

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 03 OF 2019

DIST. : AURANGABAD

Shivram s/o Baban Suryavanshi,)
Age. 47 years, Occu. : Daily Wager,)
R/o Haraswadi, Post : Saigavan,)
Tq. Kannad, Dist. Aurangabad.) .. **APPLICANT**

V E R S U S

1. The Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 32.)
2. The Principal Chief Conservator)
Of Forest (Vanbal Pramukh),)
Maharashtra State, Nagpur.)
3. The Additional Principal Chief)
Conservator of Forest (Wild life),)
West, M.H.T. Colony, L.T. Road,)
Borivali (West), Mumbai – 91.)
4. The Chief Conservator of Forest)
(Regional), Van Vibhag,)
Osmanpura, Aurangabad.)
5. The Divisional Forest Officer,)
(Wild life), Wildlife Division,)
Aurangabad.).. **RESPONDENTS**

APPEARANCE :- Shri A.S. Shelke, learned Advocate for the
applicant.
: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondents.

CORAM : **Hon'ble Shri B.P. Patil, Acting Chairman**

RESERVED ON : **29th August, 2019**

PRONOUNCED ON : **9th September, 2019**

ORDER

1. The applicant has challenged the communication dated 5.11.2018 issued by the res. no. 5 the Divisional Forest Officer (Wild Life), Wildlife Division, Aurangabad and thereby rejecting to regularize his service in view of Government Resolutions dated 16.10.2012 & 10.5.2018 and prayed to quash and set aside the said communication and to direct the respondents to grant benefit of regularization in view of above said G.Rs., by filing the present Original Application.

2. Applicant was initially appointed as daily wager employee on the establishment of res. no. 5 w.e.f. 11.1.1992. He worked continuously and without interruption at various places such as Nagad, Araswadi Plantation, Sonewadi Plantation. He has worked continuously for more than 240 days, but the respondents terminated his service w.e.f. 31.3.1999. Therefore, the applicant raised Industrial dispute under the provisions of Industrial Disputes Act, 1947. The appropriate Government by its order dated 24.8.2000 passed an order under section 10 of the Industrial Disputes Act, 1947 and referred the dispute to the

Labour Court, Aurangabad bearing Reference (I.D.A.) No. 63/2000. The Labour Court, Aurangabad partly allowed the said Reference by its judgment and order dated 18.4.2013 and declared that the termination order dated 31.3.1999 is not valid in law and accordingly quashed and set aside the same. Respondents were directed to reinstate the applicant as a daily wager employee with continuity of service, but the claim of the applicant for back wages was rejected. The res. no. 5 reinstated the applicant as a daily wager employee w.e.f. 10.12.2013 and since then he is in continuous service on the establishment of Range Forest Officer (Wild life), Nagad. Respondents filed writ petition bearing no. 555/2014 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad challenging the judgment and order passed by the Labour Court, Aurangabad dated 18.4.2013. The said writ petition was heard finally and the Hon'ble High Court by judgment and order dated 21.8.2015 dismissed the said writ petition.

3. It is contention of the applicant that the State of Maharashtra in its Revenue and Forest Department issued Government Resolution dated 16.10.2012 on the basis of the recommendations of the Committee for regularization of services of daily rated temporary employees working in the Forest & Social

Forestry Department on certain terms and conditions. State Government came with a decision thereby resolving to advance permanency benefits to the employees who have completed continuous service of 240 days between 1.11.1994 to 30.6.2004. The State Government decided to confer the benefits of regularization to such daily rated employees w.e.f. 1.6.2012. Thereafter, the State Government in its Revenue & Forest Department issued another G.R. dated 10.5.2018 and regularized 569 daily wager employees on the same terms and conditions as set out in G.R. dated 16.10.2012.

4. It is contention of the applicant that the res. no. 5 called information from the Range Forest Officer (Wildlife), Nagad about number of working days of the applicant by the letter dated 7.5.2018. The Range Forest Officer (Wildlife), Nagad vide letter dated 31.5.2018 submitted the information on the basis of available record. As per the said information the applicant has completed 240 days continuous service during the period of 1995-96 (260 days), 1996-97 (297 days), 1997-98 (307 days) and 1998-99 (278 days). Thereafter the applicant was terminated w.e.f. 31.3.1999. It is his contention that he had fulfilled the terms & conditions mentioned in the G.Rs. dated 16.10.2012 & 10.5.2018 and therefore he submitted representation to the respondents on

23.10.2018 contenting that he worked on planned / non-planned schemes of the Department till 31.3.1999 and thereafter he was illegally terminated, but Labour Court, Aurangabad allowed his Reference and directed the respondents to reinstate the applicant in service along with the continuity. The said decision was confirmed by the Hon'ble High Court in writ petition no. 555/2014. It is his contention that in view of the said decision the service rendered by him is continuous and uninterrupted and therefore he has fulfilled the condition of continuous service of 240 days during the period from 11.1.1992 to 30.6.2004 and therefore he prayed to regularize his service on the basis of G.R. dated 16.10.2012. Respondent no. 5 considered his representation and rejected it by the order dated 5.11.2018 holding that the applicant is not eligible for regularization as he has not completed the requisite period of 5 years of service w.e.f. 1.11.1994 to 30.6.2004. It is contention of the applicant that the respondents had not considered the fact that he has illegally terminated from the service w.e.f. 31.3.1999, but the said termination order has been quashed and set aside by the Labour Court, Aurangabad and he was reinstated in service with continuity in service. It is his contention that the impugned order dated 5.11.2018 issued by the res. no. 5 is illegal and without application of mind. Therefore, the applicant approached this

Tribunal challenging the impugned order dated 5.11.2018 issued by the res. no. 5, by filing the present Original Application.

5. Respondent nos. 1 to 5 filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant has alternate remedy to file complaint U.L.P. before the Industrial Court under the provisions of Item IV of the M.R.T.U. and P.U.L.P. Act, 1971 and therefore this Tribunal has no jurisdiction to entertain the present application. It is their contention that the applicant has not completed 240 days in each year since the year 1992. Applicant was doing the daily wages work when the work was available. He came to be retrenched from the service after paying the compensation and wages of one month notice as work was not available. Therefore reference I.D.A. no. 63/2000 came to be filed against the order of retrenchment and it was subsequently allowed and the order of retrenchment dated 31.3.2018 came to be quashed & set aside by the Labour Court, Aurangabad. They have admitted the fact that the Government filed writ petition bearing no. 555/2014 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad and the Hon'ble High Court dismissed the said writ petition and upheld the directions given by the Labour Court, Aurangabad. They have no dispute regarding the issuance of

G.Rs. dated 16.10.2012 and 10.5.2018 for regularization and granting the benefits of permanency to the labourers who have worked continuously or intermittently for 240 days for five years between 1.11.1994 to 30.6.2004 under the plan / non plan schemes. It is their contention that in view of the provisions of the said G.R. the applicant is not entitled to extend the benefit as he has not completed 5 years service continuously or uninterruptedly for 240 days in each years. It is their contention that the applicant has completed 240 days work only for four years from 1995 to 1999 and had not complied the terms & conditions incorporated in the G.R. dated 16.10.2012 and, therefore, he is not entitled to get the benefit of regularization. It is their contention that the respondents have rightly rejected the request of the applicant and there is no illegality. Therefore, they justified the impugned order and prayed to reject the Original Application.

6. I have heard Shri A.S. Shelke, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents. I have also gone through the documents filed on record.

7. Admittedly, the applicant was appointed as a daily rated temporary employee w.e.f. 11.1.1992. There is no dispute about the fact that on 31.3.1999 the respondents terminated the

services of the applicant. Applicant raised Industrial dispute in that regard in view of the provisions of Industrial Dispute Act, 1947 and the appropriate Government by its order dated 24.8.2000 passed an order under section 10 of the Industrial Disputes Act, 1947 and referred the dispute to the Labour Court, Aurangabad bearing Reference (I.D.A.) No. 63/2000. Admittedly, the Labour Court, Aurangabad allowed the reference by its judgment and order dated 18.4.2013 and quashed the termination order dated 31.3.1999 and directed the respondents to reinstate the applicant as daily wager employee with continuity of service and rejected the claim of the applicant regarding back wages. Admittedly the applicant has been reinstated in service as daily wager employee w.e.f. 10.12.2013 and since then he is in continuous service on the establishment of Range Forest Officer (Wildlife), Nagad. Admittedly, the Respondent State filed writ petition No. 555/2014 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad and challenged the judgment and order dated 18.4.2013 passed by the Labour Court, Aurangabad, which has been dismissed by the Hon'ble High Court vide order dated 21.8.2015. Admittedly, the State Government came with a decision thereby resolving to advance permanency benefits to the daily wager employees who have completed continuous service of 240 days between 1.11.1994 to 30.6.2004.

Admittedly, the State Government decided to confer the benefits of regularization to such daily rated employees w.e.f. 1.6.2012. Accordingly the Government issued G.R. dated 16.10.2012. Admittedly, the applicant worked for 260 days in the year 1995-96, 297 days in the year 1996-97, 307 days in the year 1997-98 and 278 days in the year 1998-99 and thereafter he has been terminated w.e.f. 31.3.1999. Applicant approached the respondents with a request to regularize his services in view of G.Rs. dated 16.10.2012 & 10.5.2018 as he has completed continuous service of 240 days in each years for the period more than 5 years, but his request has been rejected by the respondent no. 5 by the impugned order dated 5.11.2018.

8. Learned Advocate for the applicant has submitted that the applicant rendered 240 days service during the year 1995-96 to 1998-99 and w.e.f. 31.3.1999 his services have been terminated. Thereafter the said termination order has been set aside by the Labour Court, Aurangabad by its judgment dated 18.4.2013 passed in Reference I.D.A. no. 63/2000 and the respondents were directed to reinstate him as daily wager employee with continuity in service. He has argued that accordingly the applicant was reinstated in service as daily wager employee w.e.f. 10.12.2013. He has submitted that thereafter a writ petition bearing no.

555/2014 was filed by the Government challenging the said decision of the Labour Court, before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad and it was dismissed by the Hon'ble High Court on 31.8.2014. He has argued that the applicant could not able to render the service because of forceful act of the respondents terminating his service w.e.f. 31.3.1999, but he has been reinstated in service in view of the order of the Labour Court, Aurangabad with continuity of service and it means that he was in continuous service during the period of termination. He has submitted that the period of forceful termination of the applicant due to illegal termination order is rectified by the judgment of Labour Court, Aurangabad and therefore it can be said that the applicant worked continuously w.e.f. 31.3.1999 till the date of his reinstatement i.e. till 10.12.2013. He has submitted that because of illegal act on the part of the respondents the applicant could not able to render service during the period from 31.3.1999 to 10.12.2013 and therefore it can be held that during that period he was in service, but the respondents had not considered the said aspect while rejecting the claim of the applicant. Respondents ought to have considered the fact that the applicant was in service and he had rendered continuous service w.e.f. 31.3.1999 and thereby fulfilled the norms prescribed under the G.R. dated 16.10.2012. He has

placed reliance on the judgment of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in case of **Shrinivas Ramakant Rajurkar Vs. the State of Maharashtra & Ors. (Writ Petition no. 10724/2016)** decided on 27.6.2017 in support of his submissions. In view of these facts, he prayed to quash the impugned communication dated 5.11.2018 issued by the res. no. 5 and direct the respondents to extend the benefit of regularization to him in view of G.R. dated 16.10.2012, by allowing the present O.A.

9. Learned Chief Presenting Officer has submitted that in view of the G.R. dated 16.10.2012 the daily wager worker has to work for 240 days in a year continuously or intermittently for the period of five years during the period from 1.11.1994 to 30.11.2004. Applicant has rendered 240 days service during the four years from 1995-96 to 1998-99, but he has not rendered continuous service of 240 days for five years as laid down in the G.R. dated 16.10.2012 and therefore he is not entitled to get the benefit of the said G.R. and therefore the respondents rejected his claim. He has submitted that there is no illegality in the impugned order. Therefore, he has prayed to reject the Original Application.

10. I have gone through the documents placed on record and on perusal of same it reveals that the applicant worked 240 days in

each year during the period from 1995-96 to 1998-99. His service has been terminated w.e.f. 31.3.1999 and the said termination order has been quashed and set aside by the Labour Court, Aurangabad in Reference I.D.A. no. 63/2000 vide judgment dated 18.4.2013. The decision of the Labour Court, Aurangabad was upheld by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in the writ petition No. 555/2014 filed by the respondents vide judgment and order dated 21.8.2015. Admittedly, the Labour Court, Aurangabad directed the respondents to reinstate the applicant on daily wages with continuity of service and the said decision of the Labour Court, Aurangabad has been upheld by the Hon'ble High Court. In view of the said directions of the Labour Court, the res. no. 5 reinstated the applicant as daily wager employee w.e.f. 10.12.2013. Because of illegal termination the applicant could not able to render his service during the period from 31.3.1999 to 10.12.2013. The illegal termination has been rectified in view of the judgment of Labour Court, Aurangabad. The period of termination of the applicant has been treated as continuity in service and therefore it can be held that the applicant was in continuous service w.e.f. 31.3.1999 to 10.12.2013. Respondents ought to have considered the said aspect and held that the applicant was in continuous service during that period from 31.3.1999 to 10.12.2013 and he

rendered the service of 240 days in the year 1999-2000 and thereby fulfilled the terms and conditions mentioned in the G.R. dated 16.10.2012, but the respondents have not considered the said aspect while rejecting the representation of the applicant, by the impugned order.

11. Considering the peculiar facts and circumstances of the matter the respondents ought to have considered the case of the applicant and held that he was in continuous service and granted the benefit of the G.R. dated 16.10.2012 to him, but the respondents has not considered the said aspect. Respondents ought to have extended the benefit of regularization of service as per the G.Rs. dated 16.10.2012 and 10.5.2018 and conferred the benefits of regularization on the applicant. The approach of res. no. 5 rejecting the claim of the applicant is not proper and legal. Therefore, the impugned order dated 5.11.2018 is not legal in accordance with the provisions of the G.R. dated 16.10.2012 and therefore it requires to be quashed by allowing the present Original Application. In the circumstances, the Original Application requires to be allowed.

12. In view of the discussion in foregoing paragraphs the Original Application is allowed and the impugned order dated 5.11.2018 issued by the respondent no. 5 is quashed and set

aside. Respondents are directed to confer the benefit of regularization on the applicant as per the G.Rs. dated 16.10.2012 and 10.5.2018. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 9th September, 2019

ARJ-O.A. NO. 03-2019 BPP (REGULARIZATION)