



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

73 WRIT PETITION NO. 6491 OF 2023

Somnath Vitthal Nirude

VERSUS

The State Of Maharashtra Through It's Secretary And
Others

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AND

WRIT PETITION NO. 6548 OF 2023

Kishor Lachmanna Sarkalwad

VERSUS

The State Of Maharashtra Through Its Secretary And
Others

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AND

WRIT PETITION NO. 6517 OF 2023

Anantrao Ramrao Bansode

VERSUS

The State Of Maharashtra Through Its Secretary And
Others

...

AND

WRIT PETITION NO. 6519 OF 2023

Sanjay Annarao Ghadge

VERSUS

The State Of Maharashtra Through Its Secretary And
Others

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Advocate for the Petitioner : Mr. Deshmukh Swapnil A
AGP for Respondents no.1,2 : Mr. K.B. Jadhavar
Advocate for Respondent no.3 : Mr. S.S. Manale

Respondent No.4- Served.
(In all writ petitions)

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : July 15, 2024

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COMMON ORDER :-

1. Petitioners are impugning the order of reversion issued by respondent no.3 – The Chief Executive Officer and confirmed by respondent no.2 – Additional Divisional Commissioner, Aurangabad.

2. Petitioner/s contend that they were appointed as 'Gramsevak' under establishment of respondent nos.3 and 4. After rendering unblemished services for the period of more than ten years, they were promoted on the post of Village Development Officer and posted at Panchayat Samiti, Latur. However, on 8.12.2022 Respondent no.3-Chief Executive Officer erroneously reversed/repatriated them to the post of Gramsevak. Petitioner/s made representations to recall such order. However, it was not responded by respondent no.3. Petitioner/s then preferred appeal before respondent no.2, however, appeal came to be dismissed without entering into merits of the case.

3. Respondents, however, supports the order.

4. Mr. S.A. Deshmukh, learned advocate appearing for the petitioner/s vehemently submits that the order impugned is not justifiable; firstly, because it is passed without issuing show cause notice or following principles of natural justice. Consequently, no reason is mentioned for such abrupt action. As such, the order is non-speaking and contrary to the principles of natural justice. Therefore, he urges to quash and set aside the impugned order/s.

5. Per contra, Mr. S.S. Manale, learned advocate appearing for respondent no.3 vehemently submits that petitioners were given adhoc promotion. No vested right was created in their favour. Further, such appointment was for specified period. Due to the mistake of the officer in the department, petitioners continued to enjoy promotional posts although they were supposed to officiate it for limited period. He would further submit that in such case, no show cause notice is required. Petitioners are only repatriated to regular permanent post. Petitioners were having knowledge that they are officiating temporary promotion. No prejudice is caused to them. Therefore, he urges to dismiss the petitions. In support of his contentions, he relies upon the judgment of this Court in case of *Chief Executive Officer, Zilla Parishad, Ahmednagar Versus Babarao Pundalik Shamkunwar reported in AIR 2019 Bom. 1793*.

6. Having considered the submissions advanced, it can be gathered that the petitioner/s were working on the post of 'Gramsevak' and after rendering services for sufficient period, they were given officiating promotion in terms of the Government Resolution dated 16.6.2008. Introductory part of the said Government Resolution states that employees appointed against reserved posts cannot be promoted in absence of caste validity certificates. Consequently, large number of promotional posts remains vacant that affects efficacy of administration. Hence, Government came with the solution to fill up such vacancies by appointing immediate junior employee from the list of seniority on adhoc basis. Government Resolution further stipulates that such promotions shall be temporary for the period of 11 months. However, if the senior employee fails to produce caste validity, adhoc promotion shall be continued by giving break of one day.

7. The language of aforesaid Government Resolution shows that, although, adhoc promotion is prescribed for the period of 11 months, that can be continued by giving break of one day till regular incumbent is available to occupy the vacancy. Services of the petitioner/s appears to have been continued for years together and by the time of their repatriation, they had already completed ten years period in promotional cadre.

8. Perusal of the impugned order dated 8.12.2022 depict that no reasons are recorded for repatriation of the petitioner/s. The contingency as prescribed for repatriation under the Government Resolution dated 16.6.2008 was not arrived. Impugned order nowhere stipulates that regular incumbent was available to occupy the post held by the petitioners. In that view of the matter abrupt repatriation of the petitioners cannot be countenanced.

9. There cannot be quarrel to the preposition that adhoc promotion is a stopgap arrangement and no right is created in favour of the employee officiating such post, however, when adhoc promotion of the petitioners was regulated under policy of the Government promulgated under Government Resolution dated 16.6.2008, they could not have been repatriated in absence of contingency as stipulated in clause nos.2 and 3 of Government Resolution. Admittedly, in the present case, regular incumbent was not posted to occupy adhoc posts held by the petitioners. No other reason is discernible in the impugned order for the abrupt action. Consequently, impugned order cannot be sustained in law.

10. At this stage, Mr. Manale, learned advocate appearing for Respondent/Zilla Parishad submits that now

petitioners are promoted on regular basis. As such, no prejudice is caused to them.

11. Per contra, learned advocate appearing for the petitioner/s submits that the petitioner in Writ Petition No.6491 of 2023 is not yet promoted. This controversy would not be relevant for deciding the issue raised in writ petition. This Court is concerned with the impugned order dated 8.12.2022 and found that it cannot be sustained in law. Consequently, it needs to be quashed and set aside. Resultantly, Writ Petitions succeed and allowed in terms of prayer clause “B”. It is made clear that Respondents/ Authorities shall be at liberty to take appropriate action in tune with the Government Resolution dated 16th June, 2008 and this order would not be an impediment in such contingency.

12. Writ Petitions are accordingly disposed off. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

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