



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7276 OF 2022

Bhaskar S/o Hanumantrao Waghmare,
Age : 57 years, Occu : Service,
R/o 44, Ground Floor, Rathod Niwas,
Bahadurpura, Aurangabad,
Tq. and Dist. Aurangabad

.. Petitioner

Versus

- 1] The State of Maharashtra
Through its Principal Secretary,
Agriculture, Horticulture, Animal Husbandry,
Fisheries and Dairy Development Department,
Mantralaya, Mumbai – 32
- 2] The Commissioner of Dairy
Development, Maharashtra State,
Mumbai
- 3] The Regional Dairy Development
Officer, Jalna Road, Aurangabad

.. Respondents

AND

CONTEMPT PETITION NO. 74 OF 2023 IN WP/7276/2022

(Bhaskar S/o Hanumantrao Waghmare Vs. Nilesh S/o Pandurang Band)

...

Advocate for the petitioner in WP and CP : Mr. S.S. Thombre
Addl. GP for the respondent – State : Mr. P.S. Patil

...

**CORAM : ALOK ARADHE, CJ. &
RAVINDRA V. GHUGE , J.**

DATE : 18 MARCH 2025

ORAL JUDGMENT (PER : CHIEF JUSTICE) :

1. Rule, made returnable forthwith. With consent, heard finally.

2. In this Petition, the Petitioner, who is a daily wage employee in the establishment of Dairy Development Department, Aurangabad, seeks a direction to the Respondents to regularize the service of the Petitioner, on the ground that the benefit of regularization has been extended to similarly situate employees.

3. Contempt Petition No. 74 of 2023 has been filed for non-compliance of the interim order dated 27.07.2022, passed by this Court in Writ Petition No. 7276 of 2022.

(i) FACTS :-

4. Facts giving rise to filing of the present Petition, in nutshell, are as under:-

a] That the name of the Petitioner was sponsored by the Employment Exchange Officer and he was appointed as a Watchman on daily wage basis on 31.01.1985, in the Office of the Regional Dairy Development Officer, Aurangabad. Since then, the Petitioner was continuing on daily wage basis.

b] Some of the employees who are similarly situated like that of the Petitioner, approached the Principal Seat of this Court at

Mumbai, by filing Writ Petitions, namely WP/313/1998, WP/4544/1998, WP/4545/1998 and WP/4546/1998, seeking the relief of regularization on the strength of the Government Resolution dated 20.05.1991, providing for regularization of the services of the employees who had completed 5 years of service up to 30.06.1989.

c] A claim in the said Petitions was also made on the ground that the benefit of regularization was given to other similarly situated employees.

d] A Division Bench of this Court, by order dated 05.12.2019 passed in Writ Petition No. 2487 of 2013, directed regularization of services of the Petitioners therein. It is not in dispute that in pursuance to the directions passed by Division Bench of this Court, the Respondents directed regularization of the services of the Petitioners in the said Writ Petition, about 7-8 months ago.

e] In the aforesaid factual background, the Petitioner has filed the instant Writ Petition on 28.06.2022 seeking regularization of the service, on the ground that the benefit of regularization has been given to similarly situated employees.

5. This Court, by an interim order dated 27.07.2022, directed the Respondents to maintain the same service conditions of the Petitioner until further orders. However, the Respondents, by order dated 14.07.2022, had terminated the services of the Petitioner. The Petitioner had, therefore, filed Contempt Petition no.74/2023 which is before this Court today.

6. Today, however, the learned counsel for the Respondents has produced a copy of the order dated 18.03.2025 indicating that the order dated 14.07.2022, by which the services of the petitioner was terminated, will be withdrawn and the Petitioner would be reinstated in service. The aforesaid order is taken on record and marked as 'X' for the purpose of identification. Accordingly, since the principle of 'No work – No wages' will not be applicable considering that involuntary unemployment was foisted on the Petitioner, he shall be entitled for the wages at the daily rates last paid to him, from the date of refusal of work till he is reinstated. We direct the reinstatement of the Petitioner within 15 days and the arrears of wages to be paid within 60 days.

(ii) **SUBMISSIONS** :

7. The learned counsel for the Petitioner has invited the attention of this Court to the order dated 05.12.2019 passed by the Division Bench of this Court in Writ Petition No. 2487 of 2013 and

has submitted that similarly situated employees have been accorded the benefit of regularization. It is further submitted that all similarly situated employees should be treated alike, lest same would amount to discrimination and would constitute infringement of Article 14 of the Constitution of India. In support of the submission, reliance has been placed on the decision of the Supreme Court dated 17.10.2014 in the ***State of Uttar Pradesh Vs. Arvind Kumar Srivastava***¹.

8. On the other hand, the learned counsel for the Respondent did not dispute the fact that the services of similarly situated employees had been regularized. However, it is contended that the Petitioner is guilty of delay and laches and, therefore, he is not entitled to relief of regularization. It is also pointed out that presently, on account of reduction of work and in the absence of a post, the Petitioner is not entitled to seek relief of regularization.

9. We have considered the rival submissions made by both sides and have perused the record. Admittedly, the Respondents, in compliance of the directions dated 05.12.2019 passed in Writ Petition No. 2487 of 2013, have regularized the service of the similarly situated employees.

¹ (2015) 1 SCC 347

(iii) **ANALYSIS** :-

10. The issue which arises for consideration in this Petition is whether the Petitioner is entitled to a similar relief on account of delay and laches.

11. The Supreme Court, in ***State of Uttar Pradesh Vs. Arvind Kumar Srivastava*** (supra), was dealing with a case of appointment. In the case before the Supreme Court, the employees had approached after a period of 9 years seeking parity in treatment in relation to the appointment. The Supreme Court noted that there is an unexplained delay of 9 years in approaching the Court. The following legal principles were laid down by the Supreme Court in paragraph No. 23 which is extracted below for the facility of reference:

"23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the Appellants as well as the Respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same

and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma and Ors. v. Union of India (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

12. However, the question of delay and laches, is a question which is to be decided in the facts of each case. In the instant case, the Writ Petition filed by other similarly situated employees, was decided on 05.12.2019. The Respondent did not give effect to the directions issued by the Division Bench of this Court, till 2024. Only in the year 2024 i.e. after a period of 5 years, the Respondents have issued orders regularizing services of the other similarly situated employees.

13. The Petitioner has filed the Petition on 28.06.2022 i.e. within 3 years from the date of decision. So also, the cause of action which is available to the Petitioner in this matter seeking regularization, is a recurring cause of action. In the facts of the case, we find that though there is a slight delay on the part of the Petitioner in approaching the Court, yet, in the peculiar facts of the case, the same does not disentitle him to seek the relief of regularization. However, the delay in approaching this Court would be a relevant factor for the respondents while determining the consequential benefits in case the service of the Petitioner is regularized.

14. For the afore-mentioned reasons, in our considered view, the Petitioner is entitled to parity in treatment.

15. We, therefore, direct the Competent Authority of the Dairy Development Department to consider the case of the Petitioner for regularization within a period of two (2) months from the date of uploading of the order passed today, on the official website of this Court.

16. Needless to state that the Respondents shall be entitled to take into account the period from 05.12.2019 till 28.06.2022, while determining the consequential benefits, in case the Petitioner is found entitled for regularization.

17. So also, the claim of the Petitioner shall be decided by a speaking order, bearing in mind the order dated 05.12.2019 passed by this Court in Writ Petition No. 2487 of 2013.

18. Accordingly, the Writ Petition is partly allowed in the above terms.

19. Rule is made absolute accordingly. No order as to costs.

20. In view of the order passed today, we do not intend to proceed further with the Contempt Petition no.74/2023. Accordingly, the same is, therefore, closed and disposed off.

21. This order shall govern the disposal of this Writ Petition as well as the Contempt Petition No. 74 of 2023.

[RAVINDRA V. GHUGE, J.]

[CHIEF JUSTICE]

arp/