



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
930 WRIT PETITION NO. 5440 OF 2022**

1. Brahmananad s/o. Kashinath Gadge,
Age : 63 years, Occu.Retired,
R/o. Kranti Chowk, Old Bhaji Market,
Ahmedpur.Tq.Ahmedpur,
Dist.Latur. ...Petitioner

versus

1. The State of Maharashtra
Through its Secretary,
Municipal Administrative Department,
Mantralaya, Mumbai-32.
2. The Commissioner/Director,
Municipal Administration Directorate,
Government Transport Service Building,
3rd Floor, Sir Pochkhanwala Marg,
Worli, Mumbai-400 030.
3. The Divisional Commissioner and
Regional Deputy Director of
Municipal Administration,
Aurangabad.
4. The Collector,
Latur.
5. The Municipal Council,
Ahmedpur, Dist. Latur.
Through its Chief Officer. ...Respondents

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Advocate for the Petitioner : Mr. K.P. Rodge h/f. Mr.Rodge Pratap G.

AGP for Respondent/State : Mr. D.R.Korade

Advocate for Respondent No. 5 : Mr. V.P. Latange

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**CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.**

DATE : 23rd JANUARY 2025

PER COURT :

1. Heard learned counsel for the petitioner.
2. Learned AGP Mr. Korade is for the state and learned counsel Mr.Latange is for Municipal Corporation.
3. The petitioner contends that the employees, who, were in employment are daily wagers before 10.03.1993, they are regularized as per the Government policy. The petitioner was daily wager with respondent no.5 since 01.05.1992. Pursuant to the government policy to regularize the daily wagers, the respondent no.5 took the process and finally 11 persons like the petitioners were given appointment from 17.06.2002. Since the petitioner was not added in that list, he moved a representation thereafter. Again the same process for regularization was followed. The Chief Executive Officer of respondent no. 5 was candidly in favour of the petitioner and with his candid opinion he has referred the recommendations to the District Collector. District Collector also was positive and with his candid opinion that the petitioner deserves appointment from 17.06.2002, had submitted proposal to the respondent no.2.
4. Before the impugned order, the predecessor of respondent no.2 by letter dated 03.11.2022 directed respondent no. 3 to regularize the petitioner from 17.06.2002. However, surprisingly the officer

changed. By impugned order on 06.01.2022, he took a view that petitioner is not entitled to the regularization from 17.06.2002. He has referred to the Clause No. 7 of the appointment order which reveals that appointees would not be entitled to financial as well as service benefits for the period they were daily wagers and finally by the impugned order he refused the regularization of the petitioner from 17.06.2002.

5. Learned counsel for the petitioner would submit that the record reveals that authorities have accepted that it was their mistake. The petitioner would also be placed in a list of 11 persons. Therefore, they have admitted their inadvertent mistake. They have positively recommended the petitioner. The respondent no. 2 has incorrectly interpreted clause no. 7 of the order of regularization of petitioner. Petitioner is not claiming any benefits financial or service, till he was daily wager. He is simply claiming that whatever the date of appointment given to earlier persons, it be given to him so that it may help him to count his services benefits.

6. Learned AGP would submit that the condition no. 7 in the appointment order was very specific. The petitioner had accepted that condition and continued services and superannuated also. Therefore he cannot reverse the clause. The effect of regularization should be given from the date of the appointment. Even though the Chief Executive Officer and the District Collector recommended positively, it appears that they did not consider the terms and

conditions of the appointment. Therefore the impugned order is legal and proper.

7. With the able assistance of the respective counsels, we have gone through the record. There is no dispute that the petitioner was in employment before the date from which regularization process was started. He was in employment and eligible for regularization. The admitted fact on record is that when other 11 persons were recommended and appointed from 17.06.2002, the petitioner was not placed. Thereafter the matter was reprocessed by following due procedure of law admitting the inadvertent mistake. The Chief Executive Officer as well as District Collector recommended the proposals positively. However, the predecessor of respondent no. 2 was also positive. Reading of clause no. 7 of the appointment order of the petitioner has not been properly interpreted. The prayer of the petitioner is very specific that there he should be given effect to his regularization from 17.06.2002 as another 11 similarly situated employees were given though they were juniors to him. He did not ask for any financial or service benefits before 17.06.2002.

8. We are convinced that the petitioner should not suffer for the inaction of the employers. Had he been added to the list with the earlier list he would have been regularized from 17.06.2002.

9. No one should be penalized for the mistakes of the others. Hence, we are of the opinion that the petition deserves to be allowed.

ORDER

- i) Writ Petition is allowed.
- ii) The impugned order dated 06.01.2022 stands quashed and set-aside.
- iii) The regularization of the petitioner should be considered from 17.06.2002 and on that basis the post retiral benefits should be calculated.
- iv) Respondent No. 3 should proceed with the appropriate process for granting the post retirement benefits of count in service from 17.06.2002, within a month.
- v) No order as to costs.

[SHAILESH P. BRAHME, J.]

[S. G. MEHARE, J.]

vsj..