considered in terms of the Government Resolution dated 01.12.1995, **if found eligible.** The Petitioner was permitted to make a representation and if found eligible, his case for absorption was directed to be considered.
- (h) By the impugned communication dated 27.10.2010, the State concluded that the Petitioner was not eligible for absorption since he was not in employment on 31.05.1993.

5. The learned Advocate for the Petitioner strenuously canvassed that there were certain juniors who were absorbed in

service under the Government Resolution dated 01.12.1995. He specifically points out candidates namely D. M. More, Bhagwant Shamrao Ahirrao, Rajendra Arjun Shinde and Subhash Sudam Patil. According to the learned Advocate for the Petitioner, these are candidates who were not in employment as on 31.05.1996 and yet they were absorbed in service.

6. The learned AGP relies upon the affidavit-in-reply dated 01.07.2011, filed by Shri Arvind Popatrao Anturlikar, who was working as Deputy Collector (EGS), Dhule. He points out that the names of the candidates referred to by the Petitioner were those who had Court orders in their favour and which have not been set aside. So also, he refers to paragraph 4 of the affidavit in reply and submits that the Petitioner was a temporary worker as a Muster Assistant on EGS from 30.10.1985 to 31.12.1985, 02.01.1986 to 31.03.1986, 01.04.1986 to 30.06.1986, 02.07.1986 to 30.09.1986 and lastly from 03.10.1986 to 31.12.1986.

7. The learned AGP further points out that when the Government Resolution dated 01.12.1995 was placed before the Hon'ble Supreme Court by way of a scheme, the cut off date prescribed was 31.05.1993 in the light of Clause 1.2. Vide Clause 3.1,

those Mustering Assistants who were in continuous service as on 31.05.1993, and whose names were included in the seniority list, were alone to be considered. The case of the Petitioner did not fall in this category.

8. This Court has consistently held that workers working on the EGS are not a part of the process of recruitment and they neither have a right for continued employment, nor can they file ULP complaints under the MRTU and PULP Act, 1971 for claiming regularisation or permanency, nor can they raise an Industrial Dispute on account of being discontinued from the EGS.

9. In *Chief Executive Officer, Zilla Parishad, Ahmednagar vs. Daulat Narsingrao Deshmukh and another*, 2001(2) *Mh.L.J.* 543, this Court has held that the case of the Mustering Assistants can be considered in the light of the Government Resolution dated 01.12.1995 and subsequent Government Resolutions. The impugned award of the Labour Court dated 29.10.1996 was, therefore, quashed and set aside.

10. In *Arvind G. Chaudhari and another vs. Dhanraj Nathu Patil and another*, 2008(6) *Mh.L.J.* 746, this Court concluded that an

employee working under the Maharashtra Employment Guarantee Act, 1977 (Employment Guarantee Scheme) is not entitled to get any relief by resorting to the MRTU & PULP Act, 1971 or the Industrial Disputes Act, 1947. The persons working under the EGS are not governed by the provisions of such enactments and the Labour Court or the Industrial Court will have no jurisdiction to grant reliefs in the nature of regularization in service.

11. It is undisputed that the Petitioner was working on EGS for limited durations over two calendar years and had put in around 370 days. After 31.12.1986, he was not in employment. The award delivered by the Labour Court was quashed and set aside by the learned Single Judge vide judgment dated 16.07.2009. On the basis of the observation of the Court in the said judgment, the case of the Petitioner was to be considered as per the Government Resolution dated 01.12.1995. Clauses 1.2 and 3.1 clearly dis-entitled the Petitioner for seeking regularisation. In these circumstances, we do not find that the impugned communication could be faulted or could be termed as perverse or erroneous.

12. However, it cannot be ignored that the Petitioner was working for about two years on daily wages as an EGS Mustering

Assistant. After 31.12.1986, he has not been in employment for the last 37 years.

13. The Hon'ble Supreme Court has held in (1) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal* – [2013 LLR 1009], (2) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh* – [(2013) 5 SCC 136], (3) *BSNL Vs. Man Singh* – [(2012) 1 SCC 558] and (4) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board* – [(2009) 15 SCC 327], that if an employee is working for a very short period and is out of employment for a long duration, granting reinstatement in service or absorption would be impracticable. Instead, he could be granted compensation for the number of years of service that he has put in. The learned AGP vehemently opposes grant of compensation on the ground that when an EGS worker is not entitled for any benefits, merely because he is litigating, he should not be granted any compensation.

14. The judgments referred to herein above, were delivered in between 2009 and 2013 when the Hon'ble Supreme Court directed compensation between Rs.40,000/- to Rs.50,000/- per year of service put in by the employee. We are inclined to enhance the compensation

amount since the Petitioner has worked for two years and is litigating for the last about 37 years. He has reached the age of 60 years as on date. It also cannot be ignored that, after his oral engagement on daily wages on EGS, was concluded within two years in December 1986, he approached the Labour Court under the Industrial Disputes Act in 1994.

15. In view of the above, notwithstanding that the Petitioner has failed to make out a case, we are inclined to grant him compensation at the rate of Rs.1,00,000/- per year of service that he has put in, only in view of that fact he has been litigating all these years.

16. **This Writ Petition is, therefore, dismissed.** Rule is discharged.

17. We direct the Respondent Nos.1 and 2 to pay an amount of Rs.2,00,000/- to the Petitioner by depositing the said amount in this Court within sixty [60] days from today. The Petitioner would be at liberty to withdraw the said amount without conditions, under identification of the learned Advocate representing him in this matter. A copy of his Aadhar card and Election Commission voter identity

card, shall be tendered along with the application while seeking withdrawal of the amount.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

SMS