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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 WRIT PETITION NO. 768 OF 2024

VASU MALSING PADVI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE ADDITIONAL
SECRETARY AND OTHERS

Mr.G.D.Jain, Advocate for the Petitioners.
Mr.S.K.Tambe, AGP for the Respondent/State.

**(CORAM : RAVINDRA V. GHUGE AND
Y.G.KHOBRADE, JJ.)**

DATE : JANUARY 24, 2024

PER COURT :

1. These are 5 Petitioners before us, who claim to be identically placed with the Petitioners in Writ Petition No.5867/2015, WP No.7351/2012, WP No.2194/2013 and 2196/2013, which were decided by the judgment of this Court dated 31.10.2018 (**Madhukar Bhavanrao Sadgir and Others Vs. The State of Maharashtra and Others**). It is further prayed that this Court should follow the conclusions drawn in paragraph Nos. 17 and 22, which read as under :-

“17. The following circumstances persuades us to consider the case of the Petitioners for regularization of those who have completed ten years in service :

[1] The posts on which the Petitioners are appointed on sanctioned posts.

[2] The work load is available.

[3] The Petitioners have agreed to officiate at the time when the Respondents were not getting the necessary teaching and non teaching staff to work in remote tribal areas and more particularly when the means of communication and transportation were scarce.

[4] The respondents have not undertaken selection process for all these years to fill in the posts held by the petitioners.

[5] The Petitioners are working continuously for ten years or more on meager honorarium.

[6] Asking the petitioners to continue to work on meager honorarium for such a long period would tantamount to their exploitation not expected from the welfare State. The State is expected to be a model litigant.

22. We have not considered the cases of those petitioners who have not completed ten years of their service. We leave it to the respondent-State to consider their case on its own merits and as per their policy.”

2. Having considered the above submissions, we deem it appropriate to rely on the judgment delivered by the Larger Bench in the matter of **Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade [2016(6) Mh.L.J.867]**, wherein this Court ruled that in State Instrumentalities, public sector undertakings and establishments operated by the Government, unless the posts are

created/sanctioned and vacant, daily wagers cannot be directed to be regularized in employment, purely because they have completed 240 days in uninterrupted and continuous service. It has been held that Standing Order 4C of the Industrial Employment Standing Orders Act, 1946 would not be applicable to State Instrumentalities. We are also reminded of the judgment delivered by the Hon'ble Supreme Court in the matter of **Chief Conservator of Forest Vs. Jagannath Maruti Kondhare, AIR 1996 SC 289**, wherein the Hon'ble Supreme Court concluded that if posts are not available, regularization cannot be granted, though salary scale at par can be granted to such daily wagers.

3. The grievance of the Petitioners is that their request for regularization has been turned down by the communication dated 27.09.2023. The said order is assailed for the reason that the view taken by this Court on 31.10.2018 in **Madhukar Bhavanrao Sadgir** (supra) was not cited before the Additional Commissioner, Tribal Development, Nashik Division Nashik.

4. This Court had concluded in **Madhukar Bhavanrao Sadgir** (supra) that posts on which those Petitioners were working, were

admitted to be sanctioned posts. The said Authority has to first verify the sanctioned posts. Thereafter, they have to verify as to whether posts are vacant and whether the claims of such Petitioners on all Maharashtra basis , can to be considered as per their seniority having regard to the dates of joining as daily wagers and completion of 10 years in continuous employment.

5. In view of the above, **this Petition is disposed off** with liberty to the Petitioners to tender their individual representations indicating the dates on which they joined daily wage service, the areas where they have been working, the types of work that they are performing and the dates on which they have completed 10 years as daily wagers. If they have the details of the sanctioned vacant posts, they would be at liberty to mention the same in the representations.

6. Let such representations be tendered to Respondent No.2. After receipt of such representations , the said Authority would consider the above directions and refer to the judgments delivered in **Municipal Council, Tirora** (supra), **Chief Conservator of Forest** (supra) and **Madhukar Sadgir** (supra). Needless to state, the seniority of all

similarly situated employees in the State of Maharashtra will have to be taken into account. The State Authority is at liberty to issue appropriate directions to all the Authorities in the State of Maharashtra to collate such information about all such temporary/primary/secondary/ higher secondary teachers working in the Ashram Schools, to be taken into consideration for granting regularization, depending upon the permanent vacant posts available. Let this exercise be completed within a period of 210 days. We, however, caution the Authorities that they should complete this procedure in the light of these directions.

(Y.G.KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)