

(2000) 09 BOM CK 0068

In the Bombay High Court

Case No : Writ Petition No. 1170 of 1997

Chief Executive Officer, Zilla Parishad

APPELLANT

Vs

Daulat Narsingrao Deshmukh and Another

RESPONDENT

Date of Decision : 21-09-2000

Acts Referred:

Maharashtra Employment Guarantee Act, 1977 — Section 2

Citation : (2001) 4 ALLMR 215 : (2001) 2 BomCR 728 : (2001) 90 FLR 636 :
(2001) 2 LLJ 1619 : (2001) 2 MhLj 543

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : S.T. Shelka, for the Appellant; V.S. Bedre and A.G.P., for the Respondent

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—Rule, Rule made returnable forthwith and matter is taken up for final hearing by consent. Learned Counsel for the respondents waive service.

The present proceedings arise out of an order dated October 29, 1996 passed by the Presiding Officer of the First Labour Court, Ahmednagar in Reference (IDA) No. 25 of 1992. The first respondent was engaged initially as a writing Mukadam on a work-charged establishment under an order issued by the Deputy Engineer, Zilla Parishad, Minor Irrigation Sub-Division, Shrigonda. In August 1976 he was engaged as a Mustering Assistant for the purpose of work which was to be executed under the Employment Guarantee Scheme. Subsequent orders were also issued thereafter from time to time and from the award of the Labour Court it emerges that the first respondent continued to work as a Muster Assistant until June 30, 1986. The first respondent, it appears, was not engaged between the period from July 24, 1984 until December 31, 1985. Upon termination of the services of the first respondent, a reference was made u/s 10(1) of the Industrial Disputes Act, 1947 for adjudication as to whether the first respondent should be

reinstated in service with full backwages and continued in service with effect from July 1, 1986. By its award dated October 29, 1996, the Labour Court directed the petitioner to reinstate the first respondent in his original post as Mustering Assistant with continuity of service. Backwages quantified at one-third of the total backwages payable from February 1, 1992 until the date of the award on the basis of the last drawn wages were also directed to be paid to the first respondent. In the present proceedings the Chief Executive Officer, Zilla Parishad, Ahmednagar has sought to impugn the award of the Labour Court.

2. Apart from the contention that the Reference made in the year 1992 challenging the order of termination of 1986 was belated, it has been urged that the first respondent was engaged under the Employment Guarantee Scheme in accordance with the exigencies of work as and when work was available. It has been urged that the first respondent was appointed for specific periods in order to perform specific work and the case would be squarely covered by the provisions of Section 2(oo)(bb) of the Industrial Disputes Act, 1947.

3. The question of absorption of persons, such as the first respondent, who were appointed as Mustering Assistants, from time to time under the Employment Guarantee Scheme, has been a vexed issue not capable of ready solution. The Maharashtra Employment Guarantee Act, 1977 was enacted to make effective provision for securing the right to work by guaranteeing employment to all adult persons who volunteer to do unskilled manual work in rural areas in the State of Maharashtra. u/s 3 of the Act, an adult person is entitled to get employment for doing manual work and to receive wages therefore. Under the employment guarantee scheme productive work as defined by Section 2(h) is to be undertaken. Section 8 provides for the registration of every adult person who is residing in a rural area and who is willing to do any unskilled manual work. The Collector of the District is responsible, u/s 6, for the implementation of the scheme. Section 16 of the Act gives overriding effect to the provisions of the Act, the schemes, rules, notifications or orders made thereunder notwithstanding anything inconsistent in any other laws for the time being in force.

4. In *Delhi Development Horticulture Employees' Union Vs. Delhi Administration*, Delhi and others, the Supreme Court considered the question as to whether persons who were employed under the Jawahar Rojgar Yojana who had put in more than 240 days of service could claim the benefit of regularisation. Holding that the object of the scheme was to provide income to persons below poverty line the Supreme Court held that if resources used for the scheme were utilized for providing full employment to a small percentage of the population, the object of the scheme itself would be defeated. Conferment of a right to regularisation would frustrate the scheme.

5. In *Subhash Narayan Ahirrao v. Deputy Engineer, PWD Sub-Division, Dhule* 1991 LIC 1688 the question of Muster Assistants came up for consideration before a learned single Judge of this Court. The order which was passed by the learned single Judge in Ahirrao's case (*supra*) ultimately was carried in appeal to

the Supreme Court in Civil Appeal No. 5338 of 1991. By its order dated December 2, 1996 the Supreme Court directed that the question of absorption into regular services shall be governed by the scheme which has been framed by the State Government in its Resolution dated December 1, 1995.

6. This position, it must be stated, was noted by a learned single Judge of this Court (J.A. PATIL, J), in his order dated October 15, 1999 delivered in a batch of writ petitions heard together with Writ Petition No. 703 of 1997 in which the Chief Executive Officer, Zilla Parishad, Ahmednagar had moved this Court. The learned single Judge noted that besides the Government Resolution dated December 1, 1995, the State Government had also issued another Resolution dated April 21, 1999 for absorption of Musterling Assistants. In that view of the matter, my learned brother (J.A. PATIL, J.) held that the concerned respondents before this Court, engaged as Muster Assistants in the past may be considered for the grant of benefits in terms of the aforesaid Government Resolutions. In view of the matter, the awards passed by the Labour Court in the cases before the learned single Judge were quashed and set aside and were substituted by a direction in the aforesaid terms.

7. Having regard to the fact, as noticed by the learned single Judge in the earlier decision that a scheme has been formulated by the State Government on December 1, 1995 and April 21, 1999 for the purpose of regularisation of the services of Muster Assistants it would be proper if the case of the first respondent is considered in the light of the said Government Resolutions.

8. Consequently the impugned award of the Labour Court dated October 29, 1996 is quashed and set aside. There shall, however, be a direction that the case of the first respondent shall be duly considered by the petitioner in accordance with the Government Resolution dated December 1, 1995 and subsequent Government Resolutions which deal with the question of regularisation or absorption of Muster Assistants. It is made clear that the entitlement, if any for regularisation or absorption shall be considered and processed in accordance with the Government Resolutions.

9. The writ petition is accordingly allowed and the award of the Labour Court shall stand quashed and set aside and be substituted by the aforesaid directions.

10. Rule is made absolute in the above terms with no order as to costs.