

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3476 OF 2004

1. The Conservator of Forests
Nashik Circle. Old Agra Road,
Nashik.

2. The Deputy Conservator of Forests,
Trimbak Road, Nashik

...Petitioners

Versus

Ananda Soma Ughade
At Post Velunje,
Tal Trimbak Dist. Nashik

...Respondents

...
Mr. S.H. Kankal, AGP, for Petitioners - State.
Mr. S.B. Deore, for Respondent.

...

CORAM : SANDEEP V. MARNE, J.
DATE : AUGUST 25, 2023.

P.C.:

1. The Conservator of Forest, Nashik has filed this Petition challenging Judgment and order dated 25 February 2002 passed by the Industrial Court, Nashik thereby allowing Respondent's complaint directing the Petitioners to regularize services of Respondent by granting him benefit of permanency in Group - D category.

2. In this Petition, Rule was issued on 15 January 2008 and it was directed that the Petition would be heard with Writ Petition No.2223 of 1997. Respondent has moved this Petition by submitting that Writ Petition No.2223 of 1997 has been disposed of by this Court by order dated 18 November 2010. By order dated 18 November 2010 this Court held that the facts involved in Writ Petition No.2223 of 1997 were similar to the facts of various Writ Petitions (Writ Petition No.3274 of 2002 and other connected Petitions) decided by order dated 8 September 2010, by which various Writ Petitions filed by the Conservator of Forest challenging Judgments of the Industrial Court came to be rejected by this Court. The learned Counsel for Petitioner therefore submitted that since the present Petition was to be heard along with Writ Petition No.2223 of 1997 which has already been disposed of by granting benefit of permanency to the employee therein, the present Petition also deserves to be disposed of by making the same order.

3. Mr. Kankal, the learned A.G.P. appearing for the Petitioners however disagrees with the request made by the learned Counsel for Respondent. He has submitted that the employees involved in Writ Petition Nos. 2223 of 1997 and 3274 of 2002 were Vanmajur (Forest Guard) whereas the Respondent herein was employed as a labourer in the Employment

Guarantee Scheme (E.G.S.). That therefore the orders passed in Writ Petition No.2223 of 1997 or Writ Petition No.3274 of 2002 is not applicable to the present case.

4. Accordingly I have heard both the learned Counsels for the parties and have considered their submissions.

5. The Industrial Court has decided several complaints by common Judgment and order dated 25 February 2002 which is subject matter of the present Petition. Before the Industrial Court, though the employees contended that they were engaged as Forest Labourers, the specific stand was taken by Petitioners herein that they were employed in E.G.S. Department. In this regard the contention of Petitioners recorded in Paragraph 9 of the impugned Judgment is as under :

“9. Respondent has specifically submitted that E.G.S. department under which complainants are working as well as Forest Department is not an industry under Section 2(j) of the Industrial Dispute Act as the said department is performing sovereign function, said department could not be held as industry, Therefore, complaints are not maintainable.”

6. It is on account of this assertion of Petitioners before the tribunal that Mr. Kankal submits that the Respondent cannot be granted same benefit

as is granted to the employees covered by orders passed in Writ Petition No.2223 of 1997 and Writ Petition No.3274 of 2002.

7. Since Mr. Kankal attempted to draw a distinction between the Respondent herein and employees covered by Writ Petition No.2223 of 1997 or Writ Petition No.3274 of 2002, a query was to be put to Mr. Kankal about fate of other complainants whose complaint was decided along with Respondent's complaint by common Judgment dated 25 February 2002. The Petition was kept back to enable Mr. Kankal to produce status of those complainants. In his usual fairness and alacrity, Mr. Kankal has placed on record the chart giving information with regard to seven other complainants who were covered by the impugned common Judgment dated 25 May 2002. The said chart would indicate that they have been regularized in service. To illustrate Smt. Amruta Chandar Rathod was a complainant in Complaint No.380 of 1999 before the Industrial Court which was decided by common Judgment dated 25 February 2002. Her complaint was allowed along with the complaint of Respondent. It appears that the Petitioners challenged the common Judgment dated 25 February 2002 passed in the case of Amruta Chandar Rathod before this Court by filing Writ Petition No.3967 of 2004. By order dated 18 February 2022 this Court passed following order :-

“1. The learned AGP submits on instructions that, taking into account the judgment dated 08/09/2010 delivered by this Court in Writ Petition No.2223 of 1997 and group of matters, these respondents have been regularized in service and these petitions are worked out. These petitions can, therefore, be disposed off.

2. Copy of the communication alongwith Annexure A containing Sr.Nos.2 to 7 (2 pages) is tendered in the Court. The same is taken on record and collectively marked as X-1 for identification.

3. In view of the above, these petitions stand disposed off. Rule is discharged.”

8. It thus appears that though the similar stand was taken in the case of Amruta Chandar Rathod that she was employed under E.G.S. and not as a Forest Labourer, she was treated on par with the employee in Writ Petition No.2223 of 1997. Therefore the distinction sought to be drawn by Mr. Kankal between employees engaged as Vanmajur (Forest Guard) and employees engaged in E.G.S. does not appear to be entirely correct.

9. There is yet another angle from which the controversy involved in the present Petition can be viewed. Mr. Kankal has placed on record a copy of Government Resolution dated 16 October 2012. By that Government Resolution (G.R.) the Government of Maharashtra took a decision for creation of various posts for regularization of employees engaged as daily workers in

forest department. Under that G.R., employees were made eligible for regularization for their service with effect from 1 June 2012 subject to them fulfilling the condition of rendering 240 days service in any of the five years during 01 November 1994 to 30 June 2004. Thus rendering on five years of service as forest daily labourers in any of the five years up to 30 June 2004 is a mandatory condition for regularization. A query was put to Mr. Kankal that if Smt. Amruta Chandar Rathod was indeed engaged under E.G.S., how she got regularized in accordance with the G.R. dated 16 October 2012. To this query reply of Mr. Kankal is that her services rendered after the year 2008 as Forest Labourer are taken into consideration for regularizing her with effect from 1 June 2012. He was also invited my attention to the Paragraph 2, of the G.R. under which services rendered in E.G.S. are required to be excluded while computing period of 240 days. However, upon being asking as to how Smt. Archana Chandar Rathod could satisfy the condition of rendering 240 days in five years up to 30 June 2004, if she was employed only under E.G.S. Scheme up to 2002 no satisfactory answer is forthcoming. This would indicate falsity in statement of Petitioners that the complainants whose complaints are decided by common Judgment dated 25 February 2022 were expunged exclusively under EGS Scheme.

10. After considering the entire material on record I am of the view that stand of Petitioners before the Industrial Court about the complainants being employed under E.G.S. appears to be factually incorrect. The Industrial Court has not committed any error in rejecting the said defence.

11. I therefore do not find any error in the order of the Industrial Court. This Court has already upheld grant of similar benefits in case of similarly the situated employees. I do not find any reason for taking a different view in the present case. Writ Petition being devoid of merits is dismissed without any order as to costs. Rule is discharged.

(SANDEEP V. MARNE, J.)