
(2019) 11 BOM CK 0102
In the Bombay High Court
Case No : Writ Petition No. 2247 Of 2014

Dhiraj And Ors

APPELLANT

Vs

Zilla Parishad Chandrapur Through Its Chief Executive Officer
And Ors

RESPONDENT

Date of Decision : 20-11-2019

Acts Referred:

Citation : (2019) 11 BOM CK 0102

Hon'ble Judges : Sunil B. Shukre, J;Rohit B. Deo, J

Bench : Division Bench

Advocate : S.S. Wandile, A.P. Thakre, N.R. Patil

Final Decision : Partly Allowed

Judgement

Sunil B. Shukre, J

1. Heard Mrs. S.S. Wandile, learned Counsel for the petitioners, Shri A.P. Thakre, learned Counsel for the respondent no.1 and Shri N.R. Patil, learned Assistant Government Pleader for the respondent nos.2 to 5.

2. The petitioners are working as contractual drivers having been appointed on contract basis in the year 2004-05 on the establishment of the respondent no.1. Now, the petitioners are seeking their regularization on the grounds that they have put in more than 10 years of continuous service and they have been appointed against the permanent posts. The petitioners are also drawing support from the recommendations of the Standing Committee, resolution to which effect was passed in its meeting dated 11/04/2008.

3. The claim of the petitioners for regularization has been opposed by the respondents. According to the respondents, the petitioners were appointed only against the vacancies, which were to be filled in on contract basis and thus, they were temporary drivers. It is submitted that their appointments were not against any permanent posts. It is also submitted that in any case no vacancies in the permanent posts are available as of today. Additionally, it is submitted that no

procedure prescribed in the recruitment rules has been followed in making appointments of the petitioners.

4. The learned Counsel for the respondent no.1 has placed before us a copy of the judgment of another Division Bench of this Court rendered in Writ Petition No.6025/2015 on 29/06/2017. He submits that this petition was filed by similarly situated contractual drivers working on the establishment of the respondent no.1, seeking same relief as these petitioners and the relief of regularization was not granted by this Court to the similarly situated drivers.

5. It is true that there is a resolution passed by the Standing Committee of the respondent no.1, recommending that these petitioners be regularized. The resolution, however, does not give any relevant information for considering the claim of the petitioners favourably. The law in this regard has been crystallized long back. It prescribes that for any appointment to be regularized, certain conditions must be fulfilled first. These conditions require that there must be in existence vacancy in permanent post and the appointment to be regularized must have been made by following proper procedure. A useful reference in this regard is made to the law laid down in the cases of Secretary, State of Karnataka and others...Versus...Umadevi (3) and others, reported in (2006) 4 SCC 1, State of Orissa and another...Versus...Mamata Mohanty, reported in 2011 AIR SCW 1332, Renu & others...Versus...District & Sessions Judge, Tis Hazari & another, reported in 2014 (2) Scale 262 and State of Jharkhand and others...Versus...Kamal Prasad and others, reported in (2014) 7 SCC 223.

6. Considering this law only that the other Division Bench of this Court in Writ Petition No.6025/2015 decided on 29/06/2017, rejected the claim of the contractual drivers, working on the establishment of the respondent no.1, for their regularization. This Court held that the services of these petitioners could not be regularized as their appointments were not made in clear vacancies by following due procedure of selection and that they were appointed only on contractual basis.

7. It is not in dispute that the present petitioners are similarly situated as the petitioners in Writ Petition No.6025/2015.

Therefore, the claim of the petitioners to seek their regularization in the present case at least as of now cannot be accepted and it is rejected.

8. The petitioners, however, are required to be treated equally with other similarly situated contractual drivers and to this extent, we are of the view that the protection afforded to the other petitioners in Writ Petition No.6025/2015, regarding their services not being terminated till the permanent posts in clear vacancies are filled up by following due procedure, can be extended to even these petitioners. We grant the same protection to the petitioners herein.

9. The other relief claimed by the petitioners is about pay parity with the regular drivers in Class-III category. In this regard the law has been settled by the

Hon'ble Apex Court in the case of State of Punjab and others...Versus...Jagjit Singh and others, reported in (2017)1 SCC 148.

10. The Hon'ble Supreme Court has held that no artificial parameters can be devised to deny the fruits of labour when an employee performs the same work as another employee. The Hon'ble Apex Court has further held that no artificial distinction can be made between such two employees, whereby one is given higher salary and another is paid lower salary. Relevant observations of the Hon'ble Apex Court appearing in paragraph no.58 of the judgment are reproduced as below:-

"58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

11. It is clear that the Hon'ble Supreme Court has held that when one employee discharges/performs same work as another employee, there cannot be any distinction between the two employees so far as the application of the pay scale to both of them is concerned. The Hon'ble Apex Court has further held that all the temporary employees who are performing similar work as the regular employees would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale) extended to regular employees holding the same post. This relief would also have to be granted to all the petitioners as there is no dispute that their work is similar to the work of the regular drivers.

12. Accordingly, the writ petition is partly allowed. The petitioners are granted same protection as the similarly situated drivers have been granted by the Division Bench of this Court in Writ Petition No.6025/2015 decided on 29/06/2017. We further direct that the petitioners be paid wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale) extended to regular employees holding the same post with effect from the date of the petition. All arrears be calculated accordingly and paid by the respondent no.1 to the petitioners within a period of six months from the date of the order.

At this juncture, the learned Counsel for the petitioners, upon instructions, submits that few of the petitioners have been terminated from service by the respondent no.1 on account of some misconduct. If this is so, we make it clear,

those petitioners whose services have been terminated on account of misconduct, shall not be entitled to the benefits of this judgment. We also make it clear that these benefits shall be extendable to all other similarly situated contractual drivers who are not party to this petition.

Rule is made absolute in the aforesaid terms. No order as to costs.