

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

**WRIT PETITION NO.4340 OF 2005
WITH
INTERIM APPLICATION NO.3075 OF 2020
WITH
CIVIL APPLICATION NO.2830 OF 2008
IN
WRIT PETITION NO.4340 OF 2005**

Balu Mithu Dhamke

...Petitioner

Versus

The Joint Director, Social Forestry
Circle, Nashik and Anr.

...Respondents

...

Mr. Sachin B. Thorat *for the Petitioner and Applicant in
IA/3075/2020.*

Mrs. V.R. Raje, *AGP for Respondents -State and for the
Applicants in CA W/2830/2008.*

CORAM : SANDEEP V. MARNE, J.

DATED : 25 APRIL 2024.

PC:

1. By this petition, the Petitioner challenges Judgment and Order dated 7 June 2005 passed by the Member, Industrial Court, Nashik, by which Revision (ULP)No.100 of 2004 filed by Respondent -Employer came to be allowed and the Judgment and Order passed by the Labour Court on 22 July 2004 has been set aside. The Labour Court had allowed the complaint filed by Petitioner and had directed Respondent -Employer to reinstate the

Petitioner in service with full backwages during the intervening period.

2. By order dated 6 July 2005 this Court admitted the petition and granted interim relief in terms of prayer clause (b). This mean that the Judgment and Order dated 7 June 2005 passed by the Industrial Court was stayed, which resulted in operation of the Judgment and Order dated 22 July 2004 passed by the Labour Court, which contemplated reinstatement with continuity and full backwages.

3. It is common ground that on account of stay to the Judgment and Order passed by the Industrial Court and on account of operation of order passed by the Labour Court, Petitioner is continued in service during pendency of the petition. He attained the age of superannuation on 30 June 2020 and has retired.

4. Mr. Thorat, learned counsel appearing for the Petitioner would invite my attention to the Government Resolution dated 15 June 1995 by which, decision was taken to regularise the service of various individuals including Plantation Kotwals, who were terminated from service. He would also draw my attention to a proposal submitted in respect of the Petitioner by Divisional Forest Officer(Social Forest Department)to the Officer of Conservator of Forest dated 15 December 2021 by which Petitioner's services were

recommended to be regularised considering the 33 years of service from 26 December 1988 to 30 June 2020.

5. It appears that the State Government was willing to regularise the service of the Petitioner but could not do so on account of pendency of the present petition. In this regard paragraph 20 of the affidavit-in-reply filed by the State Government on 5 September 2023 states thus:-

“20. I say that, on 22.7.2022, a letter received by the office of the Additional Principal Chief Conservator (Administration-Sub-Ordinate Services), Nagpur, from the Revenue and Forest Department, Mantralaya, Mumbai, mentioning therein that, government has given following as the for inclusion Proposal to accept Balu Mithu Dhamke, Plantation Kotwal (Provisional) in the cadre of Plantation Kotwal (Forest Guard) with effect from 01.03.1985 subject to the terms and conditions laid down under the Government Resolution dated 15.6.1995 issued by the Rural Development and Water Conservation Department, Mantralaya, Mumbai. In the said letter dated 22.7.2022, it is held that, the matter is now pending before the Hon’ble High Court, therefore, decision can be taken subject to outcome of decision of the Writ Petition. Hereto annexed and marked as Exhibit-5(colly) copies of the letter dated 22.7.2022 received from the Revenue and Forest Department, Mantralaya, Mumbai to the Additional Principal Chief Conservator (Administration-Sub-Ordinate Services), Nagpur and Government Resolution dated 15.6.1995 issued by the Rural Development and Water Conservation Department, Mantralaya, Mumbai.”

6. Thus, pendency of the present petition is actually coming in the way of Petitioner's regularisation.

7. Ms Raje, learned AGP invites my attention to contents of paragraph 21 of the affidavit-in-reply, which refers to filing of an FIR relating to allegation of misappropriation. It is stated in the affidavit that the Petitioner's name is included in the FIR dated 12 October 2022. In my view this is something which the State Government would have to take into consideration. Also of relevant is the fact that the Petitioner has attained the age of superannuation on 30 June 2020 and whether the FIR filed on 12 October 2022 would have any bearing on his claim for regularisation is also required to be considered. Considering the latest developments in the case where the State Government itself was willing to regularise the services, I am of the view that the petition can be disposed of by directing the State Government to take a decision on Petitioner's claim of regularisation and other consequential benefits. I accordingly proceed to pass the following order:-

- (i) The State Government shall decide Petitioner's claim for regularisation of services in accordance with various recommendations made from time to time and particularly in view of the letter of Chief Surveyor of Forest (Regional), Thane, dated 3 January 2022. The necessary decision in this regard shall be

taken within a period of eight weeks from today.

(ii). In the event, the Petitioner is held to be entitled for regularisation of service, all consequential benefits arising out of such decision, including the arrears of pension and pensionary benefits, shall be paid to the Petitioner within a period of three months from the date of the decision.

(iii) Considering the peculiar facts and circumstances of the present case, the Petitioner shall not be entitled to any backwages in pursuance of the Labour Court's order dated 22 July 2004.

(iv) With the above directions the writ petition is disposed of.

(v) Rule is made partly absolute.

8. All civil/interim applications stand disposed of in view of disposal of the petition.

[SANDEEP V. MARNE, J.]