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

907 WRIT PETITION NO. 2772 OF 2024

Krishnaji s/o Sharadrao Patil,
Age: 30 years, Occu: Service as
Civil Engineering Assistant in
Zilla Parishad, Nanded

....PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai-32
2. The Chief Executive Officer,
Zilla Parishad, Nanded
3. The Executive Engineer,
Zilla Parishad Public Works Division,
Nanded, Dist. Nanded
4. Deputy Engineer,
Zilla Parishad Public Works
Sub-Division, Bhokar,
Dist. Nanded

....RESPONDENTS

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Mr K. P. Rodge, Advocate for Petitioner;
Mr S. K. Tambe, A.G.P. for Respondent No.1/State
Mr S. B. Pulkundwar, Advocate for Respondent Nos.2 to 4

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

DATE : 10th July, 2024

ORAL JUDGMENT (PER : Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the respective sides.

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

“B. By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent no.2 may kindly be directed to give benefit of continuation/confirmation of his services from the date of his initial ad-hoc appointment i.e. from 01.03.2016 by condoning breaks in his service with all consequential benefits and to release the arrears of salary of the petitioner of break period, within stipulated period of two months;

C. Pending hearing and final disposal of this writ petition, the respondent no.2 may kindly be directed to deposit the arrears of salary of the petitioner of the period during which he was given break in his service, in this Hon'ble High Court;

D. Pending hearing and final disposal of this writ petition, the respondent nos.2 to 4 may kindly be directed to allow the petitioner to appear for departmental examination for promotion to the higher posts;”

3. The Petitioner had responded to an Advertisement dated 27/08/2014, published by the District Selection Committee,

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Zilla Parishad, Nanded for filling up the Class-III posts. Online applications were invited. 19 posts of 'Civil Engineering Assistants' were available. Seven were earmarked to the 'Open' category. Two were reserved for the 'Economically and Socially Backward Class' (ESBC). The Petitioner tendered an online application on 19/09/2014 for the post of 'Civil Engineering Assistant' from the 'Open/General' category. Appointments, only on contractual basis, were made to the 'ESBC' category, considering the pending challenge before the Hon'ble Supreme Court. After a full fledged procedure of selection, the Petitioner was appointed as a 'Civil Engineering Assistant'. He is working till today.

4. He relies upon the Government Resolution dated 02/12/2015, which was issued by the State Government by issuing a Corrigendum, modifying the earlier Government Resolution, dated 21/02/2015. The Petitioner and similar candidates were granted 11 months appointments, followed by a gap of one month. It is informed that the Hon'ble Supreme Court delivered the order dated 12/07/2019, in Special Leave Petition No.15737/2019

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(Jaiashri Laxmanrao Patil Vs. State of Maharashtra and others), concluding that the reservation cannot be made effective, retrospectively. In Civil Appeal No.3123/2020, the Hon'ble Supreme Court passed an order on 09/09/2020, staying the reservation to the 'ESBC' category (commonly known as 'Maratha Reservation'). By a final order dated 05/05/2021, Civil Appeal No.3123/2020 was decided by the Hon'ble Supreme Court, invalidating the 'ESBC' reservation.

5. The Petitioner submits that, as the State Government started granting regularization to the candidates like the Petitioner, a dispute arose with regard to the deemed date of confirmation. Few employees rushed to the learned Maharashtra Administrative Tribunal at Mumbai in Original Application Nos. 993/2019, 995/2019 and 996/2019. By a judgment dated 12/08/2022, these O.A.s were allowed and the Applicants were granted continuity in service from the date of their initial appointments for all purposes, including pensionary benefits. A similar judgment has delivered on 12/08/2022, in O.A. No.401/2021.

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6. Shri. Pulkundwar, the learned Advocate for the Respondent/Zilla Parishad draws our attention to Clause 9 of the order dated 19/04/2022, passed by the Skill Development, Employment and Entrepreneurship Commissionerate, to indicate that, those who sought guidance from the State Government, have been advised by the State Government to confirm the services of such candidates from 05/07/2021, since the Government decision of an even date was announced. He concedes that, the Zilla Parishad has still not sought guidance from Respondent No.1. The moment they are advised to confirm the service of the Petitioner from a particular date, they would pass an appropriate order.

7. We find that the Government Resolution dated 05/07/2021, is very clear. So also, the orders passed by the learned Maharashtra Administrative Tribunal, referred to here in above, are also indicative of the fact that services of such candidates are treated to be continuous from the date of their initial appointments for all purposes, including pensionary benefits. Moreover, the Hon'ble Supreme Court has deprecated

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the practice of introducing one month break in service after 11 months of service, in **H.D. Singh vs. Reserve Bank of India & others, (1985) 4 SCC 201.**

8. In view of the above, **this Writ Petition is partly allowed.** We direct Respondent No.2/Chief Executive Officer, Zilla Parishad, Nanded to pass an appropriate order in the light of the above referred Government Resolution and the above referred two judgments of the learned Maharashtra Administrative Tribunal and grant regularization to the Petitioner from the date of joining duties, unless there is any legal impediment. If any legal impediment is noticed, we grant liberty to the Chief Executive Officer to move a Civil Application for clarification before this Court.

9. **Rule is made partly absolute in the above terms.**

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

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