



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.2265 of 2020

Suresh S/o Haribhau Chaudhari
and others.

... **Petitioners**

Versus

The Divisional Manager,
Forest Development Corporation Limited,
Nagpur Forest Project Division,
Nagpur – and others.

... **Respondents**

Mr. S.S. Dhengale, Counsel for Petitioners.
Mr. V.P. Maldhure, Counsel for Respondent Nos.1 to 3.
Mr. N.S. Rao, Assistant Government Pleader for Respondent No.4.

CORAM : BHARATI DANGRE AND ABHAY J. MANTRI, JJ.
DATE : 27th SEPTEMBER, 2024

P C. :

1. Suresh S/o Haribhau Chaudhari along with eight other petitioners are claiming regularization of their services as Forest Labours, by the Forest Development Corporation Limited (FDCL), Nagpur Division, Nagpur, i.e. the respondent Nos.1 to 3, based on the policy decision of the State Government, contained in the Resolution dated 16th October, 2012, as it is the case of the petitioners that they satisfy the conditions stipulated in the Government Resolution and therefore, they are eligible for regularization of their services.

The petitioners are aggrieved by the act of the respondents in delaying the regularization process and hence they seek the relief of

regularization, by relying upon the list of eligible candidates as well as the certificate issued by the respondent No.1 in their favour.

In the alternative, it is prayed that the respondent Nos.1 to 3 be directed to decide the representations preferred by the petitioners as expeditiously as possible, and to decide their claim and grant regularization.

2. We have heard the learned counsel Mr. S.S. Dhengale for the petitioners. The respondent Nos.1 to 3 are represented by Mr. V.P. Maldhure, whereas the respondent No.4 is represented by the learned Assistant Government Pleader Mr. Nitin Rao.

3. On 16th October, 2012, the State Government, through its Revenue and Forest Department, took a policy decision and reflected the same by issuing a Resolution, for granting regularization of services to the employees working in the Forest Department, Social Forestry and Forest Development, on daily-wage basis.

In the preface of the scheme, set out in the Government Resolution dated 31st June, 1996, considering the long period of service rendered by the daily-wagers, 10,264 supernumerary posts of Forest Labours were created. Those daily wagers, who, as on 1st November, 1994, had rendered service of 240 days in a continuous period of five years between 1st November, 1989 and 31st October, 1994, came to be regularized, pursuant to the issuance of the said Government Resolution.

By issuing another Government Resolution dated 29th January, 2000, those daily wagers working between 16th March, 1998 and 29th January, 2000, were also contemplated to be regularized. However, subsequent to the issuance of the Government

Resolution dated 29th January, 2000, except in compliance of the directions of the Courts, regularization was not granted to any person.

Taking cognizance of the fact, that in the Forest Department, the work of conservation, protection and development is implemented and this includes the work of forestry, removal of forest produce and the work in the forest guest house, the persons are regularly engaged on daily-wage basis and to regularize the services of these employees, working for years together, was under consideration of the State Government and therefore, on 16th December, 2012, the State Government decided to regularize 6,546 such persons, who, in the period of five years commencing from 1st November, 1994 to 30th June, 2004, had rendered minimum service of 240 days per year. As far as the Forest Department is concerned, the Government Resolution contemplated creation of 5,089 posts for absorption of these daily-wagers and the approval was granted for creation of these posts, subject to certain stipulations set out therein.

4. The Government Resolution dated 16th October, 2012 thus, permitted regularization of 5,089 daily wagers, who had rendered services for minimum five years from 1st November, 1994 to 30th June, 2004 and had worked for 240 days in every year and this benefit was to be conferred subject to the following stipulations :

- (i) The daily-wagers were not conferred with any pay-scale and ancillary benefits.
- (ii) As on 1st June, 2012, the daily-wagers will be governed by the prevailing pension and pay and their services will be governed by the Maharashtra Civil Services and Pension Rules.

(iii) The regularization of 5,089 workers shall be subject to seniority and eligibility.

(iv) Before conferring the benefit of regularization and releasing the financial benefits, a list of employees with their necessary details and the departments shall be prepared and forwarded to the State Government.

One of the stipulations contained in the Government Resolution, also stipulated that those employees, who had instituted the proceedings before the Court, their regularization was made subject to the condition of withdrawal of the proceedings.

5. The point for consideration that arises in the present petition is whether it is imperative for the petitioners to be in service on the date of issuance of the Government Resolution on 16th October, 2012.

The petitioners claim to be the eligible candidates for regularization, as they claim that they were appointed as daily-wage labours with the Forest Development Corporation Limited, Nagpur Division and they worked continuously in the Department. Their names were included in the seniority list published in the year 2003, at distinct serial numbers and according to them, since they had rendered service for a period of five years in each year for a period of 240 days, they are eligible for regularization.

The petition offer the details of the petitioners, reflecting upon the service rendered to the respondent-Forest Development Corporation

Limited till 2003, when they were removed from service on distinct dates, in the year 2003-2004.

6. It is in this peculiar fact, that the petitioners were not in service on the date when the Government has issued the Government Resolution dated 16th October, 2012, the counsel for the respondents would call in question their eligibility to avail the benefit of the said Government Resolution.

The respondent Nos.1 to 3 have filed an affidavit-in-reply affirmed by the Deputy Manager of Forest Development Corporation of Maharashtra, Nagpur, dated 29-8-2024, wherein a specific stand is adopted by stating as follows :

“3. The answering Respondents submit that the Petitioners came to be appointed as Forest Labours sometime in the year 1991-1992 and onwards. The services of the Petitioners came to be terminated sometime in the year 2003-2004. The answering Respondents are submitting the date of joining Petitioners and the date of discontinuation from the works in the following tabular form-

Sr.No.	Name of Petitioner	Date of Joining	Date of Discontinuation
1.	Suresh Haribhau Choudhari	03.03.1992	21.05.2004
2.	Purushottam Bajirao Bachale	01.05.1993	04.07.2003
3.	Laxman Deoraoji Shrirame	12.08.1991	21.05.2004
4.	Mahadeo Chaitu Sonwane	16.09.1991	21.05.2004
5.	Gopal Sitaram Choudhary	15.09.1991	21.05.2004
6.	Ramu Yadavrao Rode	01.07.1992	04.07.2003
7.	Mangal Bajirao Bhoyar	01.05.1993	04.07.2003

8.	Kisan Arjun Bhoyar	21.04.1993	04.07.2003
9.	Padmakar Domaji Badwaik	01.07.1991	21.05.2004

The answering Respondents submit that the above table demonstrates that none of the Petitioners were in employment on 30.06.2004 and also they were never further continued in service so as to be eligible for working on 01.06.2012. The language of the Government Resolution requires that the daily wagers who were working from 01.11.1994 till 30.06.2004 continuously or intermittently, having completed 240 days of work for minimum 5 years and working on 30.06.2004 were to be considered for regularisation provided that they are further eligible for continuation in service on 01.06.2012.”

7. Reliance is placed by the petitioners upon the decision of the learned Single Judge (Justice Z.A. Haq, as His Lordship then was), in a group of writ petitions, Writ Petition No.715 of 2017 being the lead petition, when the challenge was raised to the order passed by the Industrial Court upholding the claim of the employees for regularization of their services as per the policy of the State Government incorporated in the Government Resolution dated 16th October, 2012, subject to the stipulation that the employee should be in the employment during the period from 2nd November, 1994 till 30th June, 2004 for more than 240 days, either continuously or intermittently, subject to the condition that on 1st June, 2012, the employee should be eligible to continue in the employment.

Since the Industrial Court rendered a finding that the employees have been in the employment from 1st November, 1994 to 30th June, 2004, and hence they were eligible to continue in the employment, the respondent-employer took a specific stand that the employees were terminated before issuance of the Government Resolution dated 16th October, 2012 and they were not entitled to the benefit of the Government Resolution.

The learned Single Judge, in the facts held that the Government Resolution dated 16th October, 2012 do not show that the services of only those employees who were in employment on 16th October, 2012 were to be regularized and since the Industrial Court has found that the respondents/employees fitted in the criteria as per the Government Resolution dated 16th October, 2012, by upholding the order of the Industrial Court, the writ petitions filed by the Forest Development Corporation Limited, Nagpur were dismissed.

8. The learned counsel for the petitioners has invited our attention to the decision of another learned Single Judge (Justice Avinash G. Gharote) in Writ Petition No.5297 of 2018 - **Ramesh S/o Mahadeo Dable Versus Ministry of Forest and Environment, through its Secretary, Kamgar and Udhog Vibhag, State of Maharashtra, Mantralaya, Mumbai and others** dated 28th February, 2020, where a conclusion is derived to the effect that when the Government Resolution dated 16th October, 2012 uses the word

‘regularization’, it necessarily conveys the regularization of the employment of a person in service and not otherwise. We must reproduce the relevant observations in the said decision, which read thus :

“18. That takes me to the plea, that under the Government Resolution dated 16/10/2012, the petitioner was eligible to have been considered for appointment. In this context, it is axiomatic to state that the services of the petitioner, stood terminated on 29/01/2001 w.e.f. 31/01/2001, challenge to which was negated by the Courts. Thus, w.e.f. 31/01/2001, the petitioner, no longer remained in the employment of the respondents. A perusal of the Government Resolution dated 16/10/2012, demonstrates that the purpose for which the same was brought into effect, was that persons were working/in employment on daily wages from years together and therefore, it was necessary, to regularize their services. The Government Resolution dated 16/10/2012, categorically uses the expression “regularization”, which naturally would mean the regularization of the employment of a person in service and not otherwise. In fact, the language of the Government Resolution goes further and it specifically mandates, that only those persons, who were in employment between the period 01/11/1994 to 30/06/2004 were entitled for regularization, provided they complied with the other conditions as mentioned therein, for which purpose, 5089 additional posts were being created. The services of the petitioner already stood terminated on 29/1/2001 and therefore he was not in employment as on 30/06/2004, due to which the Government Resolution dated 16/10/2012, is clearly inapplicable to the petitioner.”

“19. The reliance by learned Counsel for petitioner, on the order dated 25/02/2019, in Writ Petition No.715/2017 and connected matters is misplaced as the said order clearly considers the situation that the Government Resolution dated 16/10/2012 was applicable to those employees who were in employment during the period from 2/11/1994 till 30/6/2004, whereas in the instant case, as already observed, the employment of the petitioner already stood terminated on 29/1/2001 and therefore the Government Resolution dated 16/10/2012 would not be applicable to the petitioner.”

With the aforesaid observations, the writ petition came to be dismissed.

9. The learned counsel for the respondent No.1 has placed reliance upon another decision in Writ Petition No.9965 of 2023 - **Mahadu Lahanu Bhoje** Versus **General Manager F D C M L LTD** dated 5th January, 2024 delivered at the Principal Seat at Mumbai, which also revolves around the Government Resolution dated 16th October, 2012.

A challenge was raised to the judgment and order passed by the Member, Industrial Court, Nashik, who rejected the complaint filed by the petitioner seeking benefit of permanency in service with effect from 1st June, 2012, based on the GR dated 16th October, 2012, and the absorption was claimed, as it was alleged that he has completed 240 days of service and he fulfill the criteria therein, he deserve regularization.

While considering the rival contentions advanced on behalf of the contesting parties, the learned Judge reflected upon the law expounded by the Apex Court on the subject of regularization of services of temporary/*ad hoc*/casual/contract workers and the permissibility of ordering regularization by the industrial adjudicator in accordance with the scheme formulated by the employer, the policy of the State Government, as contained in the Resolution dated 16th October, 2012.

Observing that the Government Resolution dated 16th October, 2012 envisages absorption of daily-wagers, who had rendered 240 days' service in any of the five years, either continuously or in broken spells, between 1st November, 1994 and 30th June, 2004, it was specifically recorded that necessary stipulation for extending the benefit of this Resolution was, that the daily-wage workers need to be in service as on 1st June, 2012. In Paragraph 15 of the decision in *Mahadu Lahanu Bhoje* (supra), it is specifically recorded thus :

“15. Thus under the GR dated 16 October 2012, Petitioner needs to satisfy the twin conditions of completion of 240 days of service in any of the 5 years from 1 November 1994 to 30 June 2004 and being in service as on 1 June 2012.”

10. Referring to the factual scenario where the statement certifying the number of days of service put up by the employee, from the year 1999-2000 to 2003-2004, it is specifically noted that there is no specific evidence to show that the petitioner was in service as on 1st June, 2012.

The facts, which surfaced before the learned Judge, reflected that the petitioner did not render any service from 2004-2005 to 2012-2013, though it appeared that he had been engaged twice in August and September 2013 for twelve days each and thereafter he was engaged for few days during 2014-2015 (106), 2015-2016 (311), 2016-2017 (312) and 2017-2018 (156).

It is specifically recorded that the petitioner was not in service as on 1st June, 2012 and the specific stand of the respondent-Corporation to the effect that, the benefit of the Government Resolution dated 16th October, 2012 cannot be extended to the petitioner, as he was not working on 1st June, 2012 was taken note of.

It is in the light of this factual scenario, the relevant observation deserve a reproduction --

“[18] Perusal of the Complaint filed by Petitioner indicates that no specific averment is made that he was in service as of 1 June 2012. Even in the present Petition, Petitioner has not made any specific averment that he was in service as of 1 June 2012. The service subsequently rendered by him during 2013-2014 to 2017-2018 is inconsequential. It is a mandatory requirement of GR dated 16 October 2012 that a daily wager must be in service as of 1 June 2012. Since Petitioner does not satisfy this mandatory requirement, he is not eligible to be absorbed in service as per GR dated 16 October 2012. This appears to be the reason why the Petitioner has been left out of the absorption exercise where the Respondent-Corporation absorbed about 1006 daily wagers in the service of the Corporation.”

With the aforesaid observations, the writ petition came to be dismissed, being found devoid of merit.

11. The factual scenario placed before us is somehow similar to the decision delivered by the learned Single Judge in ***Mahadu Lahanu Bhoye*** (supra), as, according to the pleadings in the present petition, none of the petitioners was in service on the date of issuance of the Government Resolution dated 16th October, 2012. Merely because the petitioners have rendered service of five years, as contemplated in the Government Resolution for the stipulated period between 1st November, 1994 and 30th June, 2004, we are of the express opinion that they do not deserve extension of the benefit of the policy decision of the State Government for regularizing their services. The Government Resolution dated 16th October, 2012, intends to regularize those daily-wage workers, who were in employment as on 16th October, 2012 and had rendered 240 days of service in each year, commencing from 1st November, 1994 to 30th June, 2004.

12. Admittedly, the policy was never intended to be extended to those whose services were terminated, as it was brought to our notice by the learned counsel for the respondent Nos.1 to 3 that upon termination of their services, some of the terminated employees had challenged their dismissal before the Competent Court and it would not be expedient to

extend the benefit of the policy decision, even to such employees and we find substance in his argument.

The policy decision to regularize the daily-wagers was definitely restricted to those, who were in employment on the date of the issuance of the GR as it contemplated the regularization by creating 5,089 supernumerary posts.

This definitely does not cover those who were not in service and therefore we do not find any reason to entertain the petition filed by the petitioners.

13. Hence, we dismiss the writ petition, as we are of the express opinion that the petitioners are not entitled for the extension of the benefit of the Government Resolution dated 16th October, 2012, as they were not working as daily-wagers on the said date and in fact they were removed from work long back in 2003.

(ABHAY J. MANTRI, J.)

(BHARATI DANGRE, J.)