

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 589/2017(S.B.)

- 1) Smt. Mumtazbegum Chandkha Pathan,
aged about 40 years, Occ. Household
- 2) Shahid s/o Chandkha Pathan,
aged about 19 years, Occ. unemployed
Both R/o near Balaji Mandir, Ankaleshwar Ward No.1,
Chandrapur, Tq. & Dist. Chandrapur.

Applicants.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Department of Water Supply and
Sanitation, Mantralaya, Mumbai-32.
- 2) Director,
Ground Water Survey & Development Agency, Pune
Bhujal Bhavan, Shivaji nagar, Pune.
- 3) Deputy Director, Ground Water Survey &
Development Agency, Pushraj Building,
Civil Lines, Nagpur.
- 4) Senior Geologist, Ground Water Survey &
Development Agency, near police Headquarters,
near Sawarkar Square, Chandrapur,
Tq. & Dist. Chandrapur.
- 5) Senior Geologist, Ground Water Survey &
Development Agency,
Civil Lines, Bhandara.

Respondents.

S/Shri N.N., N.Y. & Miss Y.N. Thengre, Advs. for the applicant.

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

WITH

ORIGINAL APPLICATION No. 605/2017
WITH CIVIL APPLICATION No. 183/2018(S.B.)

Maroti son of Rajaram Mankar,
aged about 56 years, Occ. Government service,
r/o Amboli, Tq. Chimur, Dist. Chandrapur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Department of Water Supply and
Sanitation, Mantralaya, Mumbai-32.
- 2) Director,
Ground Water Survey & Development Agency, Pune
Bhujal Bhavan, Shivaji nagar, Pune.
- 3) Deputy Director, Ground Water Survey &
Development Agency, Pushraj Building,
Civil Lines, Nagpur.
- 4) Senior Geologist, Ground Water Survey &
Development Agency, near police Headquarters,
near Sawarkar Square, Chandrapur,
Tq. & Dist. Chandrapur.
- 5) Senior Geologist, Ground Water Survey &
Development Agency, Maharashtra Jeevan
Pradhikaran Building, Civil Lines, Nagpur.

Respondents.

S/Shri N.N., N.Y. & Miss Y.N. Thengre, Advs. for the applicant.

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

**Coram :- Hon'ble Shri A.D. Karanjkar,
Member (J).**

JUDGMENT

(Delivered on this 4th day of January,2019)

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

2. Both the O.As. are based on same set of facts and law, therefore, both the applications are decided by the common Judgment.

3. In O.A.589/2017 the applicant No.1's deceased husband Chandkha Pathan (hereinafter referred as applicant) was in service with the respondent no.4 as Chowkidar w.e.f. 09/01/1986 till the date of termination 07/08/2002. Similarly, in O.A.No. 605/2017 the applicant Maroti R. Mankar was serving with the respondent no.4 from 07/07/1987 till 06/08/2002 as Chowkidar. In both applications li is submitted that service of the applicants till their termination was continuous and without break. Both of them had filed complaint before the Industrial Court for their regularization in services and the complaint was dismissed by the Industrial Court, consequently the services of the applicants Shri M.R. Mankar and deceased Chandkha Pathan were terminated. Both of them challenged the order passed by the Industrial Court before the Hon'ble High Court and the Hon'ble High Court dismissed the Writ Petition. Being aggrieved Shri M.R.

Mankar and deceased Chandkha Pathan filed L.P.A. No. 511/2012 and 512/2012. In the said Writ Petition the Hon'ble Division Bench passed the interim order on 17/10/2013 and directed the respondents to submit the proposal to the Government for consideration to regularise the services of Shri M.R. Mankar and deceased Chandkha Pathan as they were in continuous service from 1986-87 till 31/12/1998.

4. In pursuance of the directions given by the Hon'ble High Court in Letters Patent Appeals, proposal was forwarded to the Government for regularisation of the services of Shri M.R. Mankar and deceased Chandkha Pathan and accordingly their services came to be regularised w.e.f. 10/01/2014 as Watchman.

5. It is grievance of the applicants that they were in continuous service since 1986-87 till their termination on 07/08/2002, therefore, they were entitled to have been regularised on completion of 5 years continuous service since date of appointments. It is submitted that the applicants were entitled to claim back wages as 7-8-2002 they were illegally removed from the service. According to the applicants the action of the respondents not regularising their services after completion of 5 years of service since the dates of their appointments and not paying them back wages is illegal, therefore both the original applications be allowed.

6. The respondents have submitted reply and opposed the applications. According to the respondents, as directed by the Hon'ble High Court by the interim order dated 17/10/2013 the proposal was forwarded by the respondents to the Government for regularisation of the services of both the applicants and in view of the proposal the services of both the applicants were regularised w.e.f. 10/01/2014 vide order dated 10/04/2015. It is submitted that in government G.R. dt./1-4-2015, it was specifically mentioned that the regularisation of the services of the daily wages employees as directed by the Hon'ble High Court be regularised from the date specifically mentioned in the order or from the date of order. It is submitted that in both the matters the Hon'ble High Court passed the order on 10/01/2014 without mentioning the date of regularisation, therefore, the action on the part of the respondents is perfectly legal. It is submitted that there is no substance in the applications and as the applicants have not done any work since the date of their termination till their reinstatement as per the of order, therefore the applicants have no right to claim back wages. For these reasons the respondents are claiming that both the applications be dismissed with costs.

7. I have heard oral submissions on behalf of the applicants and on behalf of the respondents. It seems from the facts that both the applicants were in service since 1986-87 till 07/08/2002 their

services were continuous without break. On perusal of government G.R. dated 24/04/2001 which is at Annex-A-3 in O.A.605/2017 decision was taken by the Government of Maharashtra to regularise the services of daily wages employees as per the Justice Kalelkar Award. It was decided by the Government to regularise services of the daily wages labours who were in continuous service for a period of five years and were in service on 31-12-1998 or for more period. Accordingly in para-1 (2) (i) of the G.R. it was directed that the employees who have continuously worked on one post for a period of more than five years till 31/12/1998, their services were required to be regularised from the date of completion of five years service. Thus it seems that as per the government G.R. dated 24/04/2001 both the applicants were fulfilling requirements they had completed five years service on the post of Chowkidar till 31/12/1998. Both the applicants were working on the said posts since 1986-87 till 07/08/2002. Therefore, as per this government G.R. both the applicants were entitled to be regularised in service as per the provisions of Justice Kalelkar Award on completion of five years continuous service. Thus it appears that the deceased Chandkha Pathan who joined the service on 9/1/1986 had completed five years continuous service on 9/1/1991. Similarly the applicant Maroti M. Mankar joined the service on 7/7/1987 and he had completed five years continuous service on

7/7/1992. Apparently both Shri M.R. Mankar and deceased Chandkha Pathan were entitled to have benefit of the government G.R. dated 24/04/2001.

8. It is contention of the respondents that G.R. dated 24/04/2001 was not applicable to Ground Water Survey Department and therefore both the applicants were not entitled to have any benefit. In this regard I would like to point that the G.R. dated 24/04/2001 was issued by the Government in pursuance of the directions given by the Justice Kalelkar Award. There is no dispute about the fact that the provisions of Justice Kalelkar Award were also applicable to the services of Shri M.R. Mankar and deceased Chandkha Pathan. Besides this after reading the G.R. dated 24/04/2001 it seems that his G.R. was applicable to Public Works Department, Irrigation Department and Gram Vikas and District water Development Agency.

9. In the above background I would like to point out that when the interim order was passed by the Hon'ble Division Bench in both the Letters Paten Appeals it came to the notice of the Hon'ble High Court that the proposal for regularisation of the services of the employees who were in service on 31/12/1998 and had continuously worked for a period of five years was pending for consideration before the Government. The Hon'ble High Court observed that the

applicants Shri M.R. Mankar and deceased Chandkha Pathan had rendered their services from 1986-87 on 7/8/2002 and their services came to be terminated after dismissal of their complaints by the Industrial Court. As the applicants had completed five years service on 31/12/1998 direction was given to the respondents to forward the proposal for regularisation of the services of the applicants. As a matter of fact as per the government G.R. dated 24/04/2001 the respondents were bound to regularise the services of Shri M.R. Mankar and deceased Chandkha Pathan on completion of five years, but it was not done. On the contrary the respondents terminated the services of the applicants Shri M.R. Mankar and deceased Chandkha Pathan after dismissal of their complaints by the Industrial Court. This act of the respondents was amounting to unfair labour practice.

10. It is contended by the respondents that as per the government G.R. dated 1/4/2015 direction is given by the Government to regularise the services of the employees as per the date specified by the Court or from the date of the order by the Court. It must be remembered that this decision was taken by the Government in relation to 26 daily wages employees and Government decided to give benefit of the government G.R. dated 24/4/2001 to the employees serving under Ground Water Survey and Development Agency. It must be remembered that the government G.R. dated 24/04/2001 is

made applicable as it was, even to the employees of GSDA and in view of this directions the conditions mentioned in the government G.R. dated 24/04/2001 were applicable for regularisation of services of Shri M.R. Mankar and deceased Chandkha Pathan. It must be remembered that as per the direction in government G.R. dated 24/04/2001 the employees who had completed continuous five years service before 31/12/1998 were entitled to be regularised in service on completion of five years. In view of this discussion, I do not see any merit in the contention of the respondents that there is no substance in both the O.As. I therefore held that deceased Chandkha Pathan was entitled for regularisation in service after completion of five years i.e. from 9/1/1991. Similarly, the applicant Shri Maroti M. Mankar was entitled to be regularised in service after completion of five years continuous service i.e. from 7/7/1992.

11. So far as the claim of the applicants for back wages is concerned, there is no evidence that the applicants Shri M.R. Mankar and deceased Chandkha Pathan had no income after their termination till their reinstatement in services, therefore on the principle "No work, No pay" they are not entitled for any back wages. So far as the question of regularisation in service is concerned, it is necessary to issue suitable direction to the respondents. Hence, the following order:-

ORDER

The O.As. are partly allowed.

The deceased Chandkha Pathan be regularised in service w.e.f. 09/01/1991 and Shri Maroti R. Mankar be regularised in service w.e.f. 07/07/1992. The respondents are directed to fix the salary of the applicants Shri Maroti R. Mankar and deceased Chandkha Pathan and release all consequential benefits to them. The respondents are directed to comply this order within six months from the date of this order. The claims of the applicants for the back wages stand dismissed. Accordingly, the C.A.No.183/2018 in O.A.No.605/2017 also stands disposed of. No order as to costs.

Dated :- 04/01/2019.

(A.D. Karanjkar)
Member (J).

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