

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 682/2017**

Siddhartha s/o Adinath Ukey,
Aged about 56 years, Occ., Service,
R/o Belati, Post : Kawalewada,
Tahsil Tirora, District Gondia.

Applicant.

Versus

1. The State of Maharashtra,
Through its Secretary,
Irrigation Department,
Mantralaya, Mumbai - 32.
2. The Executive Engineer,
Irrigation Department (E.G.S.) Gondia,
New Name (Minor Irrigation (LS)),
Division, Gondia.
3. The Sub-Divisional Engineer,
Irrigation Sub-Division (E.G.S.),
Tirora, District Gondia,
New Name (Minor Irrigation (LS))
Sub-Division, Gondia.
4. The Collector,
Gondia.

Respondents

Shri A.R.Kalele holding for Shri P.C.Marpakwar, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 08th November, 2023.

JUDGMENT

Judgment is reserved on 2nd November, 2023.

Judgment is pronounced on 8th November, 2023.

Heard Shri A.R.Kalele holding for Shri P.C.Marpakwar, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the Respondents.

2. Case of the applicant in short is as under-

Applicant was appointed by respondent nos. 2 & 3 at Gondia w.e.f. 25.02.1988 as a Mustering Assistant. Service of the applicant was illegally terminated as per order dated 01.07.1992. Being aggrieved by the termination order dated 30.06.1992, the applicant has filed Complaint (U.L.P.) No.175/1993 before the Labour Court, Bhandara. The said Complaint came to be dismissed on 24.05.2005. The applicant was reinstated in service as per the order of Labour Court dated 29.08.1998 in Complaint (U.L.P.) No.175/1993.

3. The applicant had challenged the order of the Labour Court in Revision (U.L.P.) No.50/2005 before the Industrial Court, Bhandara. The said revision came to be dismissed on 29.06.2005. Being aggrieved by the decision of the Labour Court and Industrial Court, the applicant filed W.P.No.3829/2005 before the Hon'ble High Court Bombay, Bench at Nagpur. The said Writ Petition came to be dismissed on 18.02.2010. However, the respondents were directed to consider the case of the applicant for regularisation. The services of the applicant were again terminated from 30.06.2010 in pursuance of letter dated 29.04.2010. Being aggrieved by the termination order dated 25.06.2010, applicant filed Complaint (U.L.P.) No.23/2010 before the Labour Court, Bhandara. The said Complaint case came to be dismissed on 21.10.2013.

4. The revision was filed before the Industrial Court, Bhandara. The said Revision was dismissed on 04.02.2016. The applicant was reinstated in service as per order passed by the Collector, Gondia dated 24.02.2016. The respondents are not extending the benefit of G.R. to regularise the services of the applicant. Therefore, the present O.A. is filed for the following relief-

- i. to implement the G.R. dated 21.04.1999 on the subject of absorption of Mustering***

Assistants who were in service on 31.05.1993.

- ii. to regularise the services of the applicant from 31.05.1993 as per the G.R. dated 21.04.1999 and direct the respondents to release the arrears of salary from 01.07.1992 by placing the applicant in the appropriate seniority list.***

5. As per the submission of respondents, the services of the applicant were terminated on 30.06.1992. He was reinstated as per order of the Labour Court in Complaint (U.L.P.) No.175/1993. As per order dated 29.08.1998, the applicant was not in service in the year 1993. As per the G.R. dated 21.04.1999, Mustering Assistant those who were on duty on 31.05.1993 are to be regularised. The applicant was not on duty from 31.05.1993. Therefore, he cannot be regularised.

6. During the course of submission, the learned counsel for the applicant has pointed out the order passed by the Hon'ble Bombay High Court, Bench at Nagpur in W.P.No.3829/2005 and submitted that direction was given to the respondents to consider his entitlement independently for regularisation of his services. The

learned counsel for the applicant submits that the applicant was working as a Mustering Assistant and therefore, as per G.Rs. of 1995 & 1999 he is entitled for absorption in a regular service. In support of his submission he has pointed out the decision of this Tribunal in O.A.No.782/2016 with connected O.As. and the decision in other O.A.No.462/2004.

7. The learned P.O. has submitted that the services of the applicant were terminated on 30.06.1992. He was not in service on the particular date i.e. on 31.05.1993. He was reinstated as per the order dated 29.08.1998. The said Complaint (U.L.P.No.175/1993) was dismissed by the Labour Court on 24.05.2005. Revision filed before the Industrial Court came to be dismissed on 29.06.2005. The Hon'ble High Court also dismissed the Writ Petition No.3829/2005. As per order dated 18.02.2010, again the service of applicant were terminated on 30.06.2010. The same was challenged before the Labour Court. The said Complaint (U.L.P.) No. 23/2010 came to be dismissed on 21.10.2013. Revision No.20/2014 filed before the Industrial Court, Bhandara was dismissed on 04.02.2016. Therefore, the applicant cannot claim the benefit of G.R. dated 21.04.1999. The applicant was not working as Mustering Assistant on 31.05.2023. Therefore, he cannot be absorbed in a regular service. Hence, the O.A. is liable to be dismissed.

8. There is no dispute that the services of the applicant as Mustering Assistant were terminated on 30.06.1992. The Complaint (U.L.P.) No.175/1993 was filed. Interim order was passed on 29.08.1998 directing to reinstate the applicant. The said complaint was also dismissed on 29.06.2005. Revision before the Industrial Court and the Writ Petition filed before the Hon'ble High Court by the applicant also dismissed. Therefore, it is clear that on 31.05.1993, the applicant was not working as Mustering Assistant. Therefore, he cannot get the benefit of G.R. dated 21.04.1999. The material portion of the G.R. is reproduced below-

(1) हजेरी सहाय्यकांना त्यांच्या शैक्षणिक पात्रतेप्रमाणे वर्ग क च्या पदावर सामावून घेण्याबाबत.

नियोजन विभाग शासन निर्णय दि. 1 डिसेंबर 1995 व 14 ऑक्टोबर 1996 नुसार रोजगार हमी योजनेखाली दि. 31 मे 1993 रोजी कार्यरत असलेल्या हजेरी सहाय्यकांना त्यांच्या शैक्षणिक पात्रतेप्रमाणे ज्येष्ठतेप्रमाणे शासकीय/जि.प. मध्ये वर्ग ड च्या समकक्ष वेतनश्रेणीतील रिक्त पदावर सामावून घेण्याचे आदेश दिलेले आहेत.

9. The learned counsel for the applicant placed much reliance on Judgment of the Hon'ble High Court. The Hon'ble High Court in para 7 has held as under-

7. I do not find any substance in the Writ Petition, but then if name of petitioner is already included in the

list prepared for regularisation by respondent and if he is entitled for consideration as per any policy or Scheme of State Government in that respect, the respondents shall consider his entitlement independently in accordance with law. The appropriate decision in this respect be communicated to the petitioner as early as possible and in any case by 30.06.2010. Subject to these directions, Writ Petition is dismissed with no order as to costs.

10. After the Judgment of the Hon'ble High Court the services of the applicant came to be terminated as per the communication of Government of Maharashtra dated 29.04.2010. Again the applicant filed Complaint U.L.P. before the Labour Court and the same was dismissed. Revision filed before the Industrial Court was also dismissed. Therefore, the applicant cannot claim that he was in continuance service as Mustering Assistant with the respondent. The services of the applicant were terminated in the year 1992. He was reinstated in the year 1998 but as per the order of Labour Court the said complaint itself came to be dismissed. The order of the Labour Court was confirmed upto the High Court. The applicant was not in service as Mustering Assistant on 31.05.1993. As per the G.R. dated 21.04.1999, those Mustering Assistant who were in working on

31.05.1993 are to be absorbed. The applicant was not working as Mustering Assistant on 31.05.1993. Therefore, as per this G.R., the applicant cannot be absorbed in a regular service.

11. The Judgment of this Tribunal pointed out by the side of applicant are on different putting. They were in regular service. They were appointed on particular date and therefore, they were directed to absorb in the regular service as per the G.R. of 1995 and 1999. Therefore, those Judgments are not applicable to the applicant.

12. The applicant was not working as Mustering Assistant continuously. His services were terminated and order of the Labour Court dismissing the complaint of applicant was maintained upto the Hon'ble High Court. Therefore, the applicant cannot say that his termination was illegal. The applicant was not working as Mustering Assistant on a particular date i.e. 31.05.1993 as per G.R. dated 21.04.199. Hence, the applicant is not entitled for any relief. Therefore, the following order is passed.

ORDER

The O.A. is dismissed with no order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 08/11/2023
rsm.

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

Name of Steno : Raksha Shashikant Mankawde

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 08/11/2023.

Uploaded on : 09/11/2023.