

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH, AURANGABAD**

ORIGINAL APPLICATION NO. 259 OF 2001

DISTRICT : BEED

- 1-a) Ganesh S/o. Pandurang Markad
Age: 31 Yrs. Occ. Agri.
- 1-b) Pradip S/o. Pandurang Markad
Age: 29 Yrs. Occ. Agri.
- 1-c) Sangita wd/o Pandurang Markad
Age: 53 Yrs. Occ. Agri & Household,
All R/o. Jategaon, Tq. Georai,
Dist. Beed.
2. Prakash s/o Pandurang Markad,
Age : 42 years, Occ. : Mukadam
(at present nil) r/o. Talwada,
Tq. Gevrai, Dist. Beed.
3. Subhash s/o Ramrao Shinde,
Age : Major, Occ. : Mukadam
(at present nil), r/o. Takarwan,
Tq. Majalgaon, Dist. Beed.
4. Bhagwan s/o Kondiba Pawar,
Age : Major, Occ. : Mukadam
(at present nil), r/o. as mentioned
Above Sr. No. 03.
5. Raghunath s/o Narayan Dhyare,
Age : Major, Occ. : Mukadam
(at present nil) r/o. Takarwan,
Tq. Majalgaon, Dist. Beed.
6. Mohan s/o Appa Markad,
Age : 40 years, Occ. : Mukadam
(at present nil) r/o. as above.
7. Rajendra s/o Bhaurao Nathar,
Age : 35 years, Occ. : Labour
(at present nil) r/o. as above.
8. Sharad s/o Baburao Deshmukh,
Age : 36 years, Occ. : Labour
(at present nil) r/o. as above.

*Died. Lf's brought on record
as per Leave granted by the
Tribunal vide order dt. 21/2/17
in MA No. 62/17. PWS
R-22/2/17.*

OR

9. Kashinath s/o Sahebrao Kale,
Age : 36 years, Occ. : Labour
(at present nil) r/o. as above.
10. Pandurang s/o Dhondiba Kale,
Age : 40, Occ. : Labour
(at present nil) r/o. as above.
11. Bajirao s/o Santrao Gore,
Age : 40, Occ. : Driver
(at present nil) r/o. Jotegaon,
Tq. Georai, Dist. Beed.
12. Vishnu s/o Narsing Rathod,
Age : 42 years, Occ. : Driver
(at present nil) r/o. Jategaon,
Tq. Vavari, Dist. Beed.
13. Chatrabhuj s/o Limbaji Kale,
Age : 40 years, Occ. : Labour
(at present nil) r/o. Jategaon,
Tq. Gevrai, Dist. Beed.
14. Rangnath s/o Mansim Pandhare,
Age : 40 years, Occ. : Labour
(at present nil) r/o. Jategaon,
Tq. Gevrai, Dist. Beed.
15. Maruti s/o Ramdas Adagale,
Age : 40 years, Occ. : Labour
(at present nil) r/o. Takarwan,
Tq. Majalgaon, Dist. Beed.
16. Datta s/o Dhajiba Gaikwad,
Age : 40 years, Occ. : Labour
(at present nil) r/o. Takarwan,
Tq. Majalgaon, Dist. Beed.

VERSUS**....APPLICANTS**

1. The State of Maharashtra,
(copy served on P.O. M.A.T. Bombay
Bench at Aurangabad)



2. The Chief Engineer/Administrator,
C.A.D.A. Garkheda, Aurangabad.
3. The Superintending Engineer,
Jaikwad Project Circle,
Aurangabad.
4. The Secretary,
Irrigation Department,
Mantralaya, Mumbai-32.

.....RESPONDENTS

APPEARANCE : Shri Y.K. Bobade, learned Advocate for the
 Applicant Nos. 5 & 6.

: None present for other Applicants.

: Smt. Deepli S. Deshpande, learned Presenting
 Officer for the Respondent Nos. 1, 2 & 4.

: Shri Sham Patil, learned Advocate for
 Respondent no. 3

CORAM: HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)

AND

HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

DATE : 21.10.2016.

ORDER

(Per : Shri Rajiv Agarwal (Vice-Chairman))

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 Heard Learned Advocate Shri Y.K. Bobde for the Applicant
 Nos. ~~5~~ ^{2,6,7,8,9 & 10} & ~~6~~. None for other Applicants. Smt. Deepali S.
 Deshpande, learned Presenting Officer for the Respondent Nos. 1,
 2 & 4 and Shri Sham Paitl, learned Advocate for Respondent no.
 3.
Rh

2. This O.A. is filed by sixteen Applicants. The Applicant no. 1 has since expired and by order dated 23.09.2009 in M.A. no. 23/2016, his L.Rs. were allowed to be brought on record. However, no action is taken by the Learned Advocate for the Applicant No. 1 to bring his legal heirs on record. The matter was heard in the absence of Learned Advocate for the Applicant Nos. 1 to 4 and 11 to 19, who remained absent during the hearing.

3. The Applicants' case is that they were appointed as Labourer, Mukadam, Chowkidar, Driver and Clerk in the year 1978-79 by the Respondent no. 3. Some of them were later absorbed on the Converted Regular Temporary Establishment (C.R.T.E.). The details are given in Exhibit-'A'. On 12.07.1995, the Respondent No. 4 had issued a Circular regarding employees, who were retrenched from service after Jayakwadi Project was completed. Before that on 27.03.1992, the Additional Secretary, Irrigation Department, Mantralaya had written to the Chief Engineer, the Respondent no. 2, regarding 400 vacancies of Canal Inspectors and Surveyors, which were to be filled. The Applicants' case is that they should have been absorbed in these vacancies. Some of the retrenched employees had filed a Writ Petition No. 970 of 1986 and other Writ Petitions in Hon'ble High Court at Aurangabad. In Writ Petitions except No. 1755/1987, Hon'ble



High Court granted stay orders and the petitioners continued to be paid wages though they had no work. Those Writ Petitions were transferred to this Tribunal and were renumbered as T.A. No. 1156 of 1991 etc. By judgment dated 27.03.1996, in these T.As., this Tribunal held that the retrenched employees had no right to be absorbed in the Government Service. Government was, however, directed to give them employment under the Employment Guarantee Scheme (E.G.S.) and for those employees who were taken on C.R.T.E. or those who continued in employment by virtue of stay order granted by the High Court, a seniority list was to be prepared. The persons in the seniority list were to be absorbed as and when regular vacancies arose.

4. Learned Counsel for the Applicants contended that this judgment dated 27.3.1996 of this Tribunal was challenged in W.P. No. 5158/1997. This W.P. was disposed of by the Hon'ble High Court by order dated 17.08.2000. The order of Hon'ble High Court reads:

“We have heard Shri. Patovrkar, Learned Counsel for the Petitioners. He states that inspite of vacancies being available the petitioners are not being given appointment orders pursuant to the directions issued by the Tribunal. If that be so, the



remedy for the petitioners lies before the Tribunal itself and this petition cannot be entertained.

Petition is, therefore, disposed of with liberty to the petitioners to approach the Maharashtra Administrative Tribunal for necessary reliefs.”

Accordingly, the Applicants have filed the present O.A. claiming that though 400 vacancies of Canal Inspector/Surveyors were available, the Applicants were not absorbed.

5. Learned counsel for the Applicants argued that the Respondents have employed fresh candidates, ignoring the claim of the Applicants for absorption in service on the basis of seniority list. Learned Counsel of the Applicants stated in terms of Circular dated 24.11.2000 the Applicants are entitled to be given permanent service.

6. Learned Presenting Officer (P.O.) and Learned Advocate Shri Sham Patil argued on similar lines on behalf of the Respondents. For the sake of convenience, hereinafter their arguments are referred to as arguments of Learned P.O. Learned Presenting Officer (P.O.) argued that this Tribunal has given judgment dated 27.3.1996 to prepare a seniority list of those who

were taken on CRTE, and those who were continued in service by virtue of the stay orders granted by Hon'ble High Court. The Applicants in this O.A. are, however, relying on letter of the Respondent no. 4 to the Respondent no. 2 dated 27.3.1992, which was issued much before the date of the judgment of this Tribunal. This letter is regarding vacancies of Canal Inspector/Surveyors, which at that point of time, were 400 in number. Learned P.O. stated that the contention of the Applicants that they were not absorbed, though vacant posts are available is not correct. In fact, the Respondents have taken action as per G.R. dated 10.10.1984, to bring those who were working on daily wages-work charged establishment for five years on C.R.T.E. However, for the post of Surveyor/Canal Inspectors, candidates required training program to be completed. As per Recruitment Rules for the posts of Canal Inspector/Surveyor framed under proviso to Article 309 of the Constitution of India, notified on 4.7.1997, holding of limited Departmental Competitive Examination for appointment to those Posts is required. After 1997, it was not possible to absorb anyone directly in those posts. By the time this O.A. was filed, the Applicants could not have been absorbed as Canal Inspector/Surveyor without participating in Limited Examination. Learned P.O. argued that the Applicants have not furnished any details of any other posts except 400 posts of Canal



Inspector/Surveyor which were vacant in 1992. Those posts were available before the order of this Tribunal dated 27.3.1996. And after the recruitment rules for the post of Canal Inspector/Surveyor were notified on 4.7.1997, direct absorption in these posts is not possible. However, the Applicants have not given any details of the posts which were available ~~and in the~~ ^{where} ~~posts,~~ ^{the} applicants were not absorbed. Learned P.O. argued that all those retrenched employees who were willing to work on Employment Guarantee Scheme, were given work.

7. Let us examine all the documents appended by the Applicants in this O.A. ad seriatim.

(i) Exhibit A contains names of the sixteen Applicants. In Column No. 3, the post in which they were working is given. For the Applicants at Sr. Nos. 10, 11, 14 & 15, no posts are indicated, though in the title of this O.A., the Applicants at Sr. No. 10, 14 & 15 are claimed to have been employed as Labour while the Applicant No. 11 was employed as Driver. No date from which the Applicant Nos. 10, 14 & 15 were employed have been given. It is stated that the Applicant Nos. 11 & 12 were taken on C.R.T.E.

(ii) Exhibit 'B' is Circular dated 12.07.1985 - This Circular provides that whenever any project is completed, 50% posts in

new works in the Department concerned should be filled by retrenched employees of completed works, depending on their educational qualification. This Circular is general in nature and not regarding retrenched employees of Jayakwadi Dam Project.

(iii) Exhibit 'C' letter dated 27.3.1992 from the Respondent No. 4 to the Respondent No. 2. This letter talks about 400 vacancies of posts of Canal Inspectors/Surveyors, which were available at that point of time.

(iv) Exhibit 'D' judgment and order of this Tribunal dated 27.3.1996.

(v) Exhibit 'E' :- Recruitment Rules for the post of Canal Inspector/Surveyor dated 4.7.1997.

(vi) Exhibit 'F' : Judgment dated 17.08.2000 of Hon'ble High Court in W.P. no. 5158/1997.

(vii) Exhibit 'G' :- G.R. dated 24.11.2000.

8. It is claimed in this O.A. that the Applicants had challenged their termination orders issued in 1985 ^[Para no. 5(ii) of O.A.] ~~5(ii) [para of O.A.]~~ and challenged the same before Hon'ble High Court. In these Writ Petitions no. 970/1986 etc., it is presumed (though there is

no material on record to support this) that all the present Applicants were petitioners. Later these W.Ps. were transferred to this Tribunal, which were disposed of by this Tribunal (Exhibit 'D') on 27.03.1996. Para 8, 9 & 10 of this judgment are reproduced below:

"8. In view of this judgment, the employees whether they were on C.R.T.E. or not and whether they had obtained stay or not they are required to be concerned on par with each others so far as employment is concerned. None of them has any right whatsoever to have this services regularize in the manner sought. In view of the fact that the aforesaid petitioners hand worked on the concerned project for several years and further, in view of the fact the State Govt. A has already employed them under Employment Guarantee Scheme, which guarantees employment to the unemployed an opportunity needs to be given to the petitioners and persons situated in similar position to apply to the authorities for taking steps to hage them employment appropriately under the Employment Guarantee Scheme. Such of the petitioners, or persons situated similarly as may apply to the concerned authorities for their employment under Employment Guarantee Scheme should be assuied by the department by forwarding their names to the Collector of the concerned district or appropriate authority under the Employment Guarantee Scheme or those who are not willing to work under the Employment Guarantee Scheme

or those who had applied needs to the considered for this purpose.

9. *The last date for making such application to the authority of the respondent no. 02 irrigation Department shall be 30.4.1996. Thereafter, the willing works may apply directly to concerned authority working under the Employment Guarantee Scheme.*

10. *In so far as the question regarding persons taken on C.R.T.E. and others persons who are continued in employment by virtue of the stay granted by the High Court, though not taken on C.R.T.E. Irrigation Department, shall be prepared on the basis of the dates of their joining and continues offication, a seniority list in accordance with usual principles, such seniority list shall be published by the Irrigation Department for the information or their workers at the Zonal Office and the erstwhile divisional office on/or before 30.04.1996. Workers, who wanted to raise a any objection to the seniority list withreference to the facts each of them individually my raise the objections to the aforesaid seniority list within the one month thereafter on 31st May 1996. The aforesaid objections shall be decided by the concerned authorities under the Irrigation Department and the decision taken thereafter shall be likewise published at the zonal and divisional office. On the basis of that seniority list, the department shall take steps as and when vacancies arise in future to absorb on the posts available with them, subject to the suitability and*

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eligibility, of the respective workers, with these directions all those petitioners are disposed of. Interim relief granted in the aforesaid matters stand vacated. ”

(taken as verbatim from paper book pages 22 to 24 of the O.A.)

It is presumed that the present Applicants were either working on C.R.T.E. or were working in original posts till the date of this judgment dated 27.03.1996 by virtue of stay orders granted by Hon'ble High Court.

9. Least that was expected from the Applicants in this O.A. was that they would append the seniority list prepared by the Respondents by virtue of this Tribunal's order dated 27.3.1996. However, the same is not placed on record. It is not possible to verify the claim of the Applicants that they were entitled to be absorbed in regular posts. Be that as it may, the Applicants' claim that they were entitled to be absorbed in regular posts is taken at face value. They are relying on the letter of the Respondent No. 2 dated 27.3.1992, regarding 400 vacancies of Canal Inspector/Surveyor. These vacancies occurred prior to the judgment of this Tribunal dated 27.3.1996. The Respondents have claimed that they have taken action as per G.R. dated 10.10.1984, which provides for absorption of the employees who were retrenched in Jayakwadi Project. There is nothing on record

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to show that the Respondents have not absorbed the Applicants, though were eligible, as per their educational qualifications in such vacancies. As regards vacancies of Canal Inspector/Surveyor, the Respondents in their affidavit in reply dated 29.9.2001 have stated in para 7 that a three Member Committee had interviewed candidates to judge their suitability for these posts. The Applicants have not filed any affidavit in rejoinder. It is not clear whether the Applicants were called for interview or not. The Applicants have not been able to show that as per their seniority in the list, they were eligible to be absorbed as Canal Inspector/Surveyor. In fact, they have not even claimed that they were educationally qualified for these posts. This is as regards 400 vacancies of Canal Inspector/Surveyor in 1992. After 1997, Recruitment Rules for these posts were notified, and the Applicants could not have been absorbed directly on these posts, without appearing in the Limited Departmental Competitive Examination. The Applicants have not given details of any other vacancies, which were available, to which they were not absorbed.

10. The Applicants have relied on G.R. dated 24.11.2000 to claim that they should have been absorbed on C.R.T.E. as per Kalelkar Agreement. However, this claim cannot be accepted. This G.R. is specific to 11732 employees who had completed 5 years on daily wages-work charged establishment. The Applicants have not placed any



material on record to show that they were eligible to be included in the list to be covered by Kalelkar Agreement.

11. We have closely examined this O.A. and all the exhibits appended to the O.A. by the Applicants. The Applicants have miserably failed to establish that there were regular vacancies to which they are entitled to be absorbed and the Respondents have failed to do so. The Applicants can claim relief only under judgment of this Tribunal dated 23.03.1996 (Exhibit 'D'). This is clear from order dated 17.08.2000 of Hon'ble High Court in W.P. No. 5158 of 1997. However, the Applicants have not placed any material on record to show that the Respondents have, in any manner, failed to act in accordance with order dated 27.03.1996. This Tribunal had not ordered that all the persons covered by para 10 of order dated 27.03.1996 should be absorbed in regular service. They were to be absorbed as per their seniority in the list prepared by the Respondents and as and when vacancies occurred. If the vacancies did not occur, there was no occasion for the Respondents to absorb the Applicants. The Applicants have not been able to make out any case which would require our interference.

12. Learned Counsel for the Applicants has relied on certain judgments of Hon'ble Supreme Court which are discussed below:-

(i) AIR 2015 SC 3473

This judgment is regarding candidates seeking regularization in service, such employees were in service for long periods and facing

hardships. Hon'ble Supreme Court granted compensation of Rs. 4 lakh each to them. In the present case, the claim of the Applicants has been finalized by judgment of this Tribunal dated 27.3.1996 and their retrenchment has not been held to be invalid. The facts are entirely different and this judgment has no application in the present case.

(ii) AIR 2015 SC 609

This judgment is regarding workers in Bhavnagar Municipal Corporation. Hon'ble Supreme Court has found that the Petitioners were unfairly retrenched and were entitled to be reinstated. Instead of reinstatement, compensation has been given. The facts in the present case are entirely different. The matter is finally decided by judgment of this Tribunal dated 27.3.1997. There is no finding that the Applicants were unfairly retrenched. This judgment of Hon'ble Supreme Court is not applicable in the present case.

(iii) AIR 2005 SC 2210

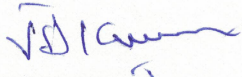
This judgment is regarding petitioners, whose worked with O.N.G.C. for several years, without following any procedure. This was held to be unfair labour practice. In the present case, no finding of unfair labour practice or any unfair practice was given by this Tribunal in judgment dated 27.3.1996. The present O.A. is in the nature of seeking benefits under the aforesaid judgment of this Tribunal dated 27.3.1996. This judgment of Hon'ble Supreme Court is not applicable in the present case.

(iv) W.P. No. 5151/2012 dated 25.07.2014




It mentions that an amount of Rs. 2,00,000/- has been sanctioned to each of the claimants' by the Government. It is presumed that the petitioners in W.P. No. 5151/2012 were 'claimants'. There is nothing on record to suggest that the aforesaid judgment is applicable to the present Applicant. If it is applicable, they may approach the relevant authorities. We are unable to hold that this judgment is applicable in the facts and circumstances of the present case.

13. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.



**J.D KULKARNI
(MEMBER. J)**



**RAJIV AGARWAL
(VICE-CHAIRMAN)**

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**M.A.NO. 62/2017 IN O.A.259/2001
(Shri Pandurang M. Markad (Died) through LRs Vs. The State of
Maharashtra and Others.)**

**CORAM : HON'BLE JUSTICE SHRI M.T. JOSHI,
MEMBER (JUDICIAL)
(This matter is placed before the Single Bench
due to non-availability of Division Bench.)**

DATE : 21.02. 2017.

ORAL ORDER:

1. Heard Shri Y.K. Bobde, learned Advocate holding for Shri A.B. Shinde – learned Advocate for the Applicant and Smt. Sanjivani Deshmukh-Ghate – learned Presenting Officer for the respondents.
2. This Miscellaneous Application has been filed by the legal heirs of the original applicant No. 1 in O.A. No. 259/2001 viz. Pandurang Manikrao Markad, seeking prayer that by extending time in view of order dated 23.09.2016 passed in M.A. No. 23/2015, the applicants in the present M.A. may be permitted to take their names on records as the LRs of the original applicant No. 1 in O.A. No. 259/2001.
3. Perused the Miscellaneous Application. Considered the contentions. For the reasons stated in the present Miscellaneous Application, the same is allowed and the amendment be carried out forthwith. Judgment dated 21.10.2016 be corrected accordingly.
4. Accordingly, the present Miscellaneous Application sands disposed of with no order as to costs.


MEMBER (J)

ORAL ORDERS 21.02.2017- HDD(DB)