

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

902 WRIT PETITION NO.631 OF 2023

MANDABAI VITTHAL HINGURDE SINCE DECEASED
THROUGH LRS VITTHAL YADAVRAO HINGURDE
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS

...

AND

903 WRIT PETITION NO.638 OF 2023

CHHABUBAI PANDURANG SHINDE
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS

...

AND

904 WRIT PETITION NO.639 OF 2023

MANGAL DATTATRAYA HINGURDE
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS

...

AND

905 WRIT PETITION NO.644 OF 2023

NARAYAN SAHEBRAO KARALE
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS

...

AND

906 WRIT PETITION NO.732 OF 2023

ASARABAI DASHRATH BHAGAT
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS

...

AND
907 WRIT PETITION NO.829 OF 2023

RAJU TUKARAM FASATE
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS

...

AND
908 WRIT PETITION NO.830 OF 2023

BHAMABAI RAOJI DETHE SINCE DECEASED THROUGH
LRS ASHA RAOJI DETHE
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS

...

Advocate for the Petitioners : Shri Barde Parag Vijay
AGP for Respondents 1 to 4/State : Shri V.M. Kagne

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CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.

DATE :- 01st September, 2023

Per Court :-

(a) Writ Petition Nos.631/2023, 638/2023, 639/2023,
732/2023, 829/2023 and 830/2023:-

1. All these Petitioners are identically placed.
2. We have heard the learned Advocates for the respective sides. Considering the undisputed facts and the order that we are passing, we are not required to advert to their entire submissions.
3. It would suffice to say that these Petitioners were before the Industrial Court in their respective ULP complaints, which were decided by the identical judgments dated 18.03.2017, 22.03.2017, 14.06.2018, 21.03.2017, 18.03.2017 and 21.03.2017, respectively. Their complaints were partly allowed and it was concluded that they have completed 240 days in continuous employment. It was also concluded that they were not working in the Employment Guarantee Scheme (EGS) or any scheme akin to it. They were temporary employees for years together. Hence, considering the facts in each case, the Industrial Court directed that their proposals be forwarded for regularization as and when the posts are available.
4. The State approached the learned Single Judge of

this Court and by the judgment dated 26.09.2018, it was concluded that as permanency cannot be granted merely because a workman has completed 240 days in continuous employment and since Standing Orders 4-C and 4-D of the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946, would not be applicable to the State or State instrumentalities, it was directed by the learned Single Judge as under:-

- “12. In view of the above, these petitions are disposed of with the following directions :*
- (A) The petitioner No. 3 shall prepare the proposals of these respondents specifically stating therein that they have been held to be daily wagers and not on EGS by the Industrial Court, their total years of service and their last drawn wages.*
 - (B) Such proposals would be forwarded to the Secretary Revenue and Forest Department, Government of Maharashtra, within a period of three months from today and no further extension of time shall be sought for any reason.*
 - (C) The concerned department shall consider the cases of these respondent as per their seniority and grant them regularization depending on the availability of sanctioned vacant permanent posts. The proposals shall be on the basis of the GR dated 16/10/2012.*
 - (D) If the posts are not available, such cases of the respondents shall be considered as and when the posts are created.*
 - (E) Until then, these respondents shall not be terminated from service merely on the ground that they are daily wagers, save and accept for*

disciplinary action/reasons.”

5. By the impugned order dated 12.11.2021 passed in all these cases, the Additional Principal Chief Conservator of Forest (Administration, Group-B) concluded that as the Chief Conservator of Forest (Regional), Nashik, has submitted the report vide letter dated 27.10.2021 that none of these persons have completed 240 days, they cannot be regularized in employment and their proposals for regularisation have been rejected. The Additional Principal Chief Conservator of Forest has merely relied upon the inputs given by the Chief Conservator of Forest (Regional), Nashik.

6. Apparently, the Chief Conservator of Forest (Regional), Nashik, sat over the orders of the Industrial Court as well as the Single Judge Bench of this Court and virtually delivered a decision that these workers have not completed 240 days and that they are EGS workers, when two Courts have concluded to the contrary. Apparently, this is an attempt to overbear the authority of the Courts by the Chief Conservator of

Forest (Regional), Nashik.

7. In view of the above, **these Writ Petitions are partly allowed**. The impugned orders are quashed and set aside. The Chief Conservator of Forest (Regional), Nashik, is directed to redraft the proposal mentioning therein that these Petitioners have completed 240 days and are not working in the EGS, by making a reference to the two orders passed by the Courts.

8. The learned AGP submits that the Chief Conservator of Forest (Regional), Nashik, has withdrawn the earlier proposal and has sent a new proposal to the appropriate authority. The same is pending with the Additional Principal Chief Conservator of Forest (Administration, Group-B).

9. We, therefore, direct that the said proposal shall be decided within 30 (thirty) days from today.

10. Needless to state, if there are lesser vacancies than the number of proposals, then the regularization would be granted in accordance with the seniority of these daily wagers

and those proposals, which cannot be taken up for lack of vacancies, may be kept pending to be adjusted as against the available vacancies as and when they may be occur in future.

11. Before parting with these matters, it needs to be noted that these Petitioners were required to approach this Court and spend on litigation only because of the high handed behaviour of the Chief Conservator of Forest (Regional), Nashik. Had the said officer maintained discipline and referred to the two judgments of the Industrial Court and the Single Judge Bench of this Court, there was no occasion for him to express his unwarranted and unsustainable opinion that they have not worked continuously for 240 days and that they were on EGS. On account of his high handedness, the Petitioners had to suffer an adverse order and approach this Court thereby, losing valuable two years and spend on litigation. Moreover, the conduct of the said officer amounts to an attempt to overbear the majesty of law and disregard and ignore the verdicts of the Courts.

12. In view of the above, we direct to **ISSUE NOTICE** to Shri Nitin Gudage, who was the Chief Conservator of Forest

(Regional), Nashik during the period 14.08.2020 to 30.04.2023, to show cause as to why we should not initiate suo-moto contempt proceedings against him under the provisions of the Contempt of Courts Act, 1971. Notice is made returnable on 03.10.2023.

(b) Writ Petition No.644/2023:-

13. The case of the Petitioner in this petition is no different. The Industrial Court concluded that though the State took the defence that the Petitioner was working under the EGS, not a single document was produced before the Industrial Court and in the absence of oral and documentary evidence, the State could not prove that he was working on EGS. When the matter reached this Court, since the State filed Writ Petition No.9755/2016, by the judgment dated 23.01.2017, the learned Single Judge concluded in paragraphs 7, 8 and 9 as under:-

“7. *The Labour Court has further observed that as per the EGS, a worker, who is in need of work, has to apply to the Tahsildar through the Talathi for being allotted the work on EGS. His name is registered in the EGS register by the Talathi. Accordingly, he is issued an EGS Identity Card / Job Card. None of these documents have been produced by the petitioners before the Labour Court.*

8. *The Labour Court has further concluded that since*

Exhibit U-9 is an Identity Card issued by the Forest Department which is not in any way connected with the EGS, it would amplify the fact that the respondents/employees were not working on EGS. In this backdrop, I do not find any reason to interfere with the findings of the Labour Court that the respondents are not working on EGS.

9. *The State of Maharashtra has introduced a GR dated 31/01/1996 and which is followed by another GR dated 16/10/2012. By virtue of the earlier GR, all such daily wagers, who are not working on EGS, have been held eligible for absorption after having put in 5 years in continuous service as daily wagers. The daily wagers working on EGS have been excluded.”*

14. Taking into account the law crystallized, the Single Judge Bench issued further directions in paragraphs 11, 12 and 13 as under:-

- “11. 11. *This Court in the matter of Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and other connected matters, [2015(5) Mh.L.J.75] and in the matter of Municipal Council, Tuljapur Vs. Baban Hussain Dhale (dead) through LR's and others in WP No.1843/2015 and other connected matters vide judgment dated 26/02/2015, has concluded that in the matters of regularization in service, unless the post on which an employee is to be regularized is sanctioned or is not vacant, the Industrial Court cannot issue directions granting regularization on a nonexistent post merely on the basis of completion of 240 days in continuous service. The learned Division Bench of this Court in the matter of Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade, [2016(6) Mh.L.J.867] has concluded that*

Standing Order 4(C) would not apply in such cases where the post is not available and vacant.

12. *Considering the above and in the light of the statement made by Mr.Barde that the respondents have continued in employment, this petition is partly allowed. The direction at clause 3 under paragraph No.33 of the impugned judgment is modified by directing the petitioners to consider the case of the respondents as per the GR dated 31/01/1996 and grant regularization to these respondents on the basis of their eligibility and seniority.*
13. *In so far as the objection of the petitioners that the respondents/workmen have approached the learned Maharashtra Administrative Tribunal, Mr.Barde makes a solemn statement that the pending Original Application No.625/2012 has already been withdrawn and disposed of on 19/12/2016.”*

15. The same Chief Conservator of Forest (Regional), Nashik, has indicated to the Additional Principal Chief Conservator of Forest (Administration, Group-B) that the present Petitioner was working under the EGS. This is not an inadvertence on the part of the said officer. Despite the judgments of the Courts placed before him, he has the courage to virtually overturn the effect of the judgments by mentioning that the Petitioner was working on EGS. The same is, prima facie, deliberate and intentional. Therefore, in connection with this petition as well, we would hear the said officer on 03.10.2023, as

to why suo moto contempt of court proceedings should not be initiated against him.

16. In view of the above, **Writ Petition No.644/2023 is partly allowed**. The impugned order dated 21.02.2022 is quashed and set aside.

17. We direct the Chief Conservator of Forest (Regional), Nashik, to correct the proposal and mention that the the Petitioner was working on daily wages and not under the EGS. Such corrected proposal would be tendered to the Additional Principal Chief Conservator of Forest within 15 days from today. Thereafter, the proposal of the present Petitioner would be considered along with all other similarly situated employees by taking into account their seniority as mentioned in the order of the learned Single Judge. The guidelines set out in this order, would be applicable to this case.

kps

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)