

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7234 OF 2023

The State of Maharashtra
By and through the
Conservator of Forests and Director
Sanjay Gandhi National Park Division,
Borivali East, Mumbai

**.....Petitioner
(Orig. Respondent)**

V/s.

1. Anil Bhagwan Baviskar, 39 years,
Occupation : Labourer at Sanjay Gandhi
National Park, residing at Room No.2
Mali Quarters, Sanjay Gandhi National
Park, Borivali East, Mumbai-400 066.

2. Nana Baburao Sonawane, 48 years
Occupation : Labourer at Sanjay Gandhi
National Park, residing at Room no.2,
Mali Quarters, Sanjay Gandhi National
Park, Borivali East, Mumbai-400 066

**....Respondents
(Orig. Applicants)**

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Mr. B.V. Samant, AGP for Petitioner-State.

Ms. Vaishali Jagdale, Advocate for the Respondents.

**CORAM : DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.**

Date : 20 June 2023.

Judgment (*Per Sandeep V. Marne J.*):

1. Rule. Rule made returnable forthwith. With the consent of parties, taken up for final disposal.
2. Petitioner-State Government has filed this petition challenging the judgment and order dated 17 June 2021 passed by the Maharashtra Administrative Tribunal (**Tribunal**) in Original Application No. 496 of 2020 as well as order dated 7 February 2023 passed by the Tribunal in Review Application No. 22 of 2022. The Tribunal has allowed the Original Application instituted by the Respondents holding that they are entitled to be absorbed in service in terms of the Government Resolution (**GR**) dated 16 October 2012. The Review Application filed by the State Government has been rejected by order dated 7 February 2023.
3. Briefly stated, facts of the case are that Respondents were engaged as Van Majoor (Forest Labourers) in Lion Safari Park of Sanjay Gandhi National Park, Borivali (**SGNP**) since the year 1998 onwards. GR was issued on 16 October 2012 *inter-alia* providing for absorption of Forest Labourers (Van Majoor), who have put in 240 days service in any of the five years during 1 November 1994 to 30 June 2004. For this purpose, 5089 supernumerary posts were created. Respondent claim that they have put in 240 days of service in five years and were eligible for being absorbed in terms of the GR dated 16 October 2012. Since the request for absorption was rejected, they instituted O.A. No.496 of 2020 before the Tribunal.
4. The Original Application filed by Respondents was resisted by the State Government by filing Affidavit-in-Reply taking

a vague stand that Respondents did not fulfill the criteria of working for 240 days in five years in terms of the requirement of GR dated 16 October 2012. It was also stated that records relating to Respondents were lost in the floods which occurred on 29 August 2017.

5. The Tribunal proceeded to allow the Original Application filed by Respondents by its judgment and order dated 17 June 2021 directing their absorption in service in terms of the G.R. dated 16 October 2012. The Tribunal held that failure on the part of the State Government to maintain records would not disentitle Respondents from seeking relief of regularisation. The Tribunal *inter alia* relied upon the report of the Chief Conservator of Forest & Director, SGNP, under which four employees including the two Respondents were held ineligible for absorption and order passed by it on 17 January 2020 in O.A. No.393 of 2019 directing absorption of the other two employees. The Tribunal therefore held Respondents to be eligible for absorption in service.

6. The Petitioner-State Government filed Review Application No. 22 of 2022 seeking review of the judgment and order dated 17 June 2021. In their Review Application, Petitioners contended that after the delivery of judgment dated 17 June 2021 by the Tribunal, confidential information was received from the administration of SGNP relating to attendance record relied upon the Respondents and that discreet enquiries conducted in pursuance thereof revealed commission of forgery on the part of Respondents. That Shri. Rasal who issued certificates to Respondents was never posted at Lion Safari Park, SGNP and that he had no authority to issue certificates to Respondents. Certain allegations were also leveled about the rubber stamp put on the certificates relied upon by Respondents.

The Tribunal however proceeded to reject the Review Application by its order dated 7 February 2023, holding that the application of the Respondents was beyond the scope of Order 47 Rules 1 and 2 of the Civil Procedure Code. Aggrieved by the main judgment and order dated 17 June 2021 allowing the OA as well as order dated 7 February 2023 rejecting the Review Application, Petitioner-State Government has filed the present petition.

7. Appearing for Petitioners, Mr. Samant, the learned AGP would submit that though specific case of forgery was put up before the Tribunal in Review Application, the Tribunal has brushed aside the same on the ground that the application was beyond the scope of Order 47 Rules 1 and 2 of the Civil Procedure Code. That the Tribunal ought to have considered and decided merits of the contentions raised in the Review Application. That the certificates relied upon by Respondents were forged as they were allegedly issued by an Officer having no authority to issue the same. That Shri. Rasal who issued those certificates was posted as Forester (Van Pal) at Tulshi Range of SGNP during the year 2013 and he had nothing to do with the administration of Lion Safari Park of SGNP. That conduct of discreet enquiries by the Superintendent of Lion Safari Park, SGNP revealed that Shri. Khadse was posted as Forester (Van Pal) at Lion Safari Park, SGNP during 2013 and he alone could have certified attendance of duties by Respondents. That the concerned certificates were not signed by Shri. Khadse. The charge of the post of 'Forester (Van Pal), Lion Safari Park, SGNP' was handed over by Shri. Khadse to Shri. Rasal on 6 June 2016 and that therefore Shri. Rasal had no authority to certify the attendance of duties by Respondents in the year 2013. This is particularly because the entire

records were lost in floods. He would further submit that the rubber stamp put on the certificates also does not inspire confidence as the same is different from the usual rubber stamp of the Forester (Van Pal), Lion Safari Park, SGNP.

8. Mr. Samant would further submit that at the time of filing of the Affidavit-in-reply opposing the O.A. on 25 March 2021, Petitioner-State Government was not aware about the forgery committed by Respondents and the same came to light only after delivery of the judgment and order dated 17 June 2021. That therefore forgery committed by Respondents was a new and important fact, which was not within the knowledge of the Petitioners despite exercise of due diligence and that therefore this was a fit case where the Tribunal ought to have considered the merits of the contentions raised in the Review Application rather than rejecting the same being outside the scope of review. He would submit that absorption of two ineligible workers would put a huge financial burden on the State Government. That though State Government is not averse to absorption of eligible Forest Labourers, since certificates produced by Respondents are found to be fraudulent, Respondents cannot be absorbed in service. He would pray for setting aside impugned orders of the Tribunal.

9. *Per-contra*, Ms. Jagdale the learned Counsel appearing for Respondents would oppose the petition. She would submit that the theory of forgery was invented by the Petitioners after delivery of judgment and order dated 17 June 2021 by way of afterthought with sole objective of somehow denying legitimate right of absorption to Respondents. That Petitioners resorted to filing of Review Application and the present Writ Petition only after contempt

proceedings were initiated against them. She would further submit that if the records of the Respondents were indeed lost by the Petitioners, they could not have levelled bald and reckless allegations of forgery against Respondents. That Shri. Rasal has rightly certified service of Respondents after perusal of the records of the year 2013. That Shri. Rasal was also posted at SGNP and has necessary access to the relevant records relating to attendance by Respondents. She would pray for dismissal of the petition.

10. Rival contentions of the parties now fall for our consideration.

11. The issue that was raised by Respondents before the Tribunal was about their entitlement to absorption in service in terms of the G.R. dated 6 October 2012. Under that G.R., a special scheme was formulated by the State Government for absorption of daily labourers working in forests. As per the Scheme, daily labourers who had put in 240 days in five years during 1 November 1994 to 30 June 2004 were to be regularised w.e.f. 1 June 2012. It appears that the number of such daily labourers to be absorbed were identified as 6546. For absorption of such labourers, it was also decided to create 5089 supernumerary posts.

12. Respondents submitted representations for their absorption in terms of the G.R. dated 16 October 2012. They relied upon certificates issued by Forester (Van Pal) Lion Safari Park, Borivali certifying number of days of service put in during 1997 to 2004. However, they were not absorbed in service. It appears that a meeting was convened under the chairmanship of Chief Conservator of Forests and Director, SGNP, Borivali on 30 January 2014. In that meeting, cases of Respondents and two other labourers Shri. Pravin

Motiram Mire and Shri. Dharma Sonya Shanwar, working with Respondents at Lion Safari Park, SGNP were considered. It was held that after considering the number of days of service put in by them, they were not eligible to be absorbed in service. The other two individuals Pravin Motiram Mire and Dharma Sonya Shanwar approached the Tribunal by filing O.A. No.393/2019 seeking absorption in service. Their O.A. was allowed by the Tribunal on 17 January 2020 directing their absorption in service in terms of the GR dated 16 January 2012. Thus, the report of the Committee headed by the Chief Conservator of Forest and Director, SGNP was already a subject matter of scrutiny before the Tribunal and despite such an adverse report, the Tribunal directed absorption of Pravin Motiram Mire and Dharma Sonya Shanwar by its judgment and order dated 17 January 2020. Mr. Samant fairly concedes that the decision of the Tribunal in O.A. No.393 of 2019 was not challenged by the State Government and the same appears to have been implemented. The Tribunal has also relied upon similar decision delivered by it in O.A. No.1033/2016 (Sanjay B. Tokare & Ors. Vs. Chief Conservator of Forest) decided on 1 July 2017.

13. Thus the cases of the two Respondents were treated on par with Pravin Motiram Mire and Dharma Sonya Shanwar passed by the Committee headed by the Chief Conservator of Forest and Director, SGNP, Borivali. The other two workers are already absorbed in service. We therefore do not find any error on the part of the Tribunal in extending similar benefits to the Respondents. The Supreme Court has time and again held that similar benefits are required to be extended to similarly situated employees. Reference in this regard can be made to the Constitution Bench judgment in **K.C.**

Sharma and Others V/s. Union of India, (1997) 6 SCC 721 and another judgment of the Apex Court in the case of **K.T. Veerappa and Others V/s. State of Karnataka and Others** (2006) 9 SCC 406.

14. In **State of U.P. v. Arvind Kumar Srivastava**, (2015) 1 SCC 347, the Supreme Court has held:

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

15. Recently, in **Rushibhai Jagdishbhai Pathak Vs. Bhavnagar Municipal Corporation**, 2022 SCC Online Hon'ble Supreme Court 641, the Supreme Court has reiterated the principle of grant of benefit of a court decision to all similarly placed employees. It is held:

Normally, and as a model employer, on accepting the said decision, the respondent-Corporation should have uniformly applied and granted the benefit to all its similarly situated employees affected by the order dated 28th October 2010. This would have avoided unnecessary litigation before the courts

16. On account of grant of relief of absorption to Pravin Motiram Mire and Dharma Sonya Shanwar, who, going by the report of the Committee, are identically placed as that of Respondents the Tribunal was bound to direct absorption of Respondents as well.

17. Now we turn to the Review Application filed by the Petitioners. It is contended by Petitioners in the Review Application

that confidential information was received by them after delivery of the judgment and order dated 17 June 2021 leading to conduct of discreet enquiries. Such discreet enquiries revealed that Shri. Rasal was never posted as Forester (Van Pal) at Lion Safari Park, SGNP during the year 2013 and that he was posted at a different place (Tulshi Range, SGNP) during 2013. That he came to be posted and took charge of the post of Forester (Van Pal) at Lion Safari Park only on 6 June 2016. Some allegations are also made in respect of the use of rubber stamp on the Certificates. Based on these contention, as inference of forgery was raised in the Review Application.

18. However, in the Review Application, no attempt was made to explain as to why contentions of forgery were not raised in the Affidavit-in-reply filed by the Petitioners opposing the O.A. A short Affidavit-in-reply running into four pages was filed on behalf of the Petitioners opposing the Original Application No. 496 of 2020. Paras-4 to 9 of the Affidavit-in-reply are reproduced below :

“4. With reference to contents of Para No.6.3 of O.A., I say that the claim that the Applicants worked as Van major Class IV since 1/11/1994 for more than 240 days per year is not correct, although the Applicants are still working as on date as claimed at the cages of the big cats. The name of Applicant No.2 is not found in Exhibit-B as claimed in Para-6.3 of the O.A.

5. With reference to contents of Para No.6.4 of O.A., I say that the office records did not bear out the claim of the Applicants made in this para of the O.A. that they worked for the requisite period of 240 days per year for 5 years between 1994 and 2004 which is the requirement of G.R. dated 16.10.2012, hence they were not regularized.

6. With reference to contents of Para No.6.5 of O.A., I say that only about payment against vouchers is correct. The remaining averment is denied.

7. *With reference to contents of Para No.6.6 of O.A., I say that as regards the duties of the workers assigned to the big cat cages is correct. The likelihood of attack by wild animals is exaggerated.*

8. *With reference to contents of Para No.6.7 of O.A., I say that contents of this para about forwarding of the report by the Superintendent and R.F.O. Lion Safari Park is correct. However, as the records of attendance did not show the required number of days of service put in by these Applicants, the Committee which was to recommend the persons for regularization felt that the Applicants did not qualify.*

9. *With reference to contents of Para No.6.8 of O.A., I say that the cases of Johnny Khedekar and Ramesh Dhuri mentioned in this para of the O.A. are different in as much as those persons had certain criminal proceedings against them which subsequently ended in their favour. The report of the Superintendent L.S.P. is not the only record of attendance. Other records then available showed that the Applicants were not eligible. However unfortunately those records have been lost in the flood of 29th August 2017. It is therefore submitted that the action of the respondent is not malafide, discriminatory and contrary to the Article 14 and 16 of the Constitution of India as contended.”*

19. Thus, far from questioning the genuineness of the certificates produced by Respondents in support of their defence, Petitioners took a vague stand that the records relating to the Respondents were lost in floods which occurred on 29 August, 2017. Assuming that the theory of destruction of records in floods in 2017 to be correct, Petitioners did possess records of posting of various officers at the time of filing of reply dated 25 March 2021. It was possible for them to notice as to who was posted as Forester (Van Pal) at Lion Safari Park, SGNP in the year 2013 and whether Shri. Rasal was in a position to issue Certificate relating to performance of duties

by Respondents. Therefore, it cannot be said that the information underlying the allegation of forgery was not within the knowledge of Petitioners despite exercise of due diligence at the time of filing of Affidavit-in-reply dated 25 March 2021. Provisions of Order 47 Rule 1 of the Civil Procedure Code are reproduced thus:

“1. Application for review of judgment.-(1) Any person considering himself aggrieved-(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, (b) by a decree or order from which no appeal is allowed, or (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation-

The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

20. Though discovery of new or important matter or evidence is a recognised ground for seeking review of judgment, the applicant seeking review must demonstrate that the new matter/evidence was not in his/her knowledge despite exercise of due diligence. In the present case, it cannot be stated, by any stretch of

imagination, that Petitioners could not have known the aspect of posting of Shri. Rasal at Tulshi Range in 2013 at the time of filing of Affidavit-in-reply dated 25 March 2021. There was absence of due diligence on the part of Petitioner. Petitioners initially opposed the O.A. by taking a vague defence of destruction of records in the floods and after delivery of judgment dated 17 June 2021, came up with a theory of forgery by seeking review of that judgment. This course of action adopted by the Petitioners does not commend us.

21. Mr. Samant has strenuously contended that the Tribunal ought to have dealt with points raised in the Review Application on merits rather than rejecting it. That there are no findings recorded by the Tribunal about the allegations of forgery raised in the Review Petition. He has therefore urged before us that the impugned orders are required to be set aside and the O.A. deserves to be remanded to the Tribunal for considering the allegation of forgery made by the Petitioners. Considering the fact that Respondents belong to lowest strata of the Society and have worked as Van Majoor in Forests for over a long period of time, we undertook the exercise of considering merits of allegations of forgery raised by the Petitioners rather than relegating the matter to the Tribunal for fresh decision. After hearing Mr. Samant on the allegations of forgery, we find that the allegations are in the nature of mere inferences. There is no concrete material in possession of Petitioners to demonstrate Respondents have worked for lesser duration than the one certified in Certificates. Petitioners have not put up a positive case that Respondents have put in 'X' number of days of service in a particular year, which falls short of requisite period of 240 days. They have merely raised doubts about

authenticity of Certificates. Petitioners have not made any attempts to contact Shri. Rasal, who is their own employee, to verify whether he indeed issued Certificates to the Respondents or not. Petitioners have raised mere suspicion on the Certificates without putting up a positive case that Shri. Rasal did not issue such Certificates. Whether Shri. Rasal was competent to issue Certificates pertaining to the year 2013 when he came to be posted at Lion Safari Park in the year 2016 is something which could be a matter of debate. However, we are unable to come to a conclusive finding that the Certificates relied upon by the Petitioners are forged.

22. There is yet another angle from which the present matter deserves to be considered. As observed above, in the report of the Committee headed by the Chief Conservator of Forest and Director, SGNP, Borivali, Respondents were declared ineligible for being absorbed in service alongwith their two cohorts, Pravin Motiram Mire and Dharma Sonya Shanwar. The finding of ineligibility was recorded by the Committee on the basis of records relating to attendance of four labourers. The Tribunal allowed O.A. No.393/2019 filed by Pravin Motiram Mire and Dharma Sonya Shanwar on 17 January 2020 and the State Government has apparently implemented the same. It is only in the case of the two Respondents that Petitioners have selectively chosen to raise allegations of forgery for defeating their right of absorption in service. The fact that the Petitioners did not challenge the judgment and order dated 17 January 2020 passed in Original Application No. 393/2019 is yet another factor why this Court would be hesitant in further examining the allegations of forgery selectively leveled by the Petitioners in respect of the two Respondents.

23. We are therefore of the view that the Tribunal has not committed any error in allowing the O.A. filed by the Respondents or in rejecting the Review Petition filed by the Petitioners. Both the impugned orders passed by the Tribunal are unexceptionable and the petition filed by the Petitioners is devoid of merits. The Writ Petition is accordingly dismissed. There shall be no order as to costs. Rule is discharged.

(SANDEEP V. MARNE, J.)

(DHIRAJ SINGH THAKUR, J.)

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