



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6776 OF 2024

District : Parbhani

Santosh s/o. Jagannath Galbe,
Age : 40 Years,
Occ. Member of Gram Panchayat/
Gram Rojgar Sevak,
r/o. Devegaon, Tq. Pathri,
Dist. Parbhani

..Petitioner

Vs.

1. The Additional Divisional Commissioner,
Aurangabad Division, Chh. Sambhajinagar
2. The District Collector,
Parbhani
3. Krushna s/o. Sahebrao Kamble,
Age : 36 Years, Occ. Agri.,
4. Gajanan s/o. Rajeshwar Galbe,
Age : 38 Years, Occ. Agri.,
5. Gram Sevak,
Gram Panahayat Office,
Devegaon, Tq. Pathri,
Dist. Parbhani

..Respondents

Mr.Mahesh P. Kale, Advocate for petitioner
Mrs.M.L.Sangit, AGP for respondent nos.1 and 2
Mr.N.R.Pawade, Advocate for respondent nos.3 and 4
Mr.G.V.Mohekar, Advocate for respondent no.5

CORAM : AJIT B. KADETHANKAR, J.
DATE : MARCH 30, 2026

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Considering the nature of controversy and apprehension of the petitioner to face the same objection of disqualification in the ensuing election, the petition is taken up for final hearing with the consent of learned counsel for the parties.

2. SUBJECT-MATTER :-

Whether the post of 'Gram Rojgar Sevak' under the Maharashtra Employment Guarantee Act, 1977 r/w. Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and Maharashtra Employment Guarantee Scheme reinforced by the Government of Maharashtra fall within the definition of an office of profit or a salaried position in the office of a Panchayat AND is hit by disqualification under Section 14(1)(f) or (g) of the Maharashtra Village Panchayat Act, 1958 ("the Act of 1958" for brevity) is the point for consideration in this Writ Petition.

3. FACTS :-

3.1 The facts of the case are not in dispute. The petitioner is an elected Member of Village Panchayat, Devegaon, Tq. Pathri, Dist. Parbhani. He used to work as a Gram Rojgar Sevak under the Government Resolution dated 02.05.2011.

3.2 The respondent no.3 filed a complaint/dispute against the petitioner before the District Collector, Parbhani, seeking petitioner's disqualification under Section 14(1)(f) and (g) of the Act. The respondent no.4 is the one who is conducting functions of the Grampanchayat and was also a party respondent no.1 in the dispute.

3.3 It was the contention of the disputant/respondent no.3 that admittedly, the petitioner was working as a Gram Rojgar Sevak. That, it is a post of profit and interest. The petitioner was getting remuneration from the said post and had interest in the Grampanchayat. As such, the respondent no.3 contended that the petitioner was to be held disqualified to continue as a Member under Section 14(1)(f)(g) of the Act of 1958.

3.4 The petitioner defended the complaint and denied that he was disqualified under the given provisions of the Act of 1958. It was his reply that he was working as a Gram Rojgar Sevak in view of the Government Resolution dated 02.05.2011. He would submit that in terms of the Government Resolution dated 02.05.2011, the petitioner was neither employed by the Grampanchayat nor was holding any salaried office or a position of profit in the gift or disposal of the Panchayat while holding his position.

3.5 The Petitioner also submitted that in the sense he is not directly or indirectly, by himself or his partner, has any share or interest in the work done by the order of the Panchayat or in any contract with, by or on behalf of, or employment with or under, the Panchayat. As such, the petitioner prayed to dismiss the complaint of disqualification lodged by the Respondent No.3.

3.6 The Authority to decide disqualification of an elected member of Village Panchayat rests with the District Collector u/s 14 of the Act of 1958. The respondent no.2 – District Collector heard the parties to the dispute. At the conclusion of the hearing, the Collector agreed with the objections raised by the respondent no.3. Consequently, vide order dated 03.01.2024, the respondent no.2 held the petitioner disqualified to continue on the post of Member of the Grampanchayat under Section 4(1)(f) (g) of the Act of 1958.

3.7 The petitioner challenged the disqualification order in an appeal under Section 16(2) of the Act of 1958 before the respondent no.1. However, vide order dated 27.06.2024 the respondent no.1 concurred with the findings rendered by the respondent no.3. Hence, the petitioner has challenged both orders referred supra in this Writ Petition.

4. SUBMISSIONS:-

4.1. Mr. Mahesh Kale, learned counsel for the petitioner has taken me to the Government Resolution dated 02.05.2011. He would submit that from the plain reading of the clause no.1 of the Government Resolution, it is clear that the petitioner was not a salaried person nor was employee of the State Government/Zilla Parishad/Panchayat Samiti and also was not regular salaried employee of the Grampanchayat.

4.2 My attention is then invited by Mr.Kale, learned counsel to clause no.2 of the Government Resolution dated 02.05.2011. Pointing out to the contents of paragraph 2, he submits that the petitioner is not appointed by the Village Panchayat. It is the Gramsabha which has conferred the work of 'Gram Rojgar Sevak' on the petitioner.

4.3 Mr.Kale further gave emphasis on clause no.7 of the Government Resolution of 2011. He would submit that the remuneration/honorarium payable to the petitioner was to be credited out of the 6% administrative expenditure. He would submit that as such it is not the Village Panchayat that pays any remuneration/honorarium to the petitioner out of the Village

Panchayat's account. Thus, applicability of Section 14 (1) (f) of the Act of 1958 is disputed by the Petitioner.

4.4 As regards to the disqualification u/s 14(1)(g) of the Act of 1958 is concerned, Mr. Mahesh Kale submits that the same is not applicable even remotely to the petitioner's case. He would submit that while clause (f) refers to the position of the Village Panchayat's Member to hold a salary office or a place of profit, while holding such office; clause (g) of Section 14(1) of the Act of 1958 refers to any share or interest of such Member in any work of the Panchayat.

4.5 Learned counsel for the Petitioner relies upon the decisions in the cases of (i) **Rukhminbai Badrinath Shedage Vs. State of Maharashtra, 2020 STPL 45 Bombay**; (ii) **Divya Prakash Vs. Kultar Chand Rana and anr., 1974 STPI 3044 SC**; (iii) **Shivamurthy Swami Inamdar Vs. Chanbasangouda Hanumanthagouda Patil, 1970 STPL 411 SC**; and (iv) **Shibu Soren Vs. Dayanand Sahay, 2001 STPL 9142 SC**.

Thus, Mr.Kale, learned counsel for the petitioner prays to allow the petition and set aside the orders of disqualification, passed by respondent no.2 and confirmed by respondent no.1.

4.6 Mr.Pawade, learned counsel for respondent no.3 - disputant would support the findings recorded by respondent nos.2 and respondent no.1. He would submit that the petitioner has not countered that he was working as Gram Rojgar Sevak. That, respondent no.3 - Collector in the impugned order has rightly observed that the position held by the petitioner, although may not be a salaried post but happened to be a place of profit. He would further submit that even, the respondent no.1 has concurred such findings and hence, the Writ Petition may be dismissed.

5. Discussion and consideration:-

With the able assistance of learned counsel for the respective parties, I have gone through the Writ Petition compilation, the documents annexed to it and the entire record of the Writ Petition. The Government Resolution dated 02-05-2011 is crucial to arrive at conclusion in the dispute in hand in the light of the disqualification provision u/s 14 (1) (f) (g) of the Act of 1958 are concerned.

5.1 For the sake of convenience, Section 14(1)(f) and (g) of the Act of 1958 are reproduced as follows:-

14.(1) No person shall be a member of a panchayat, or continue as such, who—

(a)

(b)

(c)

(d)

(e)

(f) holds any salaried office or place of profit in the gift or disposal of the Panchayat, while holding such office or place ;

or

(g) has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the Panchayat, or in any contract with, by or on behalf of, or employment with or under, the Panchayat ;

5.2. From the recitals of the clauses (f) and (g) of the Section 14(1) of the Act of 1958, disqualification u/s 14(1) (f) would depend upon the nature of work and the service conditions of the elected candidate who is alleged of the said disqualification. Similarly, the disqualification u/s 14(1) (g) of the Act would depend upon the factual aspect of the every case and the evidence to that effect.

Accordingly, firstly the Petitioner's service conditions need to be tested to see whether his job is hit by Section 14 (1)(f) of the Act. This clause refers to 'salaried post' and 'office of profit'. First, I shall deal on this aspect of the matter.

SALARIED POSITION

5.3 The Government of Maharashtra enacted the Maharashtra Employment Guarantee Act 1977 ('Act of 1977' for brevity) in conformity with Article 41 of the Indian Constitution. The object of the Act of 1977 was to make effective provision for securing the right to work by guaranteeing employment to every household whose adult members volunteer to do unskilled manual work in rural areas in the State of Maharashtra.

In the year 2006, the Central Government passed the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 ('MNREG Act' for brevity). The preface to the MNREG Act provides that, to provide for the enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith or incidental thereto.

5.4 In view of Section 28 of the MNREG Act of 2005, the Government of Maharashtra in the year 2006 continued the Act of 1977 in conformity with the MNREGA Act 2005. In tune with the MNREGA Act of 2005, the Government of Maharashtra also enacted

the Maharashtra Employment Guarantee Scheme for effective implementation of the object under the Acts of 1977 and the MNREG Act of 2005.

5.4.1 In terms of the provisions under the Act of 1977, three components i.e. the State, Gramsabha, and Gram Panchayat were determined with definite responsibility. It is the responsibility of the State to provide work to the adult on his/her demand within the village panchayat limit. Gramsabha is entrusted with the responsibility of organizing the work for the beneficiaries. Engaging the desirous adult on the approved work and to launch the actual work is the responsibility of the Gram Panchayat. The responsibility of record keeping is on the shoulders of the Sarpanch and the Gramsevak in the Village. Services of outsourced candidates are hired to assist the Gramsevak in his work and for updating the computer data. Such outsourced persons are named as Gram Rojgar Sevak.

5.5 The Act of 1977 comprised of entire mechanism to implement its object. The Government of Maharashtra issued guidelines from time to time as regards to implementation of the Act. Hiring services of helpers was thus provided. The helpers were named as Gram Rojgar Sevaks. The Government of Maharashtra

issued a Government Resolution on 02-05-2011 thereby defining service conditions of the Gram Rojgar Sevaks in the State. This Government Resolution of 2011 compiled all earlier guidelines and instructions, and with an intent to streamline service norms pan State, provided the modified guidelines. The case in hand is governed by the Government Resolution dated 02-05-2011. The Government Resolution dated 02-05-2011 reads thus:-

प्रस्तावना:-

राज्यात ग्रामपंचायतीमार्फत जवाहर रोजगार योजना, ग्रामीण भूमिहीन रोजगार हमी (आरएलईजीएस), संपूर्ण ग्रामीण रोजगार योजना इत्यादी योजना राबविल्या जात होत्या. सन २००६ पर्यंत या विकास योजना म्हणून राबविण्यात येत होत्या, व २००६ नंतर त्यांचे कायद्यात रूपांतर झाले.

महात्मा गांधी राष्ट्रीय ग्रामीण रोजगार हमी अधिनियम, २००५ केंद्र शासनामार्फत पारित केल्यानंतर, तसेच महाराष्ट्र रोजगार हमी कायदा २००६ मध्ये सुधारणा केल्यानंतर गावांतील प्रत्येक प्रौढ व्यक्तीची नोंद करून त्याने कामाची मागणी केल्यानंतर संबंधित ग्रामपंचायत हद्दीत कामे उपलब्ध करून देण्याची जबाबदारी शासनाची आहे. ग्रामसभा ही कामाचे नियोजन करणारी यंत्रणा असून गावातील प्रौढ व्यक्तीकडून जॉबकार्डसाठी अर्ज स्वीकारणे व त्यांनी केलेल्या कामाच्या मागणीप्रमाणे शेल्ववरील मंजूर कामांपैकी आवश्यकतेप्रमाणे काम सुरु करण्याची जबाबदारी ग्रामपंचायतीची आहे. राष्ट्रीय ग्रामीण रोजगार हमी कायद्यातील तरतुदीनुसार ग्रामपंचायत हे कामाच्या नियोजनाच्या संदर्भात मूळ घटक आहे.

ग्रामपंचायत स्तरावर मग्राहोहयोचे अभिलेख व नोंदवह्या ठेवल्या जातात. या कामाची जबाबदारी ग्रामपंचायतीची म्हणजेच सरपंच व ग्रामसेवक यांची आहे. या कामात ग्रामसेवकांना मदत करण्यासाठी व संगणकीय माहिती इ. भरण्यासाठी मदतनीस म्हणून ग्राम रोजगार सेवकांच्या सेवा बाह्यस्थ (outsourcing) पद्धतीने घेतल्या जातात. ग्राम रोजगार सेवकांची कर्तव्ये व जबाबदाऱ्या आणि त्यांच्या नियुक्तीच्या संदर्भात सुधारित मार्गदर्शक सुचना एकत्रितपणे देण्याची बाब शासनाच्या विचारधीन होती.

शासन निर्णय

ग्राम रोजगार सेवकांची कर्तव्ये व जबाबदाऱ्या आणि त्यांच्या नियुक्तीच्या संदर्भात देण्यांत आलेले आदेश अधिक्रमीत करून ग्राम रोजगार सेवकांची कर्तव्ये व जबाबदाऱ्या आणि त्यांच्या नियुक्तीच्या

संदर्भात पुढीलप्रमाणे मार्गदर्शक सूचना देण्यांत येत आहेत.

१. महात्मा गांधी राष्ट्रीय ग्रामीण रोजगार हमी योजनेचे अभिलेख व नोंदवह्या ठेवण्याची बाबदारी सरपंच व ग्राम सेवकांची असेल, मात्र या कामात मदत करण्याची व प्रत्यक्ष काम करण्याची जबाबदारी ग्राम रोजगार सेवकाची असेल. त्यांच्या कामाचे स्वरूप पुढीलप्रमाणे असेल.

अ) ग्राम रोजगार सेवकाचे काम हे अर्धवेळ स्वरूपाचे असेल.

ब) ग्राम रोजगार सेवक पदाच्या मानधनातून त्याची किंवा त्याच्या कुटुंबाची उपजीविका चालेल, अशी अपेक्षा त्याने धरू नये. ग्राम रोजगार सेवकाचे उत्पन्नाचे अन्य मागे असल्यास ते करून ग्राम रोजगार सेवक पदाचे काम करण्यास मुभा राहिल. ग्राम रोजगार सेवक पदाचे हे मानधन त्याचे अधिकचे उत्पन्न असेल.

(क) कामाच्या प्रमाणानुसार त्याला मानधन प्रदान केले जाईल.

ड) ग्राम रोजगार सेवकांची सेवा तात्पुरत्या स्वरूपाची असेल. ते राज्य शासन जिल्हा परिषद/पंचायत समितीचे कर्मचारी नसतील. तसेच ते ग्रामपंचायतीचेही नियमित कर्मचारी नसतील.

२. नियुक्ती प्राधिकारी

अ) ग्राम रोजगार सेवकांच्या सेवा उपलब्धते संदर्भात ग्राम सभा (ग्रामपंचायत नव्हे) निर्णय घेईल.

ब) त्याला काढून टाकण्याच्या संदर्भात ग्रामपंचायत किंवा सरपंच यांना निर्णय घेण्याचा अधिकार नसून केवळ ग्रामसभेस त्याबाबत निर्णय घेण्याचा अधिकार असेल.

क) ग्रामपंचायतीचे पदाधिकारी बदलले तरी ग्राम रोजगार सेवक बदलू नये.

ड) सबळ कारणावरून ग्राम रोजगार सेवकाला काढून टाकण्यापूर्वी त्याला नैसर्गिक न्यायानुसार ग्रामसभेत त्याचे म्हणणे मांडण्याची संधी द्यावी आणि त्याबाबत ग्राम सेवकाचे अभिप्राय घ्यावेत.

इ) गट विकास अधिकारी, विस्तार अधिकारी (ग्रामपंचायत) किंवा तत्सम अधिकारी यांनी त्यांना नियुक्तीचे आदेश देऊ नयेत.

३.१ शैक्षणिक अर्हता व इतर आवश्यकता -

राग्रोहयोचे अभिलेख ठेवणे व ग्राम रोजगार सेवकांना मदत करणे हे ग्राम रोजगार सेवकाचे काम असल्याने तो किमान दहावी पास असावा. (१२ वी पास असलेल्यास प्राधान्य राहिल.)

अ) जर दहावी पास नसलेल्या उमेदवाराची नियुक्ती पुर्वी करण्यांत आलेली असेल तर त्याची नियुक्ती पुढे चालू ठेवण्यास हरकत नाही.

ब) त्याला वेबसाईटवर ग्रामपंचायत क्षेत्रातील राग्रोहयोच्या कामाची माहिती भरण्याचे काम

करावयाचे असल्याने पुढील ६ महिन्यामध्ये त्याने MS-CIF किंवा तत्सम संगणक परीक्षा उत्तीर्ण होणे आवश्यक आहे. गटविकास अधिकारी लेखी कारणे नमूद करून फक्त अपवादात्मक परिस्थितीमध्ये सदर कालावधी पुढील ६ महिनेपर्यंत वाढवू शकेल. अन्यथा त्याची सेवा समाप्त करण्यात येईल.

क) भविष्यात त्याच्या कामाच्या संदर्भात काही चाचण्या किंवा परीक्षा घेण्यांत येतील. जर या परीक्षांमध्ये तो पास झाला नाही तर त्याला कामावरून कमी करण्यास तो पात्र राहील.

३.२ नियुक्तीच्या संदर्भात इतर अटी-

अ) उमेदवाराचे चारित्र्य निष्कलंक असावे, तसेच गांवक-यांचे त्याच्याबद्दल मत चांगले असावे.

ब) उत्तम आरोग्य असावे.

क) गावातील अंगमेहनतीचे काम करण्यास सक्षम असलेल्या प्रौढ व्यक्तीना विशेषत महिला, अनुसूचित जाती/नमातीच्या व अन्य तत्सम प्रवर्गातील ग्रामस्थांना ज्यांच्यामधून मुख्यतः मजूर उपलब्ध होणार असतात त्यांना संवेदनशिलतेने व व्यवस्थित हाताळण्याची क्षमता असावी.

४) ग्राम रोजगार सेवकाची कर्तव्ये-

१) मग्नारोहयोच्या संदर्भातील ग्रामपंचायत पातळीवर सर्व प्रकारचे अभिलेख तयार करणे तो जतन करण्यासाठी ग्राम सेवकाला मदत करणे,

२) त्याने ग्राम सेवकाच्या मार्गदर्शनाखाली सर्व प्रकारच्या नोंदी घ्याव्यात. तथापि सर्व अभिलेख योग्य प्रकारे, व्यवस्थितपणे व परिपूर्ण ठेवण्याची जबाबदारी ग्राम सेवकाची असेल.

३) ग्राम सेवकाच्या मार्गदर्शनाखाली ग्रामपंचायतीमध्ये सर्व अभिलेख सांभाळण्याचे काम ग्राम रोजगार सेवकाने करावे.

४) भविष्यात मजुरांच्या हजेरीसाठी वापरावयाची यांत्रिक व इलेक्ट्रॉनिक उपकरणे हाताळण्याची क्षमता व तयारी असावी.

५) मजुरांचे हजेरीपत्रक सांभाळावे.

६) रोजगार कार्यक्रम गांवात सुरळीतपणे व सुनियोजितपणे राबविण्यासाठी व यशस्वी करण्यासाठी ग्राम सेवकाच्या मार्गदर्शनाखाली सर्वतोपरी प्रयत्न करावेत.

७) मोजमाप घेण्यासाठी कनिष्ठ अभियंत्यांना व तत्सम तांत्रिक अधिकाऱ्यांना मदत करणे, व शासनाच्या आणि पंचायत समितीच्या कर्मचा-यांना रोजगार कार्यक्रमा संदर्भात सहाय्य करणे.

८) आवश्यकता भासल्यास मस्टर रोल गट विकास अधिकारी कार्यालयात घेऊन जाणे व बँक आणि पोस्ट ऑफिसशी संपर्क साधून मजुरांच्या मजुरी प्रदानास विलंब होणार नाही याबाबत दक्ष रहाणे.

५) गैरवर्तणूक

१) मग्नारोहयोच्या अभिलेखाची नीट काळजी न घेणे व चांगल्या प्रकारे काम न करणे

२) भ्रष्टाचार व खोट्या हजेरी पत्रकाबाबत तक्रारी आल्यास त्या गैरवर्तणुकीशी संबंधित

समजण्यात येतील.

३) मजुरांना वाईट वागणूक देणे.

४) मजुर व विशेषतः महिला मजूर यांचेशी गैरवर्तणुकीच्या तक्रारीत तथ्य आढळून आल्यास मानधनात कपात करण्यापासून कामावरून निष्कासित करण्यापर्यंत दंडात्मक कारवाई करण्यात येईल.

६) एका ग्रामपंचायतीमध्ये ग्राम रोजगार सेवकांची संख्या

शक्यतो एका ग्रामपंचायतीमध्ये एक ग्राम रोजगार सेवक असावा. तथापि ग्रामपंचायत मोठी असल्यास किंवा ग्रामपंचायत क्षेत्रात मोठ्या प्रमाणावर कामे असल्यास किंवा आदिवासी व मागास भाग असल्यास किंवा जेथे ग्रामपंचायतीमध्ये जास्त गावे विखुरलेल्या स्वरूपात असतील तर एकापेक्षा जास्त ग्राम रोजगार सेवक घेता येतील.

७) ग्राम रोजगार सेवकांना प्रदाने :-

१) ग्रामपंचायत स्तरावर झालेल्या मजुरीच्या प्रदानावर वेळोवेळी निश्चित केलेल्या दराने मानधन.

२) सदर मानधन ६% प्रशासकीय खर्चाच्या निधीमधून देण्यांत येईल

३) गट विकास अधिका-यांकडून शक्यतो दर पंधरा दिवसांनी मानधन अदा करण्यांत येईल. परंतु १ महिन्यापेक्षा जास्त कालावधीत प्रदाने करू नयेत.

४) गट विकास अधिकारी कार्यालयात जाण्यासाठी किंवा ग्राम सेवकांच्या सूचनेप्रमाणे प्रवास करण्यासाठी केलेल्या खर्चाची तसेच अन्य तत्सम खर्चाची देयके ६% प्रशासकीय खर्चाच्या निधीमधून अदा करण्यांत येतील.

ग्राम रोजगार सेवकांच्या सेवा उपलब्धतेबाबत वरीलप्रमाणे कार्यवाही करून, त्यांच्या सेवेचा वापर महात्मा गांधी राष्ट्रीय ग्रामीण रोजगार हमी योजनेच्या प्रभावी अंमलबजावणीसाठी करण्यांत यावा.

5.6 From the recitals of the preface and clause No.1 to the Government Resolution dated 02-05-2011, it is crystal clear that the Gram Rojgar Sevak is not a permanent employee of Village Panchayat under the scheme of 2011 nor holds a salaried office of any type. It is abundantly clear that the petitioner's work being Gram Rojgar Sevak, was part-time, of contractual nature on

outsourced basis, and he was to be paid honorarium corresponding to the proportion of his work. It is also clear that the Petitioner was not a regular employee of State Government/Zilla Parishad/Panchayat Samiti or Grampanchayat. The preface of the Government Resolution of 2011 in fact states that the Gram Rojgar Sevak is appointed on outsourced basis.

5.7 For sake of convenience, clause no.1 of the Government Resolution dated 02.05.2011 is reproduced as under:-

1. महात्मा गांधी राष्ट्रीय ग्रामीण रोजगार हमी योजनेचे अभिलेख व नोंदवह्या ठेवण्याची बाबदारी सरपंच व ग्राम सेवकांची असेल, मात्र या कामात मदत करण्याची व प्रत्यक्ष काम करण्याची जबाबदारी ग्राम रोजगार सेवकाची असेल. त्यांच्या कामाचे स्वरूप पुढीलप्रमाणे असेल.

अ) ग्राम रोजगार सेवकाचे काम हे अर्धवेळ स्वरूपाचे असेल.

ब) ग्राम रोजगार सेवक पदाच्या मानधनातून त्याची किंवा त्याच्या कुटुंबाची उपजीविका चालेल, अशी अपेक्षा त्याने धरू नये. ग्राम रोजगार सेवकाचे उत्पन्नाचे अन्य मागे असल्यास ते करून ग्राम रोजगार सेवक पदाचे काम करण्यास मुभा राहील. ग्राम रोजगार सेवक पदाचे हे मानधन त्याचे अधिकचे उत्पन्न असेल.

(क) कामाच्या प्रमाणानुसार त्याला मानधन प्रदान केले जाईल.

ड) ग्राम रोजगार सेवकांची सेवा तात्पुरत्या स्वरूपाची असेल. ते राज्य शासन जिल्हा परिषद/पंचायत समितीचे कर्मचारी नसतील. तसेच ते ग्रामपंचायतीचेही नियमित कर्मचारी नसतील.

5.8 Clause no.2 of the Government Resolution dated 02.05.2011 also makes it clear that the petitioner cannot be said to have been appointed by the Grampanchayat. Gram Rojgar Sevak is appointed by the Gram Sabha, not by the Gram Panchayat, nor by

the Zilla Parishad authorities or Panchayat Samiti authorities.

Clause no.2 reads thus:-

२. नियुक्ती प्राधिकारी

अ) ग्राम रोजगार सेवकांच्या सेवा उपलब्धते संदर्भात ग्राम सभा (ग्रामपंचायत नव्हे) निर्णय घेईल.

ब) त्याला काढून टाकण्याच्या संदर्भात ग्रामपंचायत किंवा सरपंच यांना निर्णय घेण्याचा अधिकार नसून केवळ ग्रामसभेस त्याबाबत निर्णय घेण्याचा अधिकार असेल.

क) ग्रामपंचायतीचे पदाधिकारी बदलले तरी ग्राम रोजगार सेवक बदलू नये.

ड) सबळ कारणावरून ग्राम रोजगार सेवकाला काढून टाकण्यापूर्वी त्याला नैसर्गिक न्यायानुसार ग्रामसभेत त्याचे म्हणणे मांडण्याची संधी द्यावी आणि त्याबाबत ग्राम सेवकाचे अभिप्राय घ्यावेत.

इ) गट विकास अधिकारी, विस्तार अधिकारी (ग्रामपंचायत) किंवा तत्सम अधिकारी यांनी त्यांना नियुक्तीचे आदेश देऊ नयेत.

5.9 It is expressly provided in the Government Resolution of 2011 that it is the Gramsabha, not the Village Panchayat that hires the services of Gram Rojgar Sevak. Now, it would be needful to go through clause no. 7 of Government Resolution of 2011. The said clause clearly lays down that the payment to be given to the petitioner was to be credited out of 6% administrative expenses meant for the effective execution and implementation of Mahatma Gandhi Rashtriya Gramin Rojgar Hami Yojana. Clause 7 is reproduced as under:-

७) ग्राम रोजगार सेवकांना प्रदाने :-

१) ग्रामपंचायत स्तरावर झालेल्या मजुरीच्या प्रदानावर वेळोवेळी निश्चित केलेल्या दराने मानधन.

2) सदर मानधन ६% प्रशासकीय खर्चाच्या निधीमधून देण्यांत येईल

3) गट विकास अधिका-यांकडून शक्यतो दर पंधरा दिवसांनी मानधन अदा करण्यांत येईल. परंतु १ महिन्यापेक्षा जास्त कालावधीत प्रदाने करू नयेत.

४) गट विकास अधिकारी कार्यालयात जाण्यासाठी किंवा ग्राम सेवकांच्या सूचनेप्रमाणे प्रवास करण्यासाठी केलेल्या खर्चाची तसेच अन्य तत्सम खर्चाची देयके ६% प्रशासकीय खर्चाच्या निधीमधून अदा करण्यांत येतील.

ग्राम रोजगार सेवकांच्या सेवा उपलब्धतेबाबत वरीलप्रमाणे कार्यवाही करून, त्यांच्या सेवेचा वापर महात्मा गांधी राष्ट्रीय ग्रामीण रोजगार हमी योजनेच्या प्रभावी अंमलबजावणीसाठी करण्यांत यावा.

5.10 Thus, its clear that the Gram Rojgar Sevak i.e. the Petitioner doesn't get any salary from the Village Panchayat, nor the Petitioner holds a salaried office within the meaning of Section 14(1) (f) of the Act of 1958.

OFFICE OF PROFIT

Lets now see whether the subject-matter post i.e. Gram Rojgar Sevak can be termed as 'office of profit/place of profit' within the meaning of Section 14(1) (f) of the Act of 1958.

5.11 Disqualification of an elected member of a local body in the State of Maharashtra owing to holding an office of profit is floated from the Article 102 (1) (a) of the Indian Constitution which reads thus:

“102. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament— 1 [(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;”

Another constitutional provision u/a 191 (1) (a) speaks thus:

“191. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—1 [(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;]”

5.12 Disqualification of a democratically elected member in Indian democratic system has its deep roots in the “Separation of Power” theory adopted by the makers of the Indian Constitution. The whole object of imposing such constitutional disqualification is to avoid the conflicting interests of the democratically elected Members of Parliament and the Houses, with the executive functionary and the Institution.

5.13 The Local Body Acts in the State of Maharashtra derived the concept of disqualification of the elected members on the lines of the disqualifications imposed u/a 102 (1) (a) and 191 (1)(a) of the

Constitution. Section 14(1) (f) and (g) of the Act of 1958 prescribes such disqualification (supra).

5.14 The term 'office of profit/place of profit' is not defined in the Act of 1958 in the State of Maharashtra. However, through the various judgments rendered by this Court as also by the Honorable Supreme Court, the interpretation is evolved that 'office of profit or place of profit' means a position that brings to the office-holder some financial gain, or advantage, or benefit.

5.15 The law evolved on the point of what is 'office of profit' would show that to check whether a candidate holds an office of profit/place of profit, is to test the source of appointment and the service conditions of such candidate. A number of factors determine whether the post in question is an office/place of profit or not i.e. (I) appointing authority – source of appointment, (ii) consideration against services i.e. remuneration and its source, (iii) the service conditions including the disciplinary authority etc.

5.16 As recorded supra, the Government Resolution of 2011 prescribes service conditions of the Gram Rojgar Sevak. It has descriptively observed above that Gram Rojgar Sevak is appointed by Gram Sabha, not by Village Panchayat or any other authority of

the State Govt, Zilla Parishad or Panchayat Samiti. The services are contractual, occasional in nature and that too, on outsourced basis. The remuneration is in form of honorarium which has to be paid through the administrative expenses of the Project under the Scheme under the Act of 1977 and the Employment Guarantee Scheme. This clearly lays down that the Gram Rojgar Sevak does not hold office of profit within the meaning of Section 14(1) (f) of the Act of 1958.

5.17 As such, this Court hereby holds that the petitioner- the Gram Rojgar Sevak was “not holding any salaried office or place of profit in the gift or disposal of the Panchayat, while holding such office or place” within the meaning of Section 14 (1) (f) of the Act. The post of Gram Rojgar Sevak created under the Act of 1977 and regulated by the Government Resolution dated 02.05.2011 thus does not fall within the purview of Section 14(1) (f) of the Act of 1958 disqualifying an elected candidate on account of holding a salaried office or office of profit.

Section 14 (1) (g)

5.18 So far as the disqualification u/s 14(1) (g) of the Act of 1958 is concerned, Mr.Kale, learned counsel for the petitioner, in

support of his arguments relies on a judgment of this Court in the case of **Rukminibai** (supra).

5.19 Learned counsel for the petitioner also places reliance on the judgments rendered by Hon'ble Supreme Court in the cases of **Divya Prakash** (supra), **Shivamurthy Swami Inamdar** (supra) and (iv) **Shibu Soren** (supra) Referring to these cases, Mr.Kale submits that the work of the petitioner as Gram Rojgar Sevak cannot be termed to be a work of profit/office of profit.

5.20 I have respectfully gone through the judgments rendered by the Hon'ble Supreme Court and passed by this court referred to herein above. It has been consistently held that the nature of work and the service conditions would determine whether a candidate is disqualified for holding a 'office/place of profit'. In Rukminibai's case (supra), this Court held that an elected candidate's husband being a beneficiary of a scheme implemented in the village in one thing, but that itself doesn't disqualify the elected woman as if she has derived some profit , share or interest in terms of Section 14 (1)(g) of the Act of 1958.

I have no reason to depart from the view expressed by the Honorable Supreme Court and this Court in the cited cases. In

view of the nature of work of the petitioner and the mode of his honorarium, as per the Government Resolution of 2011, I find that the petitioner's case is covered by the judgments cited by the learned counsel for the petitioner (supra).

5.21 Petitioner's service conditions shown in the Government Resolution of 2011 clearly demonstrate that the Gram Rojgar Sevak has no directly or indirectly, by himself or his partner, any share or interest in any work done by order of the Panchayat, or in any contract with, by or on behalf of, or employment with or under, the Panchayat. As per the Scheme under the Act of 1977 and the Government Resolution of 2011, duties of the State Govt., Gram Sabha and the Village Panchayat are distinctly earmarked. As observed supra, State Govt.'s responsibility is to make available job on demand by an adult. Gram Sabha has to organize the work on which job is to be offered. Village Panchayat has to initiate the job on the work approved under the Scheme. Honorarium of the Gram Rojgar Sevak is to be paid out of the 6% fund reserved for administrative expenses. At no juncture in this set up mechanism, the Gram Rojgar Sevak has any role or an occasion to receive anyway any interest or share within the meaning of Section 14(1) (f) of the 1958 Act.

5.22 Even the learned Counsel for the respondent side could not place on record, except the admitted fact that the Petitioner was working as Gram Rojgar Sevak.

5.23 To sum up, I hold that the post of “Gram Rojgar Sevak” created under the implementation of the Maharashtra Employment Guarantee Act 1977 in conformity with the MNREGA Act 2005, and regulated by the Government Resolution dated 02.05.2011 does not form to be a salaried office or place of profit in the gift or disposal of the Panchayat within the meaning of Section 14(1)(f) of the Act. I also hold that the remuneration/honorarium earned by a Village Panchayat Member as Gramin Rojgar Sevak cannot be said to have any share or interest in any work done by the order of Panchayat or in any contract with, by or on behalf of, or employment with or under, the panchayat within the meaning of Section 14(1) (g) of the Act.

In other words, an elected member of a Village Panchayat who works as Gram Rojgar Sevak while on post, can not be disqualified u/s 14(1) (f) or (g) of the Maharashtra Village Panchayats Act 1958.

5.24 In my considered view, both the respondent nos.1 and 2 failed to correctly appreciate the provisions under Section 14(1)(f) and (g) of the Act and also utterly failed to appreciate the provisions under the Government Resolution dated 02-05-2011. I have no hesitation in my mind to hold that the petitioner has successfully made out a case for interference of this Court under Article 227 of the Constitution of India. The impugned orders cannot be sustained.

6. Hence, the following order:-

(i) The Writ Petition stands allowed.

(ii) The order dated 03.01.2024 (Exh.D), passed by respondent no.2 - Collector and confirmed by respondent no.1 - the Addl. Divisional Commissioner, vide order dated 27.06.2024 (Exh."H") is quashed and set aside. Consequently, it is held that the Petitioner is not disqualified u/s 14(1) (f) or (g) of the Maharashtra Village Panchayats Act 1958.

(iii) Petitioner's position as an elected member of the Village Panchayat Devegaon, Taluka Pathri, Dist. Parbhani stands restored forthwith, if term of the Village Panchayat still subsists.

(iv) Rule made absolute in the above terms.

[AJIT B. KADETHANKAR, J.]

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KBP