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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 WRIT PETITION NO. 2185 OF 2022

Parasram s/o. Ranganath Gaikwad,
Age : 57 years, Occu. Service,
R/o Walki, Tq. Nagar,
Dist. Ahmednagar

....PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Animal Husbandry Department,
Mantralaya, Mumbai

2. The Commissioner,
Animal Husbandry,
Maharashtra State,
Aundh, Pune-7

3. Zilla Parishad, Ahmednagar,
Through its Chief Executive OfficerRESPONDENTS

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Mr C. K. Shinde, Advocate for Petitioner
Mr S. K. Tambe, A.G.P. for Respondent Nos.1 & 2
Mr S. T. Shelke, Advocate for Respondent No.3

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATE : 5th September, 2024

ORAL JUDGMENT (PER : Ravindra V. Ghuge, J.)

1. We are permitting the Petitioner to add prayer clause (B-1) in view of the submissions. Addition of prayer clause be carried out forthwith.

2. Rule. Rule made returnable forthwith and heard finally by the consent of the learned Advocates for the respective sides.

3. The learned Advocate for the Petitioner submits that, since the Petitioner has attained the age of superannuation of 60 years, on 30/06/2024, he is no longer granted any work by Respondent No.3/ Zilla Parishad, Ahmednagar as a **‘Part-time Sweeper’** in the Class-IV category. Hence, he is now praying for the outstanding monthly wages/arrears and for absorption or compensation in lieu of absorption/retiral benefits/pensionary benefits/gratuity, etc.

4. The admitted factors in this matter, are as under :-

(3)

(a) The Petitioner has been given work of a Part-time Sweeper in the Veterinary Hospital (पशुवैद्यकीय दवाखाना) of the Zilla Parishad at Walki, Taluka and District Ahmednagar.

(b) He started his work in 1983, with a fixed pay of Rs.110/- per month. Subsequently, the monthly consolidated pay was increased to Rs.210/- per month.

(c) From 2009, he started receiving salary @ Rs.1800/- per month. Since January, 2016, his monthly fixed salary is Rs.4587/-.

(d) He has attained the age of superannuation on completion of 60 years and is no longer given such work, after 30/06/2024.

(e) By the Government Resolution dated 05/05/2016, issued by the Rural Development Department, Government of Maharashtra, 25% of the category 'D' employees have been reduced and the said posts have been abolished.

(f) The Commissioner of the Animal Husbandry Department, Government of Maharashtra has issued a Circular dated 24/03/2016, wherein it is provided that

(4)

Part-time Sweepers should be granted adequate wages since they are working on meager pay. Those working in the Veterinary Dispensary/Clinic should be paid at least 60% of the basic pay of Rs.4300/-, which comes to Rs.2850/-.

(g) It is further provided that, with every wage revision under the Minimum Wages Act, 1948, their consolidated pay should also be revised. So also, 60% of the Dearness Allowance (D.A.), also became payable. In Clause 12 of the said Circular, it is mentioned that, those Part-time Sweepers, who have been working for long tenures, should be given preference for absorption when it comes to filling up of posts of 'Attendant' (Parichar) Class-IV category, in the Department of Animal Husbandry.

5. The District Animal Husbandry Officer, Zilla Parishad, Ahmednagar has filed an affidavit-in-reply, dated 30/08/2024. It is contended that the said Circular dated 24/03/2016, has been issued in order to streamline the payment of monthly salary to the Part-time Sweepers in the Zilla Parishads in the State and to bring uniformity. It is further contended in

(5)

paragraph No.2 that, since the Petitioner is seeking absorption on the post of the 'Attendant' Class -IV, in the Animal Husbandry Department under the Zilla Parishad, by virtue of Clause 12 of the said Circular, the Part-time Sweeper can be absorbed if the post is vacant in the Animal Husbandry Department, having regard to his experience, conduct and performance.

6. It is further stated in paragraph No.3 that, the Government Resolution dated 05/05/2016 was issued and 240 posts of 'Attendant' on the establishment of Ahmednagar Zilla Parishad have been abolished/reduced from the earlier total posts of 959. Since 2016, not a single post of 'Attendant' was recruited by the Zilla Parishad through a regular selection process. It is then submitted that the Petitioner was working for around 30 to 45 minutes and thereafter, he was free to do any job elsewhere.

7. The learned Advocate for the Petitioner submits that the work performed by him was sweeping in the Veterinary Hospital at Walki. By the very nature of the work, it could not have been completed within 30 to 40 minutes. Cleaning a veterinary hospital through out the day, requires long duration at a

Veterinary facility. After working for half day, neither would have the Zilla Parishad tolerated the Petitioner taking up a job elsewhere on any Part-time post, nor would the Petitioner get any job in any establishment since he would not be available for half day.

8. In the light of the above, the Respondents have taken a definite stand that, the Petitioner is neither entitled for regularization with regular pay-scale, nor he can be held eligible for payment of pension and gratuity.

9. The learned Advocate for the Petitioner has submitted that, since the Petitioner has worked for 41 years from 07/06/1983 till 30/06/2024, it would be a long drawn battle if he was to continue to litigate for seeking regularization and pensionary benefits. He, therefore, submits that, the Petitioner is tired of the long wait for service benefits and would be satisfied if he gets lumpsum compensation in lieu of regularization, retiral benefits, pensionary benefits/gratuity, etc.

10. In the above, we deem it appropriate to refer to the following judgments :-

- I) Dhampur Sugar Mills Ltd. Vs. Bhola Singh, (2005) 2 SCC 470;
- II) Secretary, State of Karnataka and others Vs. Umadevi (3) and others, (2006) 4 SCC 1;
- III) Kurukshetra Central Cooperative Bank Limited Vs. Mehar Chand and another, (2007) 15 SCC 680;
- IV) State of Karnataka and others Vs. G. V. Chandrashekar, (2009) 4 SCC 342; and
- V) Neelima Srivastava Vs. State of Uttar Pradesh and others, (2021) 17 SCC 693

11. In Dhampur Sugar Mills Ltd. (supra), the Hon'ble Supreme Court declined absorption to a Trainee/Apprentice, concluding that a Trainee or Apprentice is a candidate, who has to undergo training and there cannot be an automatic absorption.

12. In Secretary, State of Karnataka Vs. Umadevi (supra), the Hon'ble Supreme Court had directed framing of a scheme by way of a policy for facilitating absorption of those employees,

(8)

who have been working for more than a decade as a one time mode of absorption. The State and the Zilla Parishad contend before us that, such a scheme cannot be framed for an individual as like the Petitioner. Moreover, despite the judgment delivered in Secretary, State of Karnataka (supra), the State of Maharashtra has not yet come forward with any such scheme in any such Department, whereby those who have been working for decades, could be absorbed in employment. We, therefore, deem it appropriate to suggest that the State Government should consider introducing an absorption policy for such Part-time Sweepers and Part-time Attendants/Class-IV employees, working in the Zilla Parishads in the State of Maharashtra and similar State instrumentalities.

13. In Kurukshetra Central Cooperative Bank Limited (supra), the Hon'ble Supreme Court noted that, the Part-time Sweeper was found necessary and therefore, his services were required from 1977. It concluded that the concerned Bank required the services of a Sweeper. The decision of the High Court in concluding that the Bank can decide whether it requires a

full time or a Part-time Sweeper, was quashed and set aside. Being a Bank, the Hon'ble Supreme Court directed it to regularize the appellant if the Bank actually required a full time post of Sweeper.

14. In State of Karnataka Vs. G. V. Chandrashekar (supra), the Hon'ble Supreme Court concluded that, if the initial entering in service was illegal and the recruitment was contrary to the constitutional scheme, the claim for regularization deserves to be rejected. In the instant case, the fact that the Zilla Parishad permitted the Petitioner to work on Part-time post of Sweeper for 41 years, is undisputed. However, since the Petitioner has directly approached this Court, there is no proof or a conclusion that posts of 'Sweepers' were vacant and available with the Zilla Parishad and yet the Petitioner was not regularized in employment.

15. In Neelima Srivastava Vs. State of Uttar Pradesh (supra), the Hon'ble Supreme Court concluded that, though temporary, contractual, casual, daily wages employees had no right to claim regularization, unless an appointment was made in

terms of relevant service rules governing the appointment by adherence with Articles 14 and 16 of the Constitution of India, the only exception is that the incumbent has worked for 10 years on duly sanctioned post without benefits or protection of any interim order passed by any Court or Tribunal, and if the appointment of such employee was not illegal.

16. The learned Advocate appearing on behalf of the Zilla Parishad has submitted that, after 2016, there has been no recruitment of a regular 'Attendant' (Parichar) in the Class-IV category. No post has been filled in. This indicates that though the Petitioner has been dedicatedly working from 1983, he was apparently not considered. In our view, when the Petitioner was working from 1983 as a Part-time Sweeper, and when the above referred Circular dated 24/03/2016 permitted granting preference to the Part-time employee, when it came to recruitment on the post of an 'Attendant', the Petitioner could have been considered.

17. Keeping in view that the State of Maharashtra has now abolished 25% of the posts of Attendant/ Class IV category, it would become even more difficult for absorption of the

Petitioner. So also, in the peculiar facts and circumstances of this case, we do not find it appropriate to direct absorption of the Petitioner, as a stand alone case. If the Zilla Parishad introduces a scheme for an absorption of such Part-time Sweepers, who have been long working with the Zilla Parishads, the said policy decision would have to be implemented as regards the Zilla Parishads in the State of Maharashtra. It is a matter of circumspection, as to how much time would be required for the State Government to introduce any such policy. Even by considering Appendix XII (Rule 5) of the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967, more specifically, Clause 3-A (ii) SWEEPER, there is no provision for granting regularization to a Part-time Sweeper. In short, such a Part-time Sweeper could only be absorbed in service in the light of the Circular dated 24/03/2016, issued by the Commissioner of the Animal Husbandry Department, Maharashtra State, as on date.

18. In view of the peculiar facts recorded as above, we are inclined to accept the request of the Petitioner that, having worked for 41 years, now that the Petitioner has become senior citizen and

he would not receive a single penny for sustaining himself, that such a case be considered for grant of lumpsum compensation.

19. Recently, in matters, where the employees were working on the regular establishment for 30 years (Forest Department), this Court has delivered a verdict on 28/08/2024 in Writ Petition No. 12935/2023 (Bhagwat Nagraj Patil Vs. State of Maharashtra and others) and group of matters. We have granted Rs.10,00,000/- as lumpsum compensation to these Patitioners.

20. Considering that the Petitioner before us was working for 41 years as a Part-time Sweeper, and since he would not be entitled for any service benefits after crossing the age of superannuation, we deem it appropriate to grant a lumpsum compensation of Rs.7,50,000/- to the Petitioner, in lieu of regularization, retiral benefits, pensionary benefits, gratuity, statutory benefits as like the Provident Fund, etc. The said amount shall be paid by Respondent No.3/Zilla Parishad within a period of 60 days. We leave it open to the Zilla Parishad, if permissible in law, to seek grants from the Animal Husbandry Department, Government of Maharashtra for making such

payment. However, we make it clear that, this should not be a ground for not paying the said amount to the Petitioner within 60 days from today.

21. With the above direction, **this Writ Petition is partly allowed.** Rule is made partly absolute in the above terms.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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