

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3624 OF 1997

Executive Engineer, Zilla Parishad,
Solapur and Anr. .. Petitioners

Versus

Maktumgauda Devappa Kirsavalagi .. Respondent

WITH

WRIT PETITION NO. 2409 OF 1998

The Deputy Engineer, Zilla Parishad,
Solapur .. Petitioners

Versus

Shri Sadhu Maruti Panage .. Respondent

WITH

WRIT PETITION NO. 1699 OF 2004

The Deputy Engineer, Zilla Parishad,
Solapur .. Petitioners

Versus

Mukund Namdeo Ghoargale .. Respondent

WITH

WRIT PETITION NO. 7248 OF 2004

The Chief Executive Officer, Zilla Parishad, Solapur
and Anr. .. Petitioners

Versus

Vilas Marinath Shirase .. Respondent

WITH

WRIT PETITION NO. 6478 OF 2009

Executive Engineer, Zilla Parishad,

and Anr.

.. Petitioners

Versus

Baburao Ramchandra Narale and Anr.

.. Respondent

WITH

WRIT PETITION NO. 3628 OF 1997

Executive Engineer, Zilla Parishad,

Solapur and Anr.

.. Petitioners

Versus

Shri Ismile Babumiya Mulani

.. Respondent

WITH

WRIT PETITION NO. 3626 OF 1997

Executive Engineer, Zilla Parishad,

Solapur and Anr.

.. Petitioners

Versus

Shri Shripati Baburao Kolekar

.. Respondent

WITH

WRIT PETITION NO. 3631 OF 1997

Executive Engineer, Zilla Parishad,

Solapur and Anr.

.. Petitioners

Versus

Shri Vijaykumar Machindra Jadhav and Ors.

.. Respondents

WITH

WRIT PETITION NO. 3633 OF 1997

Executive Engineer, Zilla Parishad,
Solapur and Anr.

.. Petitioners

Versus

Satish Kisan Kavade and Ors.

.. Respondents

WITH

WRIT PETITION NO. 3632 OF 1997

Executive Engineer, Zilla Parishad,
Solapur and Anr.

.. Petitioners

Versus

Shri Kallappa Devappa Sherkhans and Ors.

.. Respondent

WITH

WRIT PETITION NO. 3629 OF 1997

Executive Engineer, Zilla Parishad,
Solapur and Anr.

.. Petitioners

Versus

Shri Shriniwas Shivairao Bhosale

.. Respondent

WITH

WRIT PETITION NO. 3625 OF 1997

Executive Engineer, Zilla Parishad,
Solapur and Anr.

.. Petitioners

Versus

Chandrakant Trimbak Patil

.. Respondent

WITH

WRIT PETITION NO. 3630 OF 1997

Executive Engineer, Zilla Parishad,

Solapur and Anr.

.. Petitioners

Versus

Shri Ramchandra Shrirang Sathe and Ors.

.. Respondents

WITH

WRIT PETITION NO. 584 OF 2000

The Assistant Engineer

.. Petitioner

Versus

Gajendra Bapurao Arjun

.. Respondent

WITH

WRIT PETITION NO. 1718 OF 2001

The Chief Executive Officer, Zilla Parishad,

Solapur

.. Petitioners

Versus

Prakash Nagappa Mashale

.. Respondent

WITH

WRIT PETITION NO. 80 OF 1999

The Chief Executive Officer, Zilla Parishad,

Solapur

.. Petitioners

Versus

Dilip Machindra Raut

.. Respondent

WITH

WRIT PETITION NO. 73 OF 1999

The Chief Executive Officer, Zilla Parishad,

Solapur

.. Petitioners

Versus

Anil Nanagiri Gosavi

.. Respondent

WITH

WRIT PETITION NO. 158 OF 1997

Zilla Parishad, Solapur

.. Petitioners

Versus

Sambhaji Vasant Mane and Ors.

.. Respondents

WITH

WRIT PETITION NO. 157 OF 1997

Zilla Parishad, Solapur

.. Petitioner

Versus

Govind Narhari Bhosale and Ors.

.. Respondents

WITH

WRIT PETITION NO. 2947 OF 1997

Executive Engineer, M.I. Divn Z.P. Solapur

.. Petitioner

Versus

Vaijnath Suryabhan Avate

.. Respondent

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Mr. Vijay Killedar, for Petitioners all Writ Petitions.***Mr. Anand Kulkarni***, for Petitioner in WP No.1718 of 2001.***Mr. Kiran Bapat***, Senior Advocate with Mr. Gaurav S. Gawande i/b Mr. Avinash Fatangare, for Respondent in WP No.6139 of 1999 and WP No. 4244 of 1999.***Mr. Kiran Bapat***, Senior Advocate with Mr. Gaurav S. Gawande i/b Ms. Gauri Bhosale, Advocate for Respondent in WP No. 584 of 2000.***Mr. B.A. Lawate***, for Respondent in WP No. 6478 of 2009.***Ms. Seema Sarnaik***, for Respondent in WP No. 4890 of 1999.***Mr. Abhishek R. Avachat***, for Respondent in WP No.1718 of 2001.***Ms. Gunjan Shah*** i/b Mr. P.B. Shah, Advocate for Respondent in WP No.2497 of 1999.***Ms. Vaishali Nimbalkar***, AGP for Respondent – State.

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CORAM : SANDEEP V. MARNE J.

DATE : 22 JULY 2024.

P.C. :-

1) These Petitions are filed by Zilla Parishad, Solapur challenging various orders passed by the Labour Court / Industrial Court, by which Respondents are either directed to be reinstated in service or permanency status is directed to be conferred on them.

2) Respondents in these Petitions have worked as Muster Assistants with Solapur Zilla Parishad during the relevant time. They have been terminated from various dates. Brief details of the services of each of the Respondents in the present Petitions are scanned and reproduced below :-

Sr.	Writ Petition No.	Respondent's name	Date of appointment	Date of termination	Details of lower Court proceedings	Date of decision	Nature of order	Date of rejoining	Present Status
1	3624/1997	Matkumgauda Devappa Kirsavalagi	13.09.1982	---	Complaint ULP No. 330/1990	26.03.1997	Respondents are directed to confer the status and privileges of permanent employee on the complaints w.e.f. 01.10.1988 and accordingly to pay them monetary benefits thereto, in the post of muster assistant.	---	Not working in Zilla Parishad
2	2409/1998	Sadhu Maruti Panage		01.04.1988	Reference IDA No. 18/1993	22.07.1997	The First Party is directed to reinstate the Second Party in his original post as muster assistant without any back wages but with continuity of service.		Retired on 31.05.2017
3	1699/2004	Mukund Namdev Ghogardare	03.07.1983	30.03.1988	Reference IDA No. 97/1993	02.05.2001	1) The reference stands dismissed; 2) The first party, however, is directed	---	Not working in Zilla Parishad

							to absorb the second party as per the scheme applicable for regularization of services of the Muster Assistants if the second party is in the employment in the present date.		
4	6478/2009	1) Baburao Ramchandra Narale 2) Ishwar Kisan Ghadge	20.10.1994 29.10.1994	01.03.1997 19.03.1997	Complaint ULP No. 45/1997	19.09.2003	In view of order & judgment passed by their Lordship of High Court Mumbai Bench Aurangabad the Respondent directed to regularize the Complainant in the employment as he is muster assistant	Not joined	Not working in Zilla Parishad
5	3634/1997	Eknath Laxman Dhumal	03.03.1984	---	Complaint ULP No. 152/1991	26.03.1997	The Respondents are directed to confer the status and privileges of a permanent employee on the complaints w.e.f 1.10.1988 and accordingly pay them	Joined	Water Supply Department, South Solapur

							monetary benefits thereto, in the post of 'musterling assistant'.		
6	3628/1997	Ismail Babumiya Mulani	03.02.1987	---	Complaint ULP No. 163/1991	26.03.1997	The Respondents are directed to confer the status and privileges of a permanent employee on the complaints w.e.f 1.10.1988 and accordingly pay them monetary benefits thereto, in the post of 'musterling assistant'.	Joined	Working as Junior Engineer, Sub division Malsheras
7	3626/1997	Shripati Baburao Kolekar	17.06.1983	---	Complaint ULP No. 366/1990	26.03.1997	The Respondents are directed to confer the status and privileges of a permanent employee on the complaints w.e.f 1.10.1988 and accordingly pay them monetary benefits thereto, in the post of 'musterling assistant'.	---	Not working in Zilla Parishad

8	3631/1997	Vijaykumar Machindra Jadhav	02.06.1986	---	Complaint ULP No. 365/1990	26.03.1997	The Respondents are directed to confer the status and privileges of a permanent employee on the complaints w.e.f 1.10.1988 and accordingly pay them monetary benefits thereto, in the post of 'musterling assistant'.	---	Not working in Zilla Parishad
9	3633/1997	Satish Kisan Kavade	24.10.1986	---	Complaint ULP No. 335/1990	26.03.1997	The Respondents are directed to confer the status and privileges of a permanent employee on the complaints w.e.f 1.10.1988 and accordingly pay them monetary benefits thereto, in the post of 'musterling assistant'.	Joined	City Survey Office, Solapur
10	3632/1997	Kallappa Devappa Sherkhane	01.10.1986	---	Complaint ULP No. 334/1990	26.03.1997	The Respondents are directed to confer the status and privileges of a permanent employee on the	---	Not working in Zilla Parishad

							complaints w.e.f 1.10.1988 and accordingly pay them monetary benefits thereto, in the post of 'mustered assistant'.		
11	3629/1997	Shrinivas Shivajirao Bhosale	21.11.1985	---	Complaint ULP No. 333/1990	26.03.1997	The Respondents are directed to confer the status and privileges of a permanent employee on the complaints w.e.f 1.10.1988 and accordingly pay them monetary benefits thereto, in the post of 'mustered assistant'.	---	Not working in Zilla Parishad
12	3625/1997	Chandrakant Trimbak Patil	12.09.1983	---	Complaint ULP No. 331/1990	26.03.1997	The Respondents are directed to confer the status and privileges of a permanent employee on the complaints w.e.f 1.10.1988 and accordingly pay them monetary benefits thereto, in the post of 'mustered assistant'.	---	Not working in Zilla Parishad

							thereto, in the post of 'mustered assistant'.		
13	3630/1997	Ramchandra Shrirang Sathe	23.01.1985	--	Complaint ULP No. 332/1990	26.03.1997	The Respondents are directed to confer the status and privileges of a permanent employee on the complaints w.e.f 1.10.1988 and accordingly pay them monetary benefits thereto, in the post of 'mustered assistant'.	---	Not working in Zilla Parishad
14	584/2000	Gajendra Bapurao Arjun	08.04.1983	18.12.1985	Reference IDA No. 43/1993	05.08.1999	1) the termination w.e.f. 18.12.1985 is quashed and set aside for want of compliance of Section 25-F of Industrial Disputes Act, 1947 2) the employer is directed to reinstate the workman with continuity in service and back wages excluding the period	Not absorbed	Retired on 29.02.2012 on existing post

							from 18.12.1985 to 21.12.1992		
15	1718/2001	Prakash Nagappa Mhasale	09.08.1987	30.06.1989	Reference IDA No. 04/1997	10.04.1999	The first party is hereby directed to reinstate the second party in his original post with continuity of service, however, back wages from 25.06.1996 onwards till the date of actual reinstatement.	---	Not working in Zilla Parishad
16	80/1999	Dilip Machindra Raut	1982	20.02.1986	Complaint ULP No. 254/1990	17.11.1995	The Respondents are directed to confer the status and privileges of a permanent employee on the complainant w.e.f. 01.10.1988 and accordingly pay to them monetary benefits thereto.	Joined	Taluka Krushi Adhikari Office, Sangola (Retired)
17	73/1999	Anil Nanagiri Gosavi (he has died on 06.03.2021)	28.08.1984	15.04.1986	Complaint ULP No. 208/1986	27.05.1991	1) The Opponent is hereby directed to reinstate the complainant with continuity of service.	Joined	Died

							2) The Opponent is hereby directed to pay 74% back wages to the Complainant w.e.f. from the date of his termination.		
18	158/1997	Sambhaji Vasant Mane	1982	06.01.1988	Complaint ULP No. 04/1989	30.11.1995	1) The Respondent No. 1 is directed to reinstate the Complainants in the post of Mustering Assistants with payment of back wages and continuity in service. 2) The Respondent No. 1 is directed to confer the status and privileges of a permanent employee on the Complainant w.e.f. 01.10.1988 and accordingly to pay them monetary benefits.	---	Not working in Zilla Parishad

19	157/1997	Govind Narhari Bhosale	1982	06.01.1988	Complaint ULP No. 3/1989	30.11.1995	1) The Respondent No. 1 is directed to reinstate the Complainants in the post of Mustering Assistants with payment of back wages and continuity in service. 2) The Respondent No. 1 is directed to confer the status and privileges of a permanent employee on the Complainant w.e.f. 01.10.1988 and accordingly to pay them monetary benefits.	---	Not working in Zilla Parishad
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22	2947/1999	Vajinath Suryabhan Avate	02.07.1983	14.05.1986	Reference IDA No. 60/1992	18.07.1998	1) termination is set aside and the first party is directed to reinstate the second party in the capacity of mustering assistant with continuity of service however, with back wages from 04.10.1991 till date of actual reinstatement.	---	Retired on 31.05.2014 Zilla Parishad (Bandhkam Upavibhag), Barshi
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23	4244/1999	Sharnappa Hanmantappa Patil	---	05.01.1989	Reference IDA No. 10/1994	23.06.1988	Termination is set aside and the first party is directed to reinstate the second party with continuity of service, however, back wages from 17.05.1993 onwards till date of actual reinstatement.	Not Joined	Worked in M. I. Solapur Retired on 31.05.2022
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3) There is no dispute to the position that the State Government issued Government Resolution dated 1 December 1995 (GR) resolving to absorb Muster Assistant working as on 31 May 1993 in services of the State Government / Zilla Parishad. The Respondents in the present Petitions possibly did not get

benefit of the said GR dated 1 December 1995 since their services were already terminated and their Complaints / References were pending adjudication before the concerned Labour / Industrial Courts. No doubt after 1 December 1995, the Respondents have been directed to be either reinstated in services and/or granted the status of permanency. Petitions are pending before this Court for considerable period of time. One of the reasons for pendency of the present Petitions is on account of the issue of status of the concerned department implementing Employment Guarantee Scheme as 'industry' being pending before the Apex Court in ***State of U.P. Vs. Jai Bir Singh***¹. However, it is also not under dispute that several orders are passed by this court from time to time directing regularization of Muster Assistants in accordance with the GR dated 1 December 1995 as well as various GRs issued thereafter.

4) The issue of granting regularization to Muster Assistant also attracted attention of the Apex Court in ***Shaikh Miya s/o Shaikh Chand etc. s. State of Maharashtra***². However, the issue before the Apex Court in ***Shaikh Miya s/o Shaikh Chand*** (supra) was slightly different. The issue was about grant of uniform date of absorption in respect of Muster Assistants absorbed in service after 31 March 1997. The Apex Court directed that all the Muster Assistants absorbed in service after 31 March 1997 shall be deemed to be have been so absorbed from notional date of 31 March 1997 for the purpose of payment of pension and pensionary benefits to them. Thus, the order of the Apex Court in ***Shaikh Mia Shaikh Chand*** (supra) also indicates that Muster Assistants have been progressively absorbed in service.

6) After the Judgment of the Apex Court in ***Shaikh Miya s/o Shaikh Chand*** (supra), numerous Petitions were apparently filed before the Division Benches of this Court seeking absorption in service of Muster Assistant with effect from 31 March 1997. Reference in this regard can be made to the order

¹ Civil Appeal No (s).897/2002

² Civil Appeal No.6531 - 6533 / 2022 decided on 7 September 2022

dated 30 March 2023 passed by Division Bench of this Court in ***Shri Aba Shankar Jadhav and Ors. Vs. The Secretary, Planning Department and Ors.***³. The case before Division Bench, involved somewhat similar circumstances, where the Muster Assistants involved therein were terminated from services prior to 31 May 1995 and were directed to be reinstated in service after issuance of the GR dated 1 December 1995. The Division Bench relied upon decision of the Apex Court in ***Shaikh Miya s/o Shaikh Chand*** (supra) and directed that all the Petitioners therein shall be considered as permanent from 31 March 1997.

7) It appears that similar course of action is adopted by the same Division Bench in ***Md. Khalik Shahbuddin Shaikh and Ors. Vs. State of Maharashtra and Ors.***⁴ It appears that the order passed by the Division Bench on 1 March 2023 in ***Md. Khalik Shahbuddin Shaikh*** (supra) was tested by the State Government before the Supreme Court by filing Special Leave Petition (Civil) Diary No (s). 2320 of 2024 and the Special Leave Petition has been dismissed by the Supreme Court by order dated 15 March 2024. In fact, two of the Petitioners in ***Md. Khalik Shahbuddin Shaikh*** (supra) are Respondents in Writ Petition No.6139 of 1999 and 4244 of 1999 which are listed today and have been disposed of as infructuous by a separate order.

8) Mr. Killedar has relied upon order of Division Bench in ***Ashok Bhikanrao Deshmukh Vs. State of Maharashtra***⁵ and, according to Mr. Killedar, the Division Bench, after taking note of various decisions of this Court, has devised a formula of payment of lumpsum compensation to Petitioner therein. I have gone through the Judgment in ***Ashok Bhikanrao Deshmukh***, (supra) where the facts appear to be completely different. In that case, though the Labour Court has set aside the termination and granted reinstatement with continuity with effect from 11 February 1987, the said order of the Labour Court came to be set

³ Writ Petition No.13819 of 2017 decided on 30 March 2023.

⁴ Writ Petition No.446 of 2021 decided on 1 March 2023.

⁵ Writ Petition No.2149 of 2011 decided on 28 November 2023.

aside by Single Judge of this Court on 16 July 2009. Thus, the order of reinstatement granted by the Labour Court was itself set aside by this Court on 16 July 2009. While doing so, the learned Single Judge directed consideration of case of the Petitioner therein as per GR dated 1 December 1995. Thus, in ***Ashok Bhikanrao Deshmukh*** (supra), the order passed by the Labour Court granting reinstatement did not survive and thus the concerned employee could not demonstrate his presence in service as on 31 May 1993. It is in the light of the peculiar facts of the case that the Division Bench has devised the mechanism of payment of lumpsum compensation of Rs.2 lakh to the Petitioner therein. In my view, the said course of action cannot be adopted in the present case as the Petitions filed by the Zilla Parishad challenging various Orders / Awards passed by Labour Court and Industrial Court are still pending. Also on the other hand of spectrum, there are various orders passed by the Division Bench, against one of which SLP has been dismissed by the Apex Court, directing the grant of permanency from 31 May 1997 following Judgment of the Apex Court in ***Shaikh Miya s/o Shaikh Chand*** (supra).

9) In my view, therefore, the present Petitions can be disposed of by directing the Zilla Parishad as well as the State Government to consider the cases of the Respondents for grant of permanency from 31 March 1997 in tune with the order of the Apex Court in ***Shaikh Miya s/o Shaikh Chand***. (supra) Mr. Killedar would raise a difficulty in case of some of the Respondents who have not joined services of the Zilla Parishad either voluntarily or on account of interim order passed by this Court, while admitting the Petitions. According to him, if Respondents are not even in service of the Zilla Parishad during pendency of the present Petitions, there is no question of granting them the relief of permanency. On the contrary, the learned counsel appearing for the concerned Respondents would submit that they are always willing to join the services during pendency of the present Petitions, but pendency of the Petitions was cited as a pretext for not allowing them to join duties.

10) In my view, ends of justice would be met if a direction is issued to treat even those Respondents who have not worked during pendency of the present Petition to be made permanent from 31 March 1997 without putting any financial burden on the Zilla Parishad and the State Government to pay them any back-wages. If such Respondents have attained the age of superannuation, their pension proposals can be sent by treating them as in regular service of Zilla Parishad from 31 March 1997.

11) All the Writ Petitions are accordingly disposed of by passing the following order:

- (i) Respondents shall be treated in permanent service of the Zilla Parishad from 31 March 1997 as per the Judgment of the Apex Court in *Shaikh Miya s/o Shaikh Chand* (supra).
- (ii) Respondents shall not be entitled to any back wages in respect of period before or after filing of the Complaints / References and the present Petitions.
- (iii) In respect of those Respondents, who have crossed the age of superannuation, the Petitioner Zilla Parishad shall process their pension proposal by computing their service from 31 March 1997 till the date of superannuation as qualifying service. The concerned Respondents shall approach the Petitioner Zilla Parishad and make necessary applications for processing of pension proposals and within 6 months from the date of receipt of the applications, the Petitioner Zilla Parishad shall process and finalize the pension proposals in respect of the Respondents.

(iv) If any Respondent is yet to attain age of superannuation and is not in service, he/she shall make an application to the Zilha Parishad for reinstatement.

13) With the above directions, the Writ Petitions are disposed of. Rule is discharged.

[SANDEEP V. MARNE J.]

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