

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.396 OF 2019**

**DISTRICT : MUMBAI**

1. Mr. Johny Yashwant Khedekar. )  
@ Mr. Johny Yashwant Waike. )  
Age : 48 Yrs., Occu.: Van Majoer, )  
R/at : 5G, 206, Sangarsh Nagar, )  
Chandiwali Farm Rd., Powai, )  
Andheri (E), Mumbai 400 072. )
  2. Mr. Ramesh Laxman Dhuri. )  
Age : 39 Yrs., Occu. : Nil, )  
R/at : Sanjay Gandhi National Park, )  
Near Mini Train, Borivali (E), )  
Mumbai. )
- )...Applicants**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Revenue & Forest Department, )  
Mantralaya, Mumbai - 400 032. )
  2. The Principal Chief Conservator of )  
Forest, IIIrd Floor, Van Bhavan, )  
Ramgiri Road, Civil Lines, Near )  
Police Gym Khana, CBI Colony, )  
Nagpur - 440 001. )
  3. The Chief Conservator of Forest & )  
Director, Sanjay Gandhi National )  
Park, Borivali (E), Mumbai. )
  4. The Deputy Conservator of Forest. )  
Sanjay Gandhi National Park, )  
Borivali (E), Mumbai. )
- )...Respondents**

**Mrs. V.K. Jagdale, Advocate for Applicants.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

*u/s*

**DATE : 01.10.2020**

**JUDGMENT**

1. Heard Mrs. V.K. Jagdale, learned Advocate for the Applicants and Mrs. K.S. Gaikwad, learned Presenting Officer for the Respondents.
2. The sole issue posed for consideration in the O.A. is whether the Applicants are entitled to pay and allowances for the period from 01.06.2012 to 10.08.2016 in the light of G.R. dated 16.10.2012.
3. The factual aspects are uncontroverted and same can be noted in brief as under :-

The Applicants were appointed as Forest Labour (Van Majoor Class-IV) in the year 1994 without issuance of any formal appointment orders. They worked till 2004. However, on 01.03.2004, they were orally terminated. Thereafter, the Government of Maharashtra, Revenue & Forest Department by G.R. dated 10<sup>th</sup> October, 2012 had taken policy decision to regularize 5089 Forest Labours who have worked for 240 days in a year for five years and were on duty on 01.06.2012 subject to certain conditions. The Applicants on the basis of G.R. dated 10<sup>th</sup> October, 2012 filed O.A.Nos.621/2014 and 622/2014 which was decided by this Tribunal by order dated 15.02.2016 with direction to the Respondents to take review of the matter in terms of G.R. dated 16.10.2012 within three months and communicate the decision to the Applicant. However, the Respondents did not take any decision which resulted in filing Contempt Proceeding. During the pending of Contempt Proceeding, the Respondents reinstated the Applicants by order dated 10.08.2016 subject to condition they will not be entitled for pay and allowances of the earlier period. Accordingly, the Applicants have joined the service. The Applicants made representation for pay and allowances for the period from 01.06.2012 to 10.08.2016. The Respondents by

order dated 20.02.2018 communicated that they are not entitled for pay and allowances and they will not be entitled for pension purposes considering their appointment from 01.06.2012.

4. In the present O.A, all that Applicants prayed for pay and allowances from 01.06.2012 to 10.08.2016 i.e. the period in which they were not in service. Material to note that they have not challenged or prayed for quashing order dated 20.02.2018. They simply prayed for pay and allowances for the period in which they did not work.

5. The submission advanced by the learned Advocate for the Applicant that the Applicants were available for appointment on 01.06.2012 but they were deprived of appointment, and therefore, they cannot be denied pay and allowances is devoid of any merit.

6. As stated above, the very foundation of the claim of the Applicant is G.R. dated 16.10.2012 whereby the Government had taken policy decision to regularize the services of 5089 daily wages workers who were in service on 01.06.2012. Para No.1 of G.R. dated 16.10.2012 is relevant, which is as follows :-

“1. वन विभागातील दि.१.११.१९९४ ते दि.३०.०६.२००४ पर्यंत सलग पद्धतीने किंवा तुटक तुटक रित्या प्रतीवर्षी किमान २४० दिवस याप्रमाणे किमान पाच वर्ष काम केलेल्या ५०८९ रोजदारी कामगारंपैकी दि.०१.०६.२०१२ला कामावर असण्यास पात्र ठरणा-या कामगारांना मंत्री मंडळाच्या निर्णयाप्रमाणे खालील अटी व शर्तीच्या अधीन राहून कायम करण्यात यावे.

१. त्यांना पूर्वीचे वेतन व तदनुषंगिक लाभ देय होणार नाही.

२. त्यांना दि. ०१.०६.२०१२ रोजी प्रचलित सेवा निवृत्ती वेतन व महाराष्ट्र नागरी सेवेच्या तरतुदी लागू राहतील.

३. उपरोक्त ५०८९ रोजंदारी कामगारांना वरीलपद्धती व पात्रतेचे निकष लावून कायम करण्यात यावेत.

४. उपरोक्त ५०८९ रोजंदारी कामगारांना कायम करण्यात यावे तथापि कुठलाही आर्थिक लाभ देण्यापूर्वी कायम करावयाचे सदर ५०८९ कामगारांची नावनिहा व विभागानिहाय अंतिम यादी शासनास सादर करण्यात यावी.”

7. Admittedly, the Applicants were not in service or on duty on 01.06.2012. Their services were already terminated way back in 2004.

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8. Now turning to the appointment of the Applicants, they were appointed by order dated 10.08.2016 in terms of G.R. dated 16.10.2012 subject to following conditions, which are as follows :-

“सदरची नियुक्ती ही वर निर्देशित शासन निर्णय दि. १६.१०.२०१२ मधील तरतुदी तसेच खालील अटी व शर्तीचे अधीन राहून करण्यात येत आहे.

१. आपली नियुक्ती तात्पुरत्या स्वरूपात अधीसंख्य पदावर करण्यात येत आहे.
२. त्यांना पूर्वीचे वेतन व तदनुषंगीक लाभ देय होणार नाही.
३. आपणांस महाराष्ट्र नागरी सेवा नियम मधील सेवा शर्ती लागू राहतील.
४. पोलीस विभागामार्फत तपासणीत आपले चारित्र आक्षेपार्ह दिसून आल्यास सदरचे नियुक्ती आदेश रद्द ठरतील.
५. हे आदेश प्राप्त झाल्यापासून १५ दिवसांच्या आत आपण निजीकच्या शासकीय रुग्णालयात वैद्यकीय तपासणीस हजर रावून वैद्यकीय प्रमाणपत्र प्राप्त करून या कार्यालयात सादर करावे. वैद्यकीय प्रमाणपत्र सादर न केल्यास व वैद्यकीय दृष्ट्या नेमणूकीस आपण अपात्र दिसून आल्यास आपले नियुक्ती आदेश रद्द ठरतील.
६. आपणांस वन विभागाचे वनमजुरी मध्ये समाविष्ट असलेली कोणतेही कामे, तसेच आवश्यकतेनुसार वनविभागात उपलब्ध असलेली गट ड ची समकक्ष कामे नमूद दिलेल्या ठिकाणी करणे बंधनकारक राहिल. आपणांस सदर आदेशातील अटी मान्य असल्याचे लेखी स्वरूपात प्रतिज्ञापत्र द्यावे लागेल.”

9. It is thus explicit from appointment order dated 10.08.2016 that though the services of the Applicants were regularized in terms of decision dated 16.10.2012, they were adjusted temporarily against supernumerary post with specific condition that they will not be entitled for pay and allowances prior to 01.06.2012. All that, by appointment order dated 02.08.2016, the date of appointment is given as 01.06.2012 for the purpose of pension. Therefore, by order dated 20.02.2018, the Respondents denied pay and allowances for the period from 01.06.2012 to 10.08.2016 informing that the date 01.06.2012 will be considered only for the purpose of pension.

10. Thus, admittedly, the Applicants were not in service from 01.06.2012 to 10.08.2016, and therefore, on the principle of ‘no work no pay’, they are not entitled for the pay and allowances. Only because their services were treated from 01.06.2012 for the purpose of pension that itself will not create any right in favour of the Applicants to claim pay and allowances of the period in which they did not work. It is

because of policy decision taken by the Government, the services of daily wages workers who have completed 240 days in a year or five years, they were regularized w.e.f.01.06.2012. This being the position, the claim of the Applicant for pay and allowances of the period for which they admittedly did not work is devoid of any merit on the settled principle 'no work no pay'.

11. The reliance placed by the learned Advocate for the Applicants on the decision of Hon'ble High Court in **Writ Petition No.10724/2016 (Shriniwas R. Rajurkar Vs. State of Maharashtra & Ors.) decided on 27<sup>th</sup> June, 2017** is of avail, as it pertains to regularization. The Hon'ble High Court allowed the Petition to the extent of regularization of the services w.e.f.16.10.2012. The issue of pay and allowances was not before the Hon'ble High Court in the said Writ Petition and it is restricted to the relief of his regularization only.

12. The decision of Hon'ble Supreme Court in **(2014) 13 SCC 260 (Sandhya Vs. State of Maharashtra)** is also hardly of any assistance to the Applicant, as it also pertains to regularization only and not on issue of back-wages. All that, the Hon'ble Supreme Court held that the Appellants therein should have been deemed to be in continuous service on the date of issuance of G.R. and accordingly, the services of the Petitioners therein were regularized with retrospective effect.

13. Now turning to the facts of the present case, the services of the Applicants were already treated w.e.f. 01.06.2012 for pension purposes and their claim for pay and allowances of the period for which he did not work is rightly rejected on the principle of 'no work no pay'. Suffice to say, the regularization w.e.f. 01.06.2012 itself would not create right to receive pay and allowances and pay and allowances are to be granted only from the date of actual appointment.

14. Material to note that the Applicants have accepted their appointment order dated 10.08.2016 wherein it is specifically stated that

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they will not be entitled to back-wages without demur and accepted the appointment. Thus, once they have accepted terms and conditions of the appointment order dated 10.08.2016, now they cannot be turned around to claim pay and allowances, which is specifically denied by them by appointment order dated 10.08.2016. Apart, on the principle of 'no work no pay', their claim is without any substance.

15. The totality of aforesaid discussion leads me to conclude that the O.A. is devoid of merit and deserves to be dismissed. Hence, the following order.

**ORDER**

The Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)  
Member-J

Mumbai

Date : 01.10.2020

Dictation taken by :

S.K. Wamanse.

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