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

8 WRIT PETITION NO. 10129 OF 2023

Gajanan s/o Hanmantrao Deshmukh,
Age: 37 years, Occu: Service,
R/o : Hanuman Gadh Road, Keshvenager,
Nanded, Tq. & Dist. Nanded

....PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Rural Development Department,
Bandhakam Bhavan, 25, Marzban Road,
Fort, Mumbai-01

2. The Chief Executive Officer,
Zilla Parishad, Parbhani,
Tq. & Dist. Parbhani

....RESPONDENTS

....

Mr A. S. Shelke, Advocate for Petitioner;
Mr P. K. Lakhotiya, A.G.P. for Respondent No.1
Mr E. P. Sawant, Advocate for Respondent No.2

**CORAM : RAVINDRA V. GHUGE
AND
R. M. JOSHI, JJ.**

DATE : 20th February, 2024

ORAL JUDGMENT (Ravindra V Ghuge, J) :

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

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

“B. By writ of mandamus, order or direction of like nature, the respondent No.2 be directed to forthwith disburse the salary and allowances of the petitioner w.e.f. 18.10.2021 till date as per the appointment order dated 18.10.2021.

C. Pending hearing and final disposal of the present Writ Petition the respondent No.2 be directed to disburse the salary and allowances of the petitioner w.e.f. 18.10.2021 till date as per the appointment order dated 18.10.2021.”

3. We have heard the learned Advocates for the respective sides. The learned Advocate for the Zilla Parishad places reliance upon the affidavit-in-reply dated 20/02/2024, filed through Shri. Deepak Trambakrao Samale, Agricultural Development Officer, Zilla Parishad, Parbhani, along with several documents.

4. The Petitioner was before us in Writ Petition No.7553/2018. By the Judgment dated 05/08/2021, this Court recorded in paragraph Nos.4 to 8 as under :-

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“4. Shri Bhavthankar, the learned Advocate representing respondent nos.3 and 4 submits that under the said scheme, the Parbhani District was allotted three positions. One such position was allotted to the petitioner and another position was allotted to Mr Vishal Kadam. The third position went to Shri Divekar, who was also appointed for the second time, but thereafter he has resigned from the said post. He then submits that as the petitioner was an ad hoc employee, he was disengaged and a permanent employee of the Zilla Parishad was deputed in his place, though a regular selected candidate is still not available.

5. A copy of the appointment order dated 15.6.2021 issued in favour of Shri Vishal Kadam, as an order of continuation under the said scheme, is placed before us. The same is taken on record and marked as "X" for identification. Shri Bhavthankar submits that along with the petitioner, Shri Kadam was also disengaged. However, he approached the Additional Commissioner by preferring an appeal in which he questioned his disengagement. By order dated 23.1.2019, the Additional Divisional Commissioner, Aurangabad partly allowed the appeal and directed the Chief Executive Officer, Zilla Parishad, Parbhani to grant a further tenure of temporary engagement to Shri Kadam on the same position which he had occupied as an ad hoc employee under the said scheme two years ago. The Zilla Parishad has accepted the order of the Additional Divisional Commissioner and by implementing the same, the continuation order dated 15.6.2021 has been issued to Shri Kadam.

6. In the light of the above, we see no difference between the case put forth by the petitioner and that of Shri Kadam. Both were engaged under the "MGNREGA". Both are ad hoc employees. Both were aware that they have no right to seek regularization or absorption in employment and that they can be continued as ad hoc employees till the scheme lasts, or a regular selected candidate is available, unless any of them commits any misconduct. The Additional Divisional Commissioner has passed an order granting continuation to Shri Kadam. The petitioner is before us since 4.7.2018. In these facts, we do not find it appropriate

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to direct the petitioner to approach the same Additional Divisional Commissioner as like Shri Kadam for seeking the same relief. He would have to spend further time before the said authority for seeking the same relief, which he has sought from this Court.

7. In view of the above, we are exercising our extraordinary, jurisdiction and we are entertaining this petition. The same is, therefore, partly allowed. Since the appointment granted to the petitioner was an ad hoc engagement and as he is out of employment since July, 2018, we would not be directing reinstatement with continuity and back wages as the petitioner was an ad hoc employee and we do not wish to tax the State Exchequer by granting back wages by applying the principle of 'no work - no pay'. However, akin to the order granted in favour of Shri Vishal Kadam, we direct respondent no.4 to issue a similar order to the petitioner within 15 days from today.

8. The petitioner makes a statement that as he is an ad hoc employee, he would not be seeking regularization in employment, save and except being subject to any decision in this context taken by the Government. Needless to state, all the three employees engaged for the Parbhani region shall be treated alike."

5. It is obvious that the Zilla Parishad has committed an error in issuing a letter dated 18/10/2021, by which, the Petitioner has been granted permanent appointment as an 'Agricultural Officer' in Class-II category. The learned Advocate for the Petitioner submits on instructions that, the Petitioner himself is aware and concedes that he is presently working on an ad-hoc basis as an 'Agricultural Officer', that he is not working in any Class-II position and that he is not entitled for the permanent

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appointment as an 'Agricultural Officer, in the present circumstances.

6. The learned Advocate for the Zilla Parishad points out from a communication dated 13/02/2024, which is addressed by the Chief Executive Officer, Zilla Parishad, Parbhani to the Deputy Secretary, Rural Development and Water Conservation Department, Bandhkam Bhavan-25, Marzban Road, Fort, Mumbai, stating therein that, though this Court had ordered vide judgment dated 05/08/2021 (supra), a permanent appointment order to the Petitioner was wrongly issued. It is further clarified in the communication that the post of an 'Agricultural Officer' under the scheme would be continued only till the scheme lasts. It is not a substantive post created by the State Government and, therefore, the moment the scheme is brought to an end, the Petitioner will have to be divested of the ad-hoc charge of 'Agricultural Officer'.

7. Taking into account the above submissions, it is obvious that, even the Petitioner agrees that, he could not be appointed on a permanent post in the light of the judgment dated 05/08/2021 (supra). A further development is brought to our

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notice vide the said communication dated 13/02/2024, which indicates that the assignment of the Petitioner would continue only till the scheme lasts.

8. We have perused the communication dated 20/06/2022, addressed by the Chief Executive Officer, Zilla Parishad, Parbhani to the Deputy Secretary (Establishment), Rural Development Department, Government of Maharashtra, mentioning that the payment of salary of the Petitioner will have to be made from the '*Panchayat-Raj Sevarth Pranali*'. A response dated 13/07/2023 to the said communication is from the Desk Officer, Rural Development Department, Government of Maharashtra, addressed to the Chief Executive Officer, Zilla Parishad, Parbhani stating that, the payment can be made accordingly.

9. The learned Advocate for the Zilla Parishad submits that the above view is erroneous and that the Petitioner would be paid the entire salary from the funds of the '*MGNREGA*', without any lapse. The learned Advocate for the petitioner submits that, he is not concerned as to the head under which the salary is drawn. He is concerned with the payment of his salary.

10. The learned Advocate for the Petitioner is justified in claiming interest, though not @ 10% on the unpaid salary. The learned Advocate for the Zilla Parishad submits that there were certain anomalies in the decision making of the Zilla Parishad and hence, the delay in payment. Since the Petitioner was without salary for more than two and half years, for no fault on his part, he is entitled for interest. In our view, non-payment of salary to an employee who has worked regularly, cannot be countenanced.

11. **This Writ Petition is, therefore, allowed.** The Petitioner shall be paid all arrears of salary along with interest @ 6% p.a., upto January, 2024 on or before the 15th day of March, 2024. His regular monthly salary shall be paid as per the practice of payment on the appointed pay-day, from February, 2024 onwards until he continues as an ad-hoc Agriculture officer, subject to any further decision of the authorities in this regard.

12. Rule made absolute in the above terms.

(R. M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)

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