

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7543 OF 2009
WITH
INTERIM APPLICATION NO. 13424 OF 2023

Papparao Bhimrao Waghmare

....*Petitioner*

V/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH

WRIT PETITION NO. 9308 OF 2009

Manohar Bhanudas Waghmare

....*Petitioner*

V/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH

WRIT PETITION NO. 9267 OF 2009

Sanjay Pandurang Kharade

....*Petitioner*

V/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH

WRIT PETITION NO. 9268 OF 2009

Popat Haribhau Rote

....*Petitioner*

V/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH

WRIT PETITION NO. 9270 OF 2009

Rajaram Bhanudas Jadhav

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 7544 OF 2009

Mahadev Jakanna Hattale

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 9309 OF 2009

Laxman Eknath Waghmare

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 9316 OF 2009

Dagdu Vithoba Narale

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 9311 OF 2009

Vikram Namdeo Suryavanshi

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 9310 OF 2009

Tanaji Bhanudas Waghmare

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 9317 OF 2009

Balbhim Nivrutti Kegar

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 9318 OF 2009

Ishwarappa Shankarappa Umrani

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 9319 OF 2009

Maruti Vitthal Raut

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 9320 OF 2009

Laxman Bhima Narale

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 9269 OF 2009

Bharat Ramchandra Jawale

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 9271 OF 2009

Mahadev Limba Chavan

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 6759 OF 2009

Machindra Dadappa Saudagar

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 9323 OF 2009

Lahu Nivrutti Pawar

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 7545 OF 2009

Rohidas Shripati Shinde

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 7546 OF 2009

Siddheshwar Vithoba Ghadage

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 9322 OF 2009

Dattatraya Bhikam Murade

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 9324 OF 2009

Shantinath Maruti Jadhav

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 9321 OF 2009

Ashok Machindra Raut

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

WITH
WRIT PETITION NO. 9285 OF 2009

Vasant Maruti Sargar

....*Petitioner*

v/s.

The Executive Engineer, Zilla Parishad
and anr.

....*Respondents*

Ms. Jai Kanade i/by. *Mr. Rahu Shirgavkar and Ms. Tanaya Patankar, for the Petitioners.*

Mr. Hrishkesh S. Shinde, *for the Petitioner in WP-9310/2009.*

Mr. Vijay Killedar, *for Respondent Nos.1 and 2.*

CORAM : SANDEEP V. MARNE, J.

Date : 9 January 2025.

P.C. :

1) The petitions challenge the Awards passed by the Presiding Officer, Labour Court Solapur answering in the negative the References registered at the instance of Petitioners relating to their reinstatement with backwages in the services of Solapur Zilla Parishad.

2) Since the factual position involved in all Petitions is more or less similar, barring slight difference in the dates of their initial engagement and the dates of their termination, it is not necessary to narrate the facts involved in each petitions. For representational purposes, facts involved in Writ Petition No. 7543/2009 are considered. Petitioner-Papparao Bhimrao Waghmare claims that he was initially engaged as daily wage Mile Majdoor in the services of Zilla Parishad, Solapur w.e.f. 1 March 1985 at Madha and that he was orally terminated on 31 August 1988. While working as Mile Mazdoor, he performed various duties relating to construction and maintenance of roads. Though he was terminated on 31 August 1988, industrial dispute *qua* him was raised in the year 2004 and the same was registered as Reference IDA No.62/2004. In similar manner, though the other Petitioners were also terminated during 1987 to 1991, the References in their cases were also made to the Labour Court in the years 2003 or 2004.

3) The grievance of the Petitioners before the Labour Court was that the State Government took a policy decision on 29 September 1995 for reinstatement of Mile Majdoors terminated in accordance with

the G.R. dated 6 February 1989 and that accordingly the Mile Majdoors who was terminated from services by Zilla Parishad were not only reinstated but also made permanent. It was contended that though the Union on behalf of the Petitioners raised a demand for grant of same treatment to the Petitioners, the Zilla Parishad failed to reinstate them in service on par with hundreds of similarly placed Mile Majdoors, who were reinstated in pursuance of letter dated 29 September 1995. It appears that though the Reference was made only against Zilla Parishad, Petitioners also impleaded Secretary, Rural Development and Irrigation Department as Respondent No.3 to their respective References. However, there is no dispute to the position that the References for reinstatement with backwages were addressed only against Solapur Zilla Parishad.

4) The Zilla Parishad resisted the References by filing Written Statement *inter-alia* questioning maintainability of the References, both on the ground of delay, as well as on the ground that the Zilla Parishad was not the employer of the Petitioners. Additionally, it was contended in the Written Statements that Petitioners' services were utilised for the work of maintenance of roads, which is not a work of routine nature and that their engagements automatically came to an end after the concerned work got completed.

5) It appears that Petitioners led evidence in support of their respective claims and additionally examined the union leader. But the Zilla Parishad did not lead any evidence. The Labour Court has answered the References made at the instance of the Petitioners in the negative and the present petitions are filed challenging the Awards passed by the Labour Court.

6) I have heard Ms. Kanade, the learned counsel appearing for the Petitioner and Mr. Killedar, the learned counsel appearing for the Respondent-Zilla Parishad. In the present petitions, State Government has not been impleaded as a party Respondent, though it was so impleaded before the Labour Court.

7) I have considered the submissions canvassed by the learned counsel appearing for the parties and have gone through the impugned Awards and relevant records placed along with the Petitions.

8) It must be observed at the outset that the References made at the instance of the Petitioners were hopelessly time barred. So far as Petitioner in Writ Petition No.7543/2009 is concerned (*Papparao Bhimrao Waghmare*), though he was allegedly terminated from service on 31 August 1988, Reference at his instance was registered in the year 2004. He thus slept over his rights for over 16 long years. True it is that no specific period of limitation is prescribed for making a Reference by the Appropriate Government. However, it is equally well settled that an order of Reference can be made only in respect of a subsisting industrial dispute. Having not raised any grievance to their alleged termination for several years, it is difficult to accept that any genuine dispute subsisted between the parties when the orders of References were made by the appropriate Government. However, since the orders of Reference were not challenged by the Respondent-Zilla Parishad and the References made to the Labour Court have been adjudicated on merits, I proceed to examine whether Petitioners made out any case for awarding reinstatement of backwages before the Labour Court, instead of non-suiting them only on the ground of delay.

9) As observed above, the broad grievance raised by the Petitioners in their Statements of Claim were premised essentially on the letter dated 29 September 1995 issued by the State Government, by which directions were issued to the Zilla Parishad, Solapur for reinstatement of all Mile Mazdoors who were terminated in pursuance of G.R. dated 6 February 1989. It would therefore be necessary to make a reference to the G.R. dated 6 February 1989, as well as to letter dated 29 September 1995.

10) The Finance Department of the Government of Maharashtra issued G.R. dated 6 February 1989 to curb tendency on the part of its departments to create new posts, which was apparently putting financial burden on the State Government. It appears that by G.R. dated 14 May 1986, instructions were already issued to curb the tendency of creation of new posts on the establishment of the State Government. However, it appears that by relying on certain other orders, several departments continued creating new posts on the establishment and accordingly issuance of G.R. dated 6 February 1989 was necessitated. The G.R. dated 6 February 1989 was issued in particular reference to workcharged establishments and daily wage establishments. In so far as daily wage establishments are concerned, the G.R. issued following directions:

13. शासनाच्या असे निर्देशनास आले आहे कि, रोजंदारीवरील आस्थापना निर्माण करण्याची प्रमाणके एकतर निश्चित तरी केलेली नाहीत किंवा ठराविक काळाने त्यांचे पुनर्विलोकन करण्यात आलेले नाही. म्हणून सर्व विभागांनी ही प्रमाणके जेथे अध्याप निश्चित केलेली नाहीत तेथे ती निश्चित करावीत व अन्य प्रकरणात त्यांचे पुनर्विलोकन करावे. कमाल उत्पादकता साध्य करणे आणि राज्याच्या दुर्मिळ अश्या अर्थबळच्या गुंतवणुकीतुन योग्य तो फायदा मिळवणे, इष्ट अशी फळे प्राप्त करून घेणे, ही उद्दिष्टे साध्य करून घेण्यासाठी यापुढे ह्या प्रमाणकांचे ठराविक काळाने पुनर्विलोकन करण्यात यावे.

14. वरीलप्रमाणे प्रमाणकांचे पुनर्विलोकन तीन महिन्यांच्या आत निश्चितपणे पूर्ण करावे अतिरिक्त ठरलेला सर्व कर्मचारीवर्ग, विहित कार्यपद्धती अनुसरून कमी करण्यात यावा.

15. शासनाने असाही निर्णय घेतला आहे की, सध्या जी काही कामे रोजंदारीवरील आस्थापनेकडून करून घेतली जातात, त्यांचा काळजीपूर्वक आढावा घेऊन त्यांची बारमाही कामे व 'इतर' अशी वर्गवारी करण्यात यावी, वरील प्रमाणे प्रमाणके सुधारित करून बारमाही कामे विभागाकडून करण्यात यावीत. विहित उत्पादन मिळविण्यासाठी, शक्यतोवर अशा कामावरील मजुरी उक्त्या कामाच्या दाराने देण्यांत यावी बिगर बारमाही कामे शक्यतोवर रोजंदारी मंजुरांकडून करून घेण्याऐवजी कंत्राटदारांना आणि / किंवा उक्त्या मजुरांना द्यावीत.

11) Thus what was essentially directed by the G.R. dated 6 February 1989 was to review the percentage/proportion of employees to be employed on daily wage establishments in relation to the availability of work. It was directed that after review of such percentage/proportion within a period of 3 months, all surplus employees shall be terminated after following due process of law.

12) The G.R. dated 6 February 1989 issued by the Finance Department was essentially applicable to only the departments of the State Government and in ordinary course, there was no reason for application of the said G.R. to the establishments of Zilla Parishads. In fact, it is the contention of Mr. Killedar that all the Mile Majdoors utilised by Zilla Parishad for undertaking construction and maintenance of road works were actually the daily wage workers of the State Government and not of Zilla Parishad. He has submitted that the Zilla Parishad was a merely an implementing authority for the work undertaken by the State Government. This appears to be the reason why though the G.R. dated 6 February 1989 was issued by the State Government and would in ordinary course would apply to the establishments of the State Governments alone, several Mile Majdoors

working on projects undertaken by the Zilla Parishad got affected by the said G.R. and were required to be terminated in accordance with the G.R. dated 6 February 1989.

13) It however appears that the Rural Development and Irrigation Department of Government of Maharashtra later reconsidered the issue of termination of services of Mile Majdoors and issued letter dated 29 September 1995 with following directions :

क्र.जिप्सो १०९४/२१२६/१०/१६
ग्रामविकास व जलतरण विभाग
मंत्रालय, मुंबई- ४०० ०३२.
दिनांक २९ सप्टेंबर १९९५.

प्रति,
मुख्य कार्यकारी अधिकारी
जिल्हा परिषद, सोलापूर.

विषय : सोलापूर जिल्हा परिषदेमधील मैल मजुरांच्या मागण्या

वरील विषया संबंधी आपले प.क्र.जिप्सो/बाखा.प्रशा ५/१३८१/९५ दिनांक ४ सप्टेंबर १९९५ कृपया पहावे.

२. सोलापूर जिल्हा परिषदेने शासन निर्णय वित्त विभाग क्र.संकिर्ण १०८८/१५[२] सेवा १० दिनांक ६ फेब्रुवारी, १९८९ अन्वये जिल्हा परिषदेकडील मैल मजूराना कमी केलेले आहे. ६ फेब्रुवारी १९८२० च्या शासन निर्णयान्वये ज्या रोजंदारी मैल मजदुरांना कमी केलेले होते, त्याच्या बाबतीत पुढीलप्रमाणे कार्यवाही करण्यात यावी.

- १] या सर्व कर्मचा-यांना सोलापूर जिल्हा परिषदे कामावर घ्यावे.
- २] या कर्मचा-यांना कमी केले तारखेपासून पुन्हा कामावर घेतलेल्या तारखेपर्यंतच्या कालावधीचे वेतन आदा करण्यात येवू नये.
- ३] हे कर्मचारी महिनाभर काम मिळण्यास पात्र आहेत, म्हणून त्यांना महिन्यातून फक्त १४ दिवस काम देण्याचा प्रश्न उदभवत नाही.
- ४] या कर्मचा-यांनी जर कामगार/ औद्योगिक न्यायालयात प्रकरणे दाखल केली असतील तर ती प्रकरणे संबंधीत न्यायालयातून प्रथम मागे घेण्याची कार्यवाही करावी व नंतर या कर्मचा-याना कामावर घ्यावे.

[प्र.म.तेलवणे.]
अपर सचिव, महाराष्ट्र शासन

14) Thus, as per the letter dated 29 September 1995, the Rural Development and Irrigation Department of Government of Maharashtra directed the Solapur Zilla Parishad to reinstate all the employees terminated in accordance with the G.R. dated 6 February 1989 in the services of Zilla Parishad without any backwages. The letter dated 29 September 1985 again shows that prior to the terminations, the said Mile Majdoors were apparently not in the service of Zilla Parishads and for the first time on 29 September 1995, they were directed to be reinstated in the services of Zilla Parishads. The decision was apparently taken on account of large-scale litigation initiated by such terminated Mile Majdoors in Labour and Industrial Courts. Therefore, in para-4 of the letter dated 29 September 1995, a specific condition was imposed that reinstatement would take place only after the concerned Mile Majdoors withdrew the cases filed before the Labour/Industrial Courts.

15) So far as Petitioners are concerned, it is not their pleaded case in their respective Statements of Claims that their termination took place on account of G.R. dated 6 February 1989. In fact, most of the Petitioners were terminated much before issuance of the G.R. dated 6 February 1989. So far as Petitioner-Papparao Bhimrao Waghmare is concerned, his termination took place on 31 August 1988.

16) The letter dated 29 September 1995 was restricted to only those Mile Majdoors who lost their job on account of G.R. dated 6 February 1989. As observed above, it was State Government's decision (Finance Department) to fix percentage/proportion of daily wage employees to be utilised on daily wage establishments and to terminate the surplus employees with a view to reduce the financial burden on

the State Government. Thus, decision for termination of daily wage workers was taken by the State Government and the decision for their reinstatement was also taken by the State Government in the letter dated 29 September 1995. To this extent, the stand taken by the Zilla Parishad that it is not the decision-making authority in respect of Mile Majdoors covered by letter dated 29 September 1995, appears to be correct. Be that as it may, the short issue for consideration is whether Petitioners can be treated on same pedestal with the Mile Majdoors who got reinstated by letter dated 29 September 1995. In my view, there is absolutely no parity between the Petitioners and the Mile Majdoors who were reinstated by letter dated 29 September 1995. Those Mile Majdoors covered by letter dated 29 September 1995, had lost their jobs on account of strict implementation of G.R. dated 6 February 1989, whereas in the present cases, Petitioners' cessation of services is not linked, in any manner, with the decision implemented by the State Government for reduction of financial burden. There can be variety of reasons why Petitioners were discontinued. According to Zilla Parishad, they were engaged on the projects of maintenance of works and since the work is not of permanent nature, their services were discontinued after the work got over. Since the termination of the Petitioners is not attributed to the G.R. dated 6 February 1989, the letter dated 29 September 1995 would have no application to their cases. Therefore, no claim of parity can be raised by the Petitioners with reference to the Mile Majdoors reinstated in service vide letter dated 29 September 1995.

17) Faced with this situation, Ms. Kanade would submit that the Petitioners, in any case, rendered 3-4 years of service and having completed 240 days of service, they were atleast entitled to protection of following of due process of law before discontinuation of their

services. She would contend that the Labour Court ought to have answered the References in affirmative atleast on the ground of non-following of provisions of Section 25F of the I.D. Act.

18) Petitioners claimed reinstatement in the services of Zilla Parishad, which is an Instrumentality of State. Their reinstatement in service would entail creation of posts. In absence of undertaking the exercise about availability of either posts or sufficient work for reinstatement on daily wage basis, an industrial adjudicator cannot simply direct reinstatement on the establishment of State Instrumentality. In this regard, useful reference can be made to the law enunciated by the Division Bench of this Court in *Municipal Council Tirora Versus. Tulsidas Baliram Bindhade*¹, where this Court has held that mere completion of 240 days of service on the establishment of a State Instrumentality does not create any right in favour of daily wage or temporary workers to claim the benefit of permanency by invoking the provisions of Clause-4C of the Model Standing Orders. Though in the present case Petitioners did not claim the relief of permanency, what must be appreciated is the position that the grant of reinstatement to them would also necessitate creation of posts. Petitioners claim to have been engaged for $\frac{3}{4}$ years. It is not even known whether they have rendered continuous service or were utilised as per availability of the work of maintenance of roads. Considering the nature of engagements in respect of the Petitioners, it was all the more necessary for them to exercise the remedy in respect of their alleged termination in a timely manner. If they were to raise industrial disputes immediately after their termination, the Labour Court would have been in a position to adjudicate their claim on the touchstone of the provisions of Section 25F of the I.D. Act by conducting a factual enquiry about completion of 240

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days of service and could have either granted them reinstatement or could have moulded the relief by awarding some compensation for not following the provisions of Section 25F of the Act, if posts were not available for their reinstatement. It is for this reason that the gross and inordinate delay on the part of the Petitioners in raising industrial dispute assumes significance.

19) Ms. Kanade would attempt to cover some part of delay by submitting that during the period 1995 to 2005-06 there was continuous correspondence between the Zilla Parishad and the State Government in relation to the Petitioners. Mr. Killedar would dispute this position and submit that Zilla Parishad did not make any such correspondence with the State Government in relation to the Petitioners. In any case, it is well settled that repeated representations do not extend the period of limitation and cannot be a ground for infusing life into dead, non-existent and stale disputes.

20) In my view, the Labour Court has not committed any palpable error in answering the References in the negative. No interference is warranted by this Court in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India in absence of element of perversity or jurisdictional error in the impugned Awards. The Writ Petitions are devoid of merits and are accordingly **dismissed** without any order as to costs. All the pending Interim Applications also stand disposed of.

[SANDEEP V. MARNE, J.]