

- ## 1. State of Maharashtra

Through its Secretary,
Department of Rural Development
and Water Resources, Mantralaya,
Mumbai 32

2. Zilla Parishad, Gadchiroli,
through its Chief Executive Officer,

..RESPONDENTS

WRIT PETITION 5411 OF 2008

1. Ulhas Pralhad Deshmukh,
Aged about 40 yrs, Occ. Service,
R/o.Gadchiroli

2. Karamjit Durgvijay Singh (dead)
through Legal Heirs

1. Smt. Nilima Karamjit Singh,
Aged about 48 yrs,wife
2. Komal Karamjit Singh,
Aged 18 yrs,daughter
3. Muskan Karamjit Singh,
Aged 16 yrs, minor through
her natural guardian mother,
Smt. Nilima Karamjit Singh.....daughter

All residents of Laxmipur,
Ward No. 1, Tahsil Aheri,
District Gadchiroli

3. Dinendranath Sishubar Mandal,
Aged about 39 yrs, Occ. Service,
R/o. Gadchiroli

.....PETITIONERS

...V E R S U S...

1. State of Maharashtra
Through its Hon'ble Minister,
Department of Rural Development
and Water Resources, Mantralaya,
Mumbai 32 as well as through the
Deputy Secretary of Rural Development
and Water Resources, Mantralaya,
Mumbai 32

2. Zilla Parishad, Gadchiroli,
through its Chief Executive Officer, **..RESPONDENTS**

Mr. A.C. Dharmadhikari, counsel for petitioners,
Mr. N.S. Rao, AGP for responde1 in both the petitions,
Mr. J.S. Mokadam, counsel for respondent 2 in both the petitions.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.

DATE : 01.03.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Issues arising for determination in both the petitions are common. The question which falls for determination is whether the Government of Maharashtra committed an error in revoking/cancelling the decision dated 8.7.2007, whereby and whereunder, the petitioners were absorbed on the establishment of the Zilla Parishad, Gadchiroli ("ZP") as Junior Engineer (Civil).

3. We may cull out the broad facts in the backdrop of which the issue formulated arises.

4. The Government of Maharashtra formulated and made functional the District Primary Education Programme ("DPEP") of primary education. The scheme envisaged construction of schools, *inter alia* in the Gadchiroli district necessitating engagement of

Junior Engineer (Civil).

5. Petitioners in Writ Petition 5401/2008 and petitioners in Writ Petition 5411/2008 were appointed under the DPEP scheme as Junior Engineer (Civil) on 16.1.1999.

6. Petitioners asserts that the appointment was made after following the due process of law.

7. On 20.12.2003, the Central Government and the State Government collaborated and made functional the Sarva Shiksha Scheme for primary education in the Gadchiroli district. Petitioners, who were appointed under the DPEP scheme were continued and accommodated in the Sarva Shiksha Scheme on contract basis with a technical break of one day.

8. On 19.4.2007, the ZP issued an advertisement for recruitment to the posts of Junior Engineer amongst others. Petitioners approached the State Government with the representation that the petitioners may be absorbed on the posts advertised by the Zilla Parishad. Petitioners aver that on 27.4.2007, the ZP forwarded a recommendatory proposal to the

State Government.

9. On 8.5.2007, the State Government addressed a communication to the Chief Executive Officer of the ZP granting approval to the proposal to absorb the petitioners on the establishment of the ZP.

10. The approval letter dated 8.5.2007 articulates certain conditions. The approval refers to the Government Resolution dated 20.12.1997 which sanctions certain posts to facilitate the implementation of the DPEP. The approval letter dated 8.5.2007 emphasizes that the absorption shall be done in accordance with the provisions and instructions spelt out in the Government Resolution dated 20.12.1997.

11. In view of the approval supra, the ZP cancelled the advertisement dated 19.4.2007 and purported to absorb the petitioners on 14.5.2007 or thereabout. The process of absorption was, however, stayed on 21.5.2007 in view of certain complaints and the stay was vacated on 11.6.2007. The appointment orders were issued on 27.6.2007. According to the petitioners, on 6.7.2007 or thereabout, the ZP issued posting orders and on

15.7.2008 or thereabout, some petitioners were also issued the confirmation orders.

12. Petitioners aver that without affording any opportunity to show cause, on 24.7.2008, the State Government issued Government Resolution cancelling the approval dated 8.5.2007 which constrained the affected employees including the petitioners to approach this Court in Writ Petition 3397/2008. This Court disposed of Writ Petition 3397/2008 vide order dated 11.9.2008. On the premise that the petitioners were not heard, the State Government was directed to take a fresh decision after extending an opportunity of hearing to the petitioners. The State Government heard the petitioners and passed a fresh order dated 25.11.2008 cancelling the approval to the absorption.

13. We have indicated the broad chronology of the events which constrained the petitioners to prefer the subject petition.

14. We have heard the learned counsel for the petitioners Mr. A.C. Dharmadhikari, the learned counsel for ZP Mr.J.S. Mokadam and the learned AGP Mr. N.S. Rao for the State.

15. The thrust of the submissions canvased by Mr. A.C. Dharmadhikari is that the termination orders violate the fundamental rights of the petitioners. In the brief synopsis and chronological events and points of arguments, there is some emphasize on the alleged breach of the *status quo* order passed by this Court on 4.8.2008. It is submitted that while directing the State Government to take a fresh decision, this Court was pleased to order that till the fresh decision is taken, the *status quo* ordered on 4.8.2008 shall continue. During the oral submission, the said line is not seriously persuaded.

16. The contention of the petitioners that the cancellation of the approval to absorption is vulnerable in law will have to be decided on the basis of the Government Resolution dated 20.12.1997. Perusal of the Government Resolution dated 20.12.1997 reveals that to facilitate the implementation of DPEP, a decision was taken to sanction various posts on the establishment of the Zilla Parishads. The Government Resolution dated 20.12.1997 categorizes the posts to be created as falling in schedule A and schedule B. While Schedule A envisages 1528 permanent posts of teachers on the establishment of the Zilla Parishads, Schedule B refers to temporary posts. The post of

junior engineer on which the petitioners were working was included in Schedule B category and such posts were to be temporary since the second stage of the scheme was expected to complete in 2002. In essence, the posts of junior engineers were to be created for the tenure of the project and were expected to be filled in either from deputationist or superannuated employees.

17. It is apparent, that the Zilla Parishad did not adhere to the clear mandate of Government Resolution dated 20.12.1997 while forwarding the proposal to the State Government seeking approval to the absorption of the petitioners. It further appears to us, that while the approval letter dated 8.5.2007 did refer to the petitioners, the State Government perhaps was not aware that the petitioners do not fall in category Schedule A and were essentially working on posts which were meant to be temporary and for the project tenure. In this view of the matter, we find no infirmity whatsoever in the cancellation of the approval to absorption. The approval to the absorption of the petitioners was erroneous and indeed illegal. The State Government did the right thing in ensuring that the illegality is not perpetuated. We are not persuaded to accept the submission canvased by Mr. A.C. Dharmadhikari that the rights of the petitioners stand violated.

18. Before parting with the order, we note the submission of Mr. A.C. Dharmadhikari that the petitioners have suffered emotionally and otherwise due to the error committed and that the accountabilities must be fixed. We leave the said aspect to the good sense and wisdom of the respondents. The appropriate authority may consider the said submission and if an enquiry is found necessary and is feasible given the passage of time, the same may be conducted in the usual course.

19. The petition is dismissed with no order as to cost.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)

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