
(2001) 08 BOM CK 0071

In the Bombay High Court

Case No : Writ Petition No's. 1403, 1404, 1456 of 1990 and 1450 of 1991

Shashikant Make and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-08-2001

Acts Referred:

Constitution of India, 1950 — Article 16, 226

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

Citation : (2002) 1 ALLMR 782 : (2002) 3 BomCR 739

Hon'ble Judges : N.V. Dabholkar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : R.S. Deshmukh, in W.P. Nos. 1403, 1404, 1456/1990 and 1450/1991, for the Appellant; V.D. Sapkal, A.G.P., in W.P. Nos. 1403, 1404, 1456/1990 and 1450/1991, S.S. Choudhari, for respondent No.2 in W.P. Nos. 1403, 1404, 1456/1990, D.R. Irale Patil, in W.P. Nos. 1403, 1404 and 1456/1990 A.S. Deshpande, Adsv. for respondent No. 4 in W.P. Nos. 1403, 1404, 1456/1990, V.P. Kadam, in W.P. Nos. 1403, 1404, 1456/1990, C.R. Bharaswadkar, for respondent 7 in W.P. No. 1403, 1404, 1456/1990 and M.A. Kulkarni, in W.P. No. 1450/1991, for the Respondent

Judgement

B.H. Marlapalle, J.—This group of petitions, filed under Article 226 of the Constitution, raises the grievance regarding regularization/absorption in the permanent service of Zilla Parishads as Junior Engineers who were appointed under the Jawahar Rozgar Yojana vide order dated 21st February, 1990 issued by the Zilla Parishad, Aurangabad. The petitioners had apprehended discontinuation of their employment after 10th June, 1990 and, therefore, they approached us on 4th of June, 1990 and prayed for the following substantial reliefs :

"(C) This Honourable Court be pleased to issue a writ of certiorari or any other writ, direction or order quashing and setting aside the order filed at Exhibit "F" dated 21-2-1990 in so far as it relates to the discontinuation and termination of the petitioners from the service as Junior Engineers by the respondent No. 3.

(D) This Honourable Court be pleased to issue a writ of mandamus or any writ

direction or order directing the respondent Nos. 1 and 3 to treat the petitioners continuously in service as Junior Engineers from the date of their first appointment from 23-2-1987.

(E) This Honourable Court be pleased to issue a writ of mandamus or any other writ direction or order by directing the respondents to pay them all the benefits, increments and emoluments attached to the continuous service, which they are legally entitled."

2. While granting rule, by order dated 8th June, 1990, interim relief in terms of prayer Clause (F) was granted, as a result of which they continued to be in service of the Zilla Parishad. As the issues raised in the petitions were concerning to all the Zilla Parishads, petition was allowed to be amended and all other Zilla Parishads in the Marathwada region came to be impleaded as additional respondents i.e. respondent Nos. 4 to 8. Except the Jalna Zilla Parishad, all other Zilla Parishads have appeared before us and contested the petitions. On behalf of respondent No. 3 first affidavit in reply has been presented on 27th February, 1991 whereas respondent No. 2 Beed Zilla Parishad has filed its return on 21st February, 1992. Additional return has been presented by respondent No. 3 on 8th August, 2001.

3. The petitioners contend that they possess the diploma in Engineering and they came to be appointed to the post of Junior Engineer vide order dated 23rd February, 1987 under the Employment Guarantee Scheme of construction of houses of respondent No. 2 and it appears that originally their tenure was only upto 31st March, 1983 but was extended from 2nd April, 1987 to 30th June, 1987 by an order dated 9th April, 1987 issued by the respondent No. 3. By a communication dated 19th June, 1987 they were informed that their temporary tenure would come to an end on 30th June, 1987. Government took a decision on 2nd February, 1990 whereby the Zilla Parishads were directed to take in employment petitioners and others under the Jawahar Rozgar Yojana. It appears that by Government decision dated 11th December, 1989 the Government had decided to absorb the surplus junior engineers under this scheme which was announced by the Government of India and was to be implemented by the State Governments. The petitioners, alongwith some 22 engineers, came to be appointed on 22nd February, 1990 by the respondent No. 3 Zilla Parishad and it was stated in the said appointment order that the temporary tenure under the Jawahar Rozgar Yojana would come to an end on 10th of June, 1990. The petitioners contend that the appointments were made against clear posts and they were continued in employment for about three years with technical breaks and, therefore, they were deemed to be permanent employees of the Zilla Parishads. In support of their contentions they have also given a tabular information stating therein that there were 49 posts vacant in the 6 Zilla Parishads at the relevant time and additional 139 posts were created.

4. The Zilla Parishads, on the other hand, contend that the petitioners were initially appointed by respondent No. 2 under the Employment Guarantee

Scheme and after completion of their temporary tenure they were discontinued. A list of all such discontinued or surplus junior engineers was submitted to the State Government and when the Jawahar Rozgar Yojana was introduced by the Central Government, the State Government decided to utilise the services of the engineers like the petitioners, who were earlier employed under the Employment Guarantee Scheme or on temporary basis by different Zilla Parishads. Accordingly, orders were issued and the Zilla Parishads, in turn, appointed the surplus or unemployed junior engineers on temporary basis under the Jawahar Rozgar Yojana with a specific tenure of employment. A copy of this appointment order dated 21st February, 1990 has been brought on record at Exhibit-F in Writ Petition No. 1403 of 1990. It was specifically stated that the employment was purely temporary and was to be discontinued at any time after 10th June, 1990 without giving any notice. However, due to the interim order passed by this Court on 8th June, 1990 the petitioners remained in employment.

5. The State Government had called for information regarding all these candidates appointed under the Jawahar Rozgar Yojana and the State Government addressed to the issue of absorption of these engineers in regular employment of the Zilla Parishads. As per the data collected by the State Government there were in all 3761 temporary employees working in different departments of the State Government and out of them 1372 were under the Zilla Parishads. The State Government, therefore, issued a Government Resolution on 8th March, 1999 and took a policy decision for absorption of all these temporary employees engaged either under the Jawahar Rozgar Yojana, the Employment Guarantee Scheme or under the local powers of the Zilla Parishads, without following the prescribed mode of recruitment as one time concession. This decision was followed by another Government Resolution dated 29th April, 1999 dealing exclusively with the temporary appointees under the Zilla Parishads. The conditions for absorption of these temporary appointees were also set out in the Government Resolution dated 29th April, 1999 and the number of such persons to be absorbed on regular basis in each Zilla Parishad was also set out in a tabular form attached thereto. Under the Aurangabad Zilla Parishad there were 72 such temporary appointees who were directed to be absorbed in regular employment in the post of Assistant Teachers, Junior Engineers Jawahar Rozgar Yojana, Junior Engineers (Assistants), Health Workers and Health Assistants. The employees who were sought to be regularised in other Zilla Parishads were Jalna 18, Parbhani 305, Beed 15, Nanded 84, Osmanabad 14 and Latur 51. The figure of Parbhani District, at the relevant time, obviously consisted of the present Parbhani and Hingoli Districts and there were 215 posts of Assistant Teachers out of the 305 sought to be regularized.

6. Pursuant to the Government Resolution dated 29th April, 1999 issued by the State Government the respective Zilla Parishads have issued appointment orders of regularization in January, February, March, 2000 and all these employees who were covered by the said Government Resolution have been regularized from its date and these appointments are treated with retrospective effect from the initial

date of appointment under the Jawahar Rozgar Yojana.

7. When these Government Resolutions were brought before us alongwith the additional affidavits and the regularization orders issued by the different Zilla Parishads we thought it appropriate to dispose of the petitions as infructuous. However, the issue of seniority and consequential benefits from the date of initial appointment was raised before us and, therefore, the Zilla Parishad, Aurangabad filed an additional reply clarifying these issues as well. It is pointed out by the respondent No. 3 that Writ Petition No. 619 of 2001 has been moved before this Court and it relates to the issue of seniority as was sought to be agitated in this batch of petitions subsequent to the orders of regularization have been issued by the respondent No. 3. The affidavit also states that the State Government also is seized of the issue and the State Government has called for information from different Zilla Parishads so as to decide the issue of seniority and consequential benefits. We have also noticed that petitions were not amended after the orders of regularization were issued and instead civil applications were sought to be presented before us during the time of final hearing agitating the issue of seniority.

8. Shri Irale Patil, the learned Counsel appearing for the Aurangabad Zilla Parishad argued at length the freshly raised issued regarding seniority etc. and emphasizing the status of these petitioners as the appointees under the Jawahar Rozgar Yojana the learned Counsel placed reliance on the decision of the Supreme Court in the case of Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, and more particularly the observations in paras 13 to 15. The petitioners, in Delhi Development Horticulture Employees' Union's case (supra) were also the appointees under the Jawahar Rozgar Yojana and dealing with their status the Supreme Court held that such appointees were not entitled for absorption in regular employment under the State Government or in any local self-Government on account of completion of 240 days of service in a year or continuous service for more than one year, in para 15 of the said decision. On the issue of seniority, the learned Counsel for the respondent No. 3 referred to yet another decision of the Supreme Court in the case of Keshav Chandra Joshi and others etc. Vs. Union of India and others, . The Apex Court referred to the The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, , and the propositions "A" and " B" set out therein and observed, in para 25, as under :

"25.The proposition "A" lays down that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The latter part thereof amplifies postulating that where the initial appointment is only ad hoc and not according to rules and is made as a stop-gap arrangement, the period of officiation in such post cannot be taken into account for reckoning seniority. The quintessence of the propositions is that the appointment to a post must be according to rules and not by way of ad hoc or stop-gap arrangement made due

to administrative exigencies. If the initial appointment thus made was de hors the rules, the entire length of such service cannot be counted for seniority. In other words the appointee would become a member of the service in the substantive capacity from the date of his appointment only if the appointment was made according to rules and seniority would be counted only from that date."

9. Shri Irale Patil, learned Counsel referred to the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967 and more particularly Appendix-IV framed under Rule 5 of the said Rules. It states that appointment to the post of junior engineer shall be made by promotion from amongst suitable draftsmen in District Technical Service (Class-III) (Engineering) Grade-III. He has also pointed out that the appointments to Class-III in the Zilla Parishad are required to be made through the Regional Subordinate Service Selection Boards and unless the mode of selection is followed through the said Board, no appointees could claim regularization in service. The petitioners were not such appointees. The learned Counsel also relied upon the provisions of Rule 4 of the Maharashtra Civil Service (Regulation of Seniority) Rules, 1982.

10. We need not advert to the issues subsequently raised during the course of oral arguments by the learned Counsel for the petitioners and replied to by the respondent No. 3. It is evident from the additional affidavit presented before us on behalf of respondent No. 3 that the issue is pending with the State Government for decision and it has also been raised in a fresh writ petition being Writ Petition No. 619 of 2001 which is waiting admission. We have no doubt that the State Government would take appropriate decision on this issue also after considering the submissions/information as may be forwarded by the respective Zilla Parishads and having due regards to the rules and the law laid down on the issue of seniority in respect of such temporary appointees and more particularly the appointees under the Jawahar Rozgar Yojana or the Employment Guarantee Scheme etc. as referred to hereinabove as well as in the case of State of Haryana Vs. Haryana Veterinary and A.H.T.S. Assn. and Another, . We hope the State Government would decide the said issue expeditiously.

11. So far as the main issue of regularization of service is concerned, nothing further survives and we have satisfied ourselves that almost all the Zilla Parishads have issued the appointment orders of regularization in respect of all these junior engineers. We have not been pointed any single case which is before this Court and has not been given the benefit of regularization pursuant to the Government Resolution dated 29th April, 1999 issued by the State Government for regularization under the Zilla Parishads. We, therefore, dispose of these petitions as infructuous and leave the connected issues of seniority and consequential benefits to the decision of the State Government. Rule discharged. Interim order stands vacated. No costs.

12. We also have on today's Board similar petitions filed by Assistant to junior engineers and their cases will also be covered by this order.