



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4864 OF 2014

Shaikh Mohammad Younus s/o Shah Mohammad
Age : 65 years, Occu.: Nil,
R/o. Mominpura, Udgir, Tq. Udgir
Dist. Latur

... PETITIONER

Versus

1. The State of Maharashtra
Through its Secretary
Public Work Department,
Mantralaya, Mumbai
2. The Senior Accounts Officer/PR-V
Indian Audit and Accounts Department,
Office of the Accountant General (A & E) II,
Maharashtra Civil Lines, Nagpur
3. The Executive Engineer,
Public Works Division, Latur
4. The Sub-Divisional Engineer
Public Works Sub-Division, Ausa

... RESPONDENTS

Mr. R. R. Suryawanshi, Advocate for the Petitioner
Mr. R. K. Ingole, AGP for Respondent Nos. 1 to 4

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

RESERVED ON: 20th MARCH, 2024

PRONOUNCED ON : 03rd APRIL, 2024

JUDGMENT (PER – R. M. JOSHI, J.) :-

1. The Petitioner seeks setting aside of order dated 17th January, 2013 issued by Respondent No.3 whereby the request of the Petitioner for grant of pension is rejected on the ground that he has not completed

eligible period to be entitled for pensionary benefits.

2. It is the case of the Petitioner that he was appointed as Muster Assistant in the office of Public Works Department, Sub-Division, Ausa on 13th December, 1983. He worked on the said post from December, 1983 to April, 1987 and thereafter from May 1987 to April 1989 on the pay scale of Rs.400/- and thereafter up to April 1992 on pay scale of Rs.500/-. According to him, as per the Government Resolution dated 6th May, 1992 he has been paid the scale of Rs.750-940. As per the government resolution dated 25th June, 2004 and order passed by this court in writ petition nos. 954 of 1990, 4 of 2000 and 83 of 2003 direction was issued not to fill up any post by appointment till absorption of the muster assistant, the Divisional Commissioner, Aurangabad has absorbed and appointed 665 muster assistant in the post of Adhisankhya (Supernumerary) as Muster Assistant on pay scale of Rs. 3050-75-3950-80-4590 vide order dated 30th July, 2004. The Petitioner worked in the said post till 31st May, 2005 i.e. the date on which he attained age of superannuation The Petitioner raised claim for pension which was not entertained initially. Since the proposal of the petitioner of pension was not decided Petition came to be filed. During the pendency of the Petition impugned order dated 17th January, 2013 came be passed rejecting his claim for pension on the ground that he has not completed eligible service of 10 years.

3. Respondent Nos. 3 and 4 filed affidavit-in-reply of Malikarjun s/o Madappa Kodgi, Sub-Divisional Engineer contending that the Petitioner was working as Muster Assistant on consolidated pay and his salary was paid through District Collector from Employment Guarantee Scheme (EGS) and hence the services of the Petitioner was not as a regular government servant, but it was from EGS. It is further claimed that Divisional Commissioner, Aurangabad vide letter dated 30th July, 2004 has regularized the services of Muster Assistant and Maharashtra Civil Services Rules were made applicable to them. In the said letter it was clarified that all the persons will remain as Muster Assistant till their absorption and the present Petitioner retired prior to his absorption in the service.

4. We have heard the learned Advocate for both sides at length. The Petitioner seeks to place reliance on the judgment of the Hon'ble Apex Court in case of *Prem Singh V. State of Uttar Pradesh and others*, **AIR 2019 Supreme Court 4390** to contend that the services rendered in the work charged establishment were treated as qualifying service under the relevant pension rules and direction was issued to confer the benefits of pension to the Petitioner therein with restricting the pension therein.

5. The learned Advocate for the contesting Respondents submits that since the Petitioner was a Muster Assistant working under the Employment Guarantee Scheme, he is not entitled to seek any

benefit thereof for the purpose of treating the said period as qualifying service to make him eligible to receive pension. He placed reliance on the judgment of this Court in case of ***Ashok Bhikanrao Deshmukh Versus The State of Maharashtra and others*** in ***Writ Petition No. 2149 of 2011*** dated 28th October, 2023 (Coram : Ravindra V Ghuge and Y. G. Khobragde, JJ.).

6. Though the Petitioner has claimed that he was appointed on the post of Muster Assistant in the office of Public Works Department, Sub-Division, Ausa on 13th December, 1983, he does not make any reference in the Petition as to the manner in which he was so appointed. He cannot demonstrate whether he was occupying any substantive post. Perusal of the document placed reliance by the Petitioner himself it is clear that the Petitioner was working as a Muster Assistant not in the employment of the Respondents or even as a work charged establishment, but was working under Employment Guarantee Scheme. The said fact further gets strengthened from the Government Resolution dated 25th June, 2004, wherein it is specifically stated that the super numerical 751 posts were permitted by the Government and the salary was also to be received from the funds allocated towards Employment Guarantee Scheme. It is thus clear that the Petitioner was employed under the Employment Guarantee Scheme and not on work charged establishment or even temporary establishment of Respondents.

7. Perusal of the judgment of the Hon'ble Apex Court in case of

Prem Singh (supra) shows that fact as they appear from the judgment is that the Petitioner therein had worked on work-charged basis. It is held in paragraph Nos. 29, 30, 31 and 32 which reads thus:

"29. We are not impressed by the aforesaid submissions. The appointment of the work-charged employee in question had been made on monthly salary and they were required to cross the efficiency bar also. How their services are qualitatively different from regular employees? No material indicating qualitative difference has been pointed out except making bald statement. The appointment was not made for a particular project which is the basic concept of the work charged employees. Rather, the very concept of work-charged employment has been misused by offering the employment on exploitative terms for the work which is regular and perennial in nature. The work-charged employees had been subjected to transfer from one place to another like regular employees as apparent from documents placed on record. In Narain Dutt Sharma & Ors. v. State of Uttar Pradesh & Ors. (CA No._____2019 @ SLP (C) No.5775 of 2018) the appellants were allowed to cross efficiency bar, after '8' years of continuous service, even during the period of work-charged services. Narain Dutt Sharma, the appellant, was appointed as a work-charged employee as Gej Mapak w.e.f 15.9.1978. Payment used to be made monthly but the appointment was made in the pay scale of Rs.200-320. Initially, he was appointed in the year 1978 on a fixed monthly salary of Rs.205 per month. They were allowed to cross efficiency bar also as the benefit of pay scale was granted to them during the period they served as work-charged employees they served for three to four decades and later on services have been regularized time to time by different orders. However, the services of some of the appellants in few petitions/appeals have not been regularized even though they had served for several decades and ultimately reached the age of superannuation.

30. In the aforesaid facts and circumstances, it was unfair on the part of the State Government and its officials to take work from the employees on the work-

charged basis. They ought to have resorted to an appointment on regular basis. The taking of work on the work-charged basis for long amounts to adopting the exploitative device. Later on, though their services have been regularized. However, the period spent by them in the work-charged establishment has not been counted towards the qualifying service. Thus, they have not only been deprived of their due emoluments during the period they served on less salary in work charged establishment but have also been deprived of counting of the period for pensionary benefits as if no services had been rendered by them. The State has been benefitted by the services rendered by them in the heydays of their life on less salary in work- charged establishment.

31. In view of the note appended to Rule 3(8) of the 1961 Rules, there is a provision to count service spent on work charged, contingencies or non pensionable service, in case, a person has rendered such service in a given between period of two temporary appointments in the pensionable establishment or has rendered such service in the interregnum two periods of temporary and permanent employment. The work-charged service can be counted as qualifying service for pension in the aforesaid exigencies.

32. The question arises whether the imposition of rider that such service to be counted has to be rendered in-between two spells of temporary or temporary and permanent service is legal and proper. We find that once regularization had been made on vacant posts, though the employee had not served prior to that on temporary basis, considering the nature of appointment, though it was not a regular appointment it was made on monthly salary and thereafter in the pay scale of work-charged establishment the efficiency bar was permitted to be crossed. It would be highly discriminatory and irrational because of the rider contained in Note to Rule 3(8) of 1961 Rules, not to count such service particularly, when it can be counted, in case such service is sandwiched between two temporary or in-between temporary and permanent services. There is no rhyme or reason not to count the service of work-charged period in case it has been rendered before regularisation. In our opinion, an

impermissible classification has been made under Rule 3(8). It would be highly unjust, impermissible and irrational to deprive such employees benefit of the qualifying service. Service of work-charged period remains the same for all the employees, once it is to be counted for one class, it has to be counted for all to prevent discrimination. The classification cannot be done on the irrational basis and when respondents are themselves counting period spent in such service, it would be highly discriminatory not to count the service on the basis of flimsy classification. The rider put on that work-charged service should have preceded by temporary capacity is discriminatory and irrational and creates an impermissible classification.

. With these observations it was held that the services rendered in the worked charged establishment shall be treated as qualifying service under the aforesaid rules for grant of pension.

8. In the instant case, however, the Petitioner was not on work charged establishment for even temporary establishment. He was on Employment Guarantee Scheme. This Court in case of **Ashok Bhikanrao Deshmukh** (supra) has held in paragraph Nos 8 to 10 as under:

"8. This Court has consistently held that workers working on the EGS are not a part of the process of recruitment and they neither have a right for continued employment, nor can they file ULP complaints under the MRTU and PULP Act, 1971 for claiming regularisation or permanency, nor can they raise an Industrial Dispute on account of being discontinued from the EGS.

9. In Chief Executive Officer, Zilla Parishad, Ahmednagar vs. Daulat Narsingrao Deshmukh and another, 2001(2) Mh.L.J. 543, this Court has held that the case of the Mustering Assistants can be considered in the light of the Government Resolution dated 01.12.1995 and subsequent Government Resolutions. The impugned award of the Labour Court dated

29.10.1996 was, therefore, quashed and set aside.

10. In Arvind G. Chaudhari and another vs. Dhanraj Nathu Patil and another, 2008(6) Mh.L.J. 746, this Court concluded that an employee working under the Maharashtra Employment Guarantee Act, 1977 (Employment Guarantee Scheme) is not entitled to get any relief by resorting to the MRTU & PULP Act, 1971 or the Industrial Disputes Act, 1947. The persons working under the EGS are not governed by the provisions of such enactments and the Labour Court or the Industrial Court will have no jurisdiction to grant reliefs in the nature of regularization in service."

9. Perusal of the impugned order dated 17th January, 2013 shows that the Petitioner had service as a regular employee only for the period of 7 months and 6 days. In absence of he being working on a temporary establishment or work charged basis, he would not be entitled to seek the benefit of the previous service rendered in the work on Employment Guarantee Scheme. We, therefore, respectfully hold that the judgment of the Hon'ble Supreme Court in **Prem Singh** (supra) would not apply to this case.

10. In the result, **this Petition stands dismissed.**

(R. M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)

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