

(1999) 11 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 1008 of 1987

Mohd. Yousuf Mohd. Ibrahim

APPELLANT

Vs

The Zilla Parishad Parbhani and Others

RESPONDENT

Date of Decision : 16-11-1999

Acts Referred:

Maharashtra Civil Services (Joining Time, Foreign Service and Payment during Suspension, Dismissal and Removal) Rules, 1981 — Rule 70(2)

Maharashtra Public Services (Subordinate) Selection Board (Repeal) Act, 1983 — Section 4

Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act, 1990 — Section 249

Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 — Rule 5

Citation : (2000) 1 ALLMR 639 : (2000) 2 BomCR 17 : (2000) 1 MhLj 504

Hon'ble Judges : B.H. Marlapalle, J; A.S. Bagga, J

Bench : Division Bench

Advocate : S.R. Barlinge, for the Appellant; A.H. Vaishnav, for the Respondent

Judgement

1. The petitioner came to be appointed alongwith other 18 individuals vide order dated 4th December, 1981 issued by the Chief Executive Officer, Zilla Parishad, Parbhani (respondent No. 2 herein) as Junior Engineer in the District Technical Services (Class III) (Engineering) Grade-II in the pay scale of Rs. 395-15-20-700-25-900 with a higher start of Rs. 425/- plus dearness allowance as admissible under the Rules, on a purely temporary basis for a period not exceeding one year or till the candidate selected by the Regional Selection Board, Aurangabad was appointed, whichever was earlier. By an order dated 22nd/29th November, 1982 the petitioner's temporary service alongwith other six Junior Engineers, was brought to an end with effect from 2nd December, 1982 and on or about the same day a fresh appointment order was issued by the respondent No. 2 in favour of the petitioner and other six, appointing them on temporary basis for a period not exceeding one year or till the candidate selected by the Regional Selection Board at Aurangabad were appointed, whichever was earlier, in the same post and on a basic pay of Rs. 500/-. Similar appointment orders

were issued on 27th/28th December, 1983, 1st December, 1984 and 29th November, 1985. In all these appointment letters there was a condition that these temporary appointees shall furnish a written undertaking in the specimen form enclosed, before joining duty to the officer concerned and admittedly such an undertaking was furnished. By an order dated 19th November, 1986 the temporary appointment of the petitioner alongwith five other similarly appointed Junior Engineers was dispensed with effect from 21st November, 1986 and by another order dated 25th November, 1986 the other five Junior Engineers were reappointed on the same terms and conditions but the petitioner's case was not considered. He, therefore, submitted representations to the respondent No. 2 for reappointment. It appears that inspite of the reminders submitted before the respondent No. 2 his case for reappointment on temporary basis was not considered and he, therefore, filed an appeal before the Divisional Commissioner at Aurangabad which came to be registered as Case No. 87/DB/DESK/I/CRS/A/33 and this appeal was allowed by the Additional Divisional Commissioner at Aurangabad by order dated 30th May, 1988. The lower Appellate Authority directed the reinstatement of the petitioner and the respondent No. 2 was directed to decide separately the issue of backwages etc. for the period from the date of dismissal till reinstatement in the light of Rule 70(2) of the Maharashtra Civil Services (Joining Time, Foreign Service & Payments during Supersession Discipline & Removal) Rules, 1981. During the pendency of the appeal he approached this Court by the instant petition.

2. Pursuant to this order passed by the lower Appellate Authority the petitioner approached the respondent No. 2 and sought an appointment by way of reinstatement. The respondent No. 2 issued an order dated 9th August, 1988 appointing the petitioner as Junior Engineer on a vacant post for a period not exceeding one year and with all other similar terms which are applicable to a temporary appointee including the undertaking to be furnished in writing. The petitioner contends that in response to this appointment order he submitted a joining report and he was not allowed to join on the ground that he did not furnish the written undertaking as was required in terms of the appointment order. The petitioner approached this Court in Civil Application No. 1664 of 1988 for amendment of the petition and the petition was allowed to be amended. The petitioner moved yet another Civil Application No. 6259 of 1997 for directions to continue the petitioner in service as Junior Engineer subject to the decision of the petition and pay his salary regularly or in the alternate to fix the petition for final hearing. By order dated 21st July, 1998 the alternate prayer was granted and the petition was fixed for final hearing in December, 1998 but it remained undecided.

3. The respondent No. 2 has appeared and contested the petition by filing an affidavit in reply. It has been, inter alia, contended that the order passed by the Additional Divisional Commissioner on 30th May, 1988 was not in keeping with the provisions of law and, therefore, a revision application has been submitted before the Divisional Commissioner which reportedly remains undecided till this date. It is further contended that the petitioner did not satisfy the conditions laid

down in Clause 4(1)(ii) of the Maharashtra Public Services (Subordinate) Selection Board (Repeal) Act, 1983 inasmuch as the petitioner was not a candidate recommended by any of the employment exchanges and, therefore, his service was not liable to be regularised. Admittedly, no further revision lies before the Divisional Commissioner against the order passed by the Additional Divisional Commissioner.

4. The appointments under the Zilla Parishad are governed by The Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 and Rule 5 thereunder sets out the qualification and method of appointments. Appendix VI framed under Rule 5 of the said Recruitment Rules has laid down eligibility conditions for the post of Junior Engineer under the District Technical Service (Class III) (Engineering) Grade II and it states that appointments shall be made either (a)... ..(b) by nomination from amongst candidates who-- (i) unless already in service of the Zilla Parishad are not more than 28 years of age and (ii) possess a recognised degree or diploma (three years course) in Civil, Mechanical or Electrical Engineering, as the case may be, or an equivalent qualification. The Government of Maharashtra promulgated the Maharashtra Public Services (Subordinate) Selection Board Act, 1973 and framed the Rules of 1976 thereunder. As per the said Act all the appointments in Class-III under the Zilla Parishads were to be made on the recommendations of the said Board provided that the eligibility criteria as laid down under Rule 5 and Appendix VI thereunder of the Recruitment Rules, 1967 were fulfilled. The Government of Maharashtra, by an Ordinance dated 18th June, 1983 repealed the Maharashtra Public Services (Subordinate) Selection Boards Act, 1973 and Clause 4(b) of the said Ordinance is relevant for the purpose of appointments under the Zilla Parishads. This Ordinance was converted into an Act namely Maharashtra Public Services (Subordinate) Selection Boards (Repeal) Act, 1983 and it was brought into force on 8th August, 1983. Section 4 of the said Act provided for validation of certain appointments to subordinate service and Clause (b) of the said section pertains to the appointments under the Zilla Parishads. A plain reading of this section makes it clear that the appointments, made by the Chief Executive Officer on temporary basis pending the selection to be made by the Subordinate Selection Boards, were required to be regularised provided the initial appointment of such persons was made in conformity with the relevant rules and regulations or orders made by the authority concerned or any orders issued in that behalf by the Government and in force at the time of such appointments.

5. By a D.O. letter dated 15th November, 1979 the respondent No. 2 was informed by the Deputy Secretary from the Ministry of Rural Development, Government of Maharashtra, that he (respondent No. 2) was empowered to appoint temporary employees in the subordinate services for a period of one year without the consent of the Subordinate Selection Board and such appointments could be made on temporary basis awaiting the selection for regular post by the said Board. The respondent No. 2 invoked such powers and appointed the petitioner and other similarly placed persons to the post of Junior Engineer on

temporary basis and all these appointees fulfilled the eligibility requirements set out under Rule 5 and Appendix VI of the Recruitment Rules of 1967. On promulgation of the Repeal Act of 1983 the Government issued an order dated 9th November, 1983 and called on the Chief Executive Officers of the Zilla Parishads to take appropriate steps to ensure that the temporary appointees, who were in employment as on that date, were regularised before 15th December, 1983. There is no dispute that the petitioner and other similarly placed six Junior Engineers were in the employment under respondent No. 2 and they were entitled for the benefit of section 4(b) of the Repeal Act of 1983 and they ought to have been regularised in service. In spite of the provisions of the said Act as well as the order issued by the Government on 9th November, 1983 the respondent No. 2 did not take appropriate steps and failed to regularise the services of the petitioner and other similarly placed temporary appointees. It is evident that the Additional Divisional Commissioner at Aurangabad has considered the statutory provisions of the Repeal Act of 1983 and directed reinstatement of the petitioner vide order dated 30th May, 1988. Though this order is not happily worded, it is implicit that the lower Appellate Authority has relied upon the Repeal Act of 1983 and observed that the petitioner was entitled to be regularised in service under the Government orders.

6. While issuing the reappointment order dated 25th November, 1986 in favour of other five Junior Engineers, whose temporary appointment was terminated alongwith the petitioner vide order dated 19th November, 1986, the case of the petitioner was not considered by the respondent No. 2. In the affidavit in reply this action has been justified by the respondent No. 2 stating therein that the petitioner was in the habit of remaining absent without permission/intimation and, therefore, it was decided not to reappoint him. Though we do not find fault with such a decision, we have noted that the order dated 30th May, 1988 passed by the Additional Divisional Commissioner had become final and even otherwise the respondent No. 2 was duty bound to issue an order in December, 1983 itself regularising the appointment of the petitioner and similarly placed temporary appointees.

7. By Maharashtra Act No. 3 of 1990 Section 249 was inserted in the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961 and as per the said provisions the temporary appointees in the District Technical Services (Class III), who were appointed by the Chief Executive Officer of the Zilla Parishad during the period commencing on the 18th June, 1983 and ending on the 17 February, 1988 and who were in continuous service, whether with or without breaks on the commencement of the Maharashtra Zilla Parishads and Panchayat Samities (Amendment) Act, 1990, shall, for all intents and purposes be deemed to have been validly and regularly appointed and no such appointment shall be called in question in any Court of law merely on the ground that the appointments were made otherwise than in accordance with the procedure laid down by or under that Act or any other law for the time being in force or on the ground that the District Selection Board or the Divisional Selection Board or any

other Selection Boards were not duly constituted and were not functioning, provided that each such appointment was made according to the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967 and any orders issued in that behalf by the State Government from time to time and in force at the time of such appointment. Pursuant to this amendment the Government of Maharashtra issued orders directing regularisation of services of the temporary appointees and it appears that the five Junior Engineers, who were reappointed by order dated 25th November, 1986 on temporary basis and continued thereafter were given the benefit of regularisation of service.

8. After the appointment order dated 9th August, 1988 was issued in favour of the petitioner the petitioner has submitted a letter dated 3rd September, 1988 which reads as under :

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As per this letter the petitioner contended that he had submitted a joining report on 31st August, 1988 in person to the Deputy Engineer (Mechanical), Ground Water Survey, Zilla Parishad, Parbhani but he refused to accept it and, therefore, the same was submitted in the inward section on 3rd September, 1988. The petitioner further wanted to know whether the same was accepted or not and he requested the Deputy Engineer to convey him by a written communication the action on the joining report. On the contrary, the petitioner has alleged by amending the writ petition that he submitted the joining report which was accepted and he was not allowed to report for duty on the condition that he did not furnish a written undertaking as was required in terms of the appointment letter dated 9th August, 1988. If this was so, it was open for the petitioner to

pray for an injunction against the respondent Nos. 1 and 2 in Civil Application No. 1664 of 1988 or praying for directions to allow him to report for duty on the post of Junior Engineer subject to the outcome of the petition. We have noted that such a prayer is conspicuously absent and it has been incorporated in the Civil Application No. 6259 of 1997, that is after a period of about nine years. We are, therefore, of the view that the contentions of the petitioner that he was forcibly kept away from joining his duties cannot be relied upon. If the petitioner had continued in service pursuant to the order passed by the respondent No. 2 on 9th August, 1988 his services also could have been regularised as a result of incorporation of section 249 in the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961 alongwith the similarly placed five Junior Engineers and the claim in the petition could have been considered by this Court while deciding it finally. The petitioner appears to have taken wrong decision for the reasons best known to him and remained away from employment for no justifiable reasons.

9. However, the action of the petitioner of not reporting for duty pursuant to the fresh appointment order issued on 9th August, 1988 cannot by itself dislodge his claim for reinstatement in service of the Zilla Parishad. As observed hereinabove, pursuant to the Repeal Act of 1983 the temporary employment of the petitioner was required to be regularised before 15th December, 1983 when the petitioner was in employment and the respondent No. 2 failed to perform the statutory duty inspite of the Government's reminder dated 9th November, 1983. On the other hand, the petitioner has resorted to wrong and illegal action of remaining away from employment on the alleged ground that he was forced to submit a written undertaking. He must, therefore, suffer for the same misdeed on his part. Admittedly, for the reasons attributable to the petitioner, he has not been in employment from August/ September, 1988 till this date and, therefore, it will not be appropriate for this Court to give him the benefit of salary for this period.

10. For the reasons set out in the foregoing paragraphs, we partly allow the petition and direct the respondent Nos. 1 and 2 to reinstate the petitioner in service as Junior Engineer and give him the benefit of regularisation of service on par with the other five Junior Engineers who were appointed and continued pursuant to the appointment order dated 25th November, 1986. We make it clear that the petitioner shall not be entitled for the backwages and he shall be treated to be a regular employee of the Zilla Parishad from the date he is reinstated and for the purpose of his retiral benefits his service as regular employee shall be counted from the date the other five Junior Engineers have been regularised.

11. The petition is partly allowed in terms of the above order and Rule is made absolute accordingly. Costs be in cause. The petitioner to report for duty to the respondent No. 2 within one week from today.

12. Steno copy to be given to the respective Counsel, if an application for a certified copy is made.

13. Petition partly allowed.