

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 443/2017 (S.B.)**

1) Rameshwar S/o Kisan Bhandarkar,
Aged about 57 years, R/o At Post,
Mundikata, Tah. Tiroda, Distt. Gondia.

2) Manohar S/o Dhonduji Patle,
Aged about 59 years, R/o Nimbgaon,
Post Indora, Tah. Tirora, Dist. Gondia.

Applicants.

Versus

1) The State of Maharashtra
through its Secretary,
Department of Planning,
Mantralaya, Mumbai-32.

2) The Collector, Gondia.

Respondents.

Shri N.R. Saboo, the Id. Advocate for the applicants.

Shri S.A.Sainis, the Id. P.O. for the respondents.

WITH**ORIGINAL APPLICATION No. 33/2018 (S.B.)**

1) Yashwant S/o Dheklu Ramteke,
Aged about 59 years, R/o Bodhda, Post Koregaon,
Tah. Desaiganj, Distt. Gadchiroli.

2) Ganpati S/o Gangaram Pohankar,
Aged about 52 years, R/o Navegaon,
Post Mudza, Tah. & Dist. Gadchiroli.

3) Prabhakar S/o Ganpatrao Bhardkar,
Aged about 59 years, R/o At Ward No. 19,
Ramnagar, Gadchiroli.

Applicants.**Versus**

- 1) The State of Maharashtra
through its Department of Planning,
Mantralaya, Mumbai-32.
- 2) The Collector, Gadchiroli.

Respondents.

Shri N.R. Saboo, the Id. Advocate for the applicants.

Shri S.A.Sainis, the Id. P.O. for the respondents.

WITH**ORIGINAL APPLICATION No. 96/2018 (S.B.)**

- 1) Rushi S/o Patruji Barsagade,
R/o Mohli, Tahsil Dhanora,
Dist. Gadchiroli.
- 2) Husain Khan Imamkhan Pathan,
R/o Sironcha, Tahsil Sironcha,
Dist. Gadchiroli.
- 3) Vilas S/o Devaji Dingalwar,
R/o Bhor, Tahsil Chamorshi,
Dist. Gadchiroli.
- 4) Suresh S/o Sambhaji Chaudhari,
R/o Dhanora, Tahsil Dhanora,
Distt Gadchiroli.
- 5) Abaji S/o Maroti Shimpi,
R/o Yerkad, Tahsil Dhanora,
Distt. Gadchiroli.
- 6) Chinnu S/o Ganda Usendi,
R/o Heti, Tahsil Dhanora,
Distt Gadchiroli.

7) Vijay Rajaram Wairagade,
R/o Belgaon, Post Bathikathi,
Tahsil Korchi, Distt. Gadchiroli.

Applicants.

Versus

1) The State of Maharashtra
through its Department of Planning,
Mantralaya, Mumbai-32.

2) The Collector, Gadchiroli.

Respondents.

Shri N.R. Saboo, the Id. Advocate for the applicants.

Shri S.A.Sainis, the Id. P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 215/2018 (S.B.)

Abhiman Jayram Warthi,
Aged about 59 years,
R/o Paharni, Tahsil Nagbid, Distt. Chandrapur.

Applicant.

Versus

1) The State of Maharashtra
through its Department of Planning,
Mantralaya, Mumbai-32.

2) The Collector, Chandrapur.

Respondents.

Shri N.R. Saboo, the Id. Advocate for the applicants.

Shri S.A.Sainis, the Id. P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 219/2018 (S.B.)

- 1) Shriram Yashwant Nipane,
Aged about 56 years, Occ. Service,
R/o Kurud, Tah. Wadasa,
Distt. Gadchiroli.
- 2) Siddharth Chimanji Dhondane,
Aged 60 years, Occ. Service,
R/o Mohagaon, Tah. Kurkheda,
Distt. Gadchiroli,
Near R.L.T. College, Akola-444 001.
- 3) Ghanshyam Pandhari Meshram,
Aged 59 years, Occ. Service,
R/o Arattondi, Tah. Kurkheda,
Distt. Gadchiroli.

Applicants.**Versus**

- 1) The State of Maharashtra
through its Secretary, Department of Planning,
Mantralaya, Mumbai-32.
- 2) The Collector, Gadchiroli
District Gadchiroli.

Respondents.

Shri A.A.Dhawas, the Id. Advocate for the applicants.

Shri S.A.Sainis, the Id. P.O. for the respondents.

WITH**ORIGINAL APPLICATION No. 246/2018 (S.B.)**

Subhash Phuktuji Ghollar,
Aged about 49 years,
R/o Naghbhid,
Dist. Chandrapur.

Applicant.**Versus**

1) The State of Maharashtra
through its Secretary, Department of Planning,
Mantralaya, Mumbai-32.

2) The Collector, Chandrapur.

Respondents.

Shri N.R.Saboo, the Id. Advocate for the applicants.

Shri S.A.Sainis, the Id. P.O. for the respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice Chairman.

Date of Reserving for Judgment : 28th Aug., 2019.

Date of Pronouncement of Judgment : 07th Nov., 2019.

COMMON JUDGMENT

(Delivered on this 07th day of November, 2019)

Heard Shri N.R. Saboo, the learned counsel for the applicants
and Shri S.A.Sainis, the learned P.O. for the respondents.

2. The applicants in all the O.As. were engaged in service as Mustering Assistant and they have filed these applications for their absorption in service as per the G.Rs. bearing no. gl dk&1394@i z185@jkg; k&3] dated 01/12/1995 & G.R. bearing no. gl dk&1397@i z136@jkg; k&3] dated 21/04/1999. As the grievances of the applicants in all the O.As. are common, therefore, all the O.As. are disposed of by this common order.

3. In O.A.443/2017, the applicant no. 1 named Shri R.L.Bhandarkar initially was engaged in service as Mustering Assistants on 17/02/1990, the applicant no. 2 named Shri M.D.Patle was engaged in service as Mustering Assistants w.e.f. 22/10/1985. Thereafter their services were terminated without following the procedure laid down by law, these applicants, therefore, filed ULP Complaint no. 347/1992 and 443/1996 respectively before the Labour Court. The complaints were allowed and directions were given to reinstate them with continuity in service.

4. In O.A. 33/2018, the applicant no. 1 i.e. Shri Y.D.Ramteke was initially appointed as Mustering Assistant w.e.f. 25/09/1987, applicant no. 2 Shri G.G.Pohankar was appointed as Mustering Assistant on 16/05/1989 while applicant no. 3 i.e. Shri P.G.Bharadkar was appointed on 31/03/1991. As per Annexure-A-4 which is a list notified by respondent Collector although there name appears and there services are shown as on 31/05/1993 and also observed regarding absorption in service. However, no such order is issued by Collector. Thus those applicants were in service as on cut-off date i.e. 31/05/1993.

5. In O.A.96/2018, the applicant no. 1 named Shri R.P.Barsagade was initially engaged in service as Mustering Assistants on 05/01/1985, the applicant no. 2 named Shri H.I.Pathan was engaged

in service as Mustering Assistant w.e.f. 24/02/1986, the applicant no. 3 named Shri V.D.Dingalwar was engaged in service as Mustering Assistant on 14/01/1985, the applicant no. 4 named Shri S.S.Choudhari was engaged in service as Mustering Assistant on 22/11/1984, the applicant no. 5 named Shri A.M.Shimpi was engaged in service as Mustering Assistant on 18/04/1985, the applicant no. 6 named Shri C.G.Usendi was engaged in service as Mustering Assistant on 14/11/1983 and the applicant no. 7 named Shri V.R.Wairagade was engaged in service as Mustering Assistant on 31/07/1989. Thereafter their services were terminated without following the procedure laid down by law. These applicants, therefore, filed ULP Complaint before the Labour Court as reflected in O.A.. The complaints were allowed and direction were given to reinstate them in service with continuity.

6. In O.A. No. 215/2018 the original applicant was engaged in service of Mustering Assistant on 31/03/1992. His services was terminated by the order dated 31/07/1992 and it was challenged in ULP Complaint No.211/1992 before the Labour Court. The Labour Court, allowed the complaint and reinstated the applicant in service with continuity.

7. In O.A.219/2018, the applicant no. 1 named Shri Shriram Yashwant Nipane was initially engaged in service as Mustering

Assistants on 01/03/1984, the applicant no. 2 named Shri Siddharth Chimanji Dhondane was engaged in service as Mustering Assistant w.e.f. 22/12/1984, the applicant no. 3 named Shri Ghanshyam Pandhari Meshram was engaged in service as Mustering Assistant on 13/04/1984. Thereafter their services were terminated without following the procedure laid down by law. These applicants, therefore, filed ULP Complaint before the Labour Court as reflected in O.As. The complaints were allowed and direction were given to reinstate them in service with continuity.

8. In O.A. 246/2018 the applicant was appointed as Mustering Assistant w.e.f. 01/03/1992 and on 31/07/1992 his service was terminated. Thereafter he filed complaint ULP No.15/1994. The complaint was allowed and the applicant was reinstated in service with continuity.

9. It is contention of the applicants that grievance as canvassed in the instant O.As. are already covered by common Judgment passed by this Hon'ble Tribunal in O.A. Nos. 782/2016 and connected O.As. delivered on 01/08/2019. This Tribunal relying on earlier Judgment in O.A.No. 462/2004 filed by Chandrashekhar Badwaik and 20 ors., decided on 14/08/2015 granted benefit of Regularization to the similarly situated Mustering Assistant. It is submitted that the applicants

in this O.A. were the Mustering Assistants and considering all the facts and the circumstances, it was held that they were entitled for the benefit of the G.Rs. dated 1/12/1995 and 21/4/1999. The applicants are also relying upon the decision in O.A.No.316/2016, **Tikaram Borkar Vs. State of Maharashtra**, decided on 5/7/2016. The applicants have also placed reliance on the Circular dated 28/2/2017 issued by the Government of Maharashtra and submitted that the decision delivered in above mentioned are the Judgments in rem and therefore the applicants are also entitled for the same relief.

10. The applicants have also placed reliance on the Judgment delivered in Writ Petition No.8908/2015 in case of **Kishor Digambar Gaikwad & Ors. Vs. State of Maharashtra & Ors.**, decided on 04/05/2017 and the Judgment in Writ Petition No. 2946/1997 in case of **Shri Ramchandra Kondiba Mahajan Vs. State of Maharashtra & Ors.**, decided on 19/07/2012. On the basis of this, it is contention of the applicants that the relief was granted to the Mustering Assistants who were in service on the cut off date as mentioned in the G.Rs. issued in 1995 & 1999 and as the applicants are in continuous service, therefore, their services are required to be regularised as per the G.Rs. issued in 1995 & 1999.

11. All the applications are opposed by the respondents on the ground that the O.As. are barred by limitation and no just reason is given by the applicants why they did not approach the Tribunal within a reasonable time. It is submitted that the applicants are fence sitters, when they realized that similar relief was granted to the other Mustering Assistants, thereafter they approached this tribunal, therefore, they are not entitled for the relief. So far as the decisions delivered by the Labour Court and Industrial Court are concerned, it is submitted that the Employment Guarantee Scheme (EGS) is not an Industry and therefore the applicants cannot claim the continuity in service on the basis of the Judgments delivered by the Labour Court and Industrial Court without jurisdiction. In support, the respondents have placed reliance on the various Judgments. So far as the issue of limitation is concerned, the respondents have placed reliance on the Judgment in case of **State of Tripura & Ors. Vs. Arabinda Chakraborty & Ors. (2014) 6 SCC,460**. I have perused this case. It seems that in case of statutory appeal, period of limitation commences from date when statutory appeal was decided and in absence of any provision with regard to statutory appeal, simply by making representations period of limitation would not get extended. In the present case the facts are all together different, the applicants are in service and length of service is from 1980 and onwards. The services of the applicants were determined without following the procedure laid

down in law, consequently, the applicants approached the Labour Court, they were reinstated in service with continuity. It further appears that the respondents in most of the matters not challenged the decisions of the Labour Court. Secondly, in some matters the decision was challenged by filing the revision, but undertaking was given by the respondents before the Industrial Court to absorb the applicants in service on the post of Mustering Assistant. Thus, it appears that the applicants were under apprehension that the respondents will fulfil their obligation as per the undertaking. In view of this matter, I do not see any substance to the contention that the claim is barred by limitation. On the contrary, I will say that the cause is continuing one.

12. It is submission on the respondents that the applicants were not party to the previous litigation on which reliance is placed. The applicants were fence sitters and therefore they cannot claim the relief. The learned P.O. has placed reliance on the Judgment in case of **Bharat Sanchar Nigam Limited Vs. Ghanshyam Dass (2) & Ors. (2011) 4 SCC,374**. In this case the Hon'ble Supreme Court has observed that "on the other hand, where only the affected parties approached the court and relief is given to those parties, the fence-sitters who did not approach the Court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others." After reading this portion, it seems that the relief

was refused in that case, because, had any relief was granted it had effect to upset and interfere with the rights and seniority of the other employees, therefore, this ratio is not applicable to the present matter. The legal position is established in case of **State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava & Ors. (2015) 1 SCC,347.**

“(22.2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim”.

13. In subsequent Para 22.3 it is laid down by the Hon'ble Apex Court that exception may not apply in those cases where the judgment pronounced by the Court was judgment in *rem* with intention to give benefit to all similarly situated persons, whether they approached the court or not, with such pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and like.

14. In view of these observations and conduct of the respondents not challenging the orders reinstating of the original applicants in service with continuity, it was in the mind of the Government not to terminate the applicants and therefore they were allowed to work as Mustering Assistants after the order of reinstatement in service by the Labour Court. It is pertinent to note that it is contended by the respondents that the Labour Court had no jurisdiction to entertain the complaints so also the Industrial Court, then definitely the respondents should have challenged those orders in the High Court, but it was not done. It appears that in all the matters on which reliance is placed by the applicants, the orders were complied by the respondents. In view of this conduct of the respondents, it is not possible to say that the Judgments delivered in these matters, are not going to touch to the policy regarding regularisation. All these contention of respondents already dealt with in the common Judgment in O.A. Nos. 782/2016 and connected O.As.

15. The learned P.O. has placed reliance on the Judgment in case of **Union or India & Ano. Vs. Association of Unified Telecom Service Providers of India & Ors., (2011) 10 SCC,543.** It is submission of the learned P.O. that the orders passed by the Labour Court and Industrial Court were without jurisdiction, the orders were nullity and no cognizance of the orders can be taken. In the present case for a sake of

argument this submission of the respondents is accepted, then also fact remains that the respondents never challenged those orders in the High Court, the respondents continued the applicants in service. As a matter of fact if the orders passed by the Labour Court were without jurisdiction, then why the orders were obeyed. While deciding the O.A. 462/2004, this Bench observed that there was a contention raised that the applicants in that matter were not employees, the Employment Guarantee Scheme was not Industry but that submission was rejected and ultimately the relief was granted. It is pertinent to note that the order passed in O.A.462/2004 was executed by the respondents, therefore, in this situation while deciding the matter it is to be seen whether the applicants are in continuous service, whether they were in continuous service when the G.R. was issued in 1995 and second G.R. was issued in the year 1999. It appears that technically it is to be accepted that the applicants were in service when the respective G.Rs. were issued by the Government.

16. The learned P.O. has placed reliance on the Judgment in case of **Shri Vikar Ansar Shaikh & Ors. Vs. State of Maharashtra & Ors., (2018) 1 AIR Bom R 513.** In this case the ratio laid down is that the Mustering Assistants are not governed by the Maharashtra Civil Service rules.

17. My attention is invited to the Judgment in Writ Petition No.630/2008 in case of **Chief Executive Officer, Z.P., Washim & Ors. Vs. State of Maharashtra & Ors.**, decided on 11/12/2008. In this matter the Hon'ble Bombay High Court held that the Employment Guarantee Scheme is not an Industry and consequently the Labour Court had no jurisdiction to entertain the matter, but ultimately no direction was given to remove the respondent no.2 from the service, on the contrary it was observed that he may take advantage of any other G.R. or Circular as applicable to him. Similarly, in Writ Petition No. 1729/2001 in case of **Deputy Engineer, Zilla Parishad (Works Sub Division) Chamorshi, Dist. Gadchiroli & Ors. Vs. Eknath S/o Vithoba Latare & Ors.**, decided on 20/11/2008. The Hon'ble High Court came to the conclusion that as the respondents were employed under the EGS, it was not an Industry, therefore, the Labour Court or Industrial Court had no jurisdiction in the matter, but ultimately direction was given by the Hon'ble High Court to the Collector, Gadchiroli to consider the cases of the respondents employees in accordance with the G.R. dated 1/12/1995 and 21/4/1999 for their absorption in Government service. The learned P.O. has also placed reliance on the Judgment in Writ Petition No. 1509/1993 in case of **State of Maharashtra & Ors. Vs. Mangesh Ramchandra Tandale & Ors.**, decided on 16/7/2009. After going through all these Judgments, it seems that though the Hon'ble High Court recorded findings that the EGS

is not an Industry and Labour and Industrial Court had no jurisdiction, but ultimately considering the fact that the Mustering Assistants were in service with continuity, consequently directions were issued for granting them benefit of the G.Rs. issued in the year 1995 & 1999. In view of this discussion, I am compelled to say that on the ground of parity, the applicants are also entitled for the same relief. In the result, I pass the following order –

ORDER

- (i) The O.As. are allowed.
- (ii) The respondents are directed to extend benefits of the G.Rs. dated 01/12/1995 and 21/04/1999 to the applicants and absorb them in service without giving any monetary benefits. No order as to costs.

Dated :- 07/11/2019.

(Shri Shree Bhagwan)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : A.P.Srivastava

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 07/11/2019.

Uploaded on : 08/11/2019.