

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12320 OF 2018

Namdev Yashwant Bhoir and Ors. .. Petitioners
Versus
The Executive Engineer and Ors. .. Respondents

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- Mr. Ravindra B. Nair a/w. C.M. Lokesh Advocate for Petitioners.
 - Mrs. V.S. Nimbalkar, AGP for Respondent - State.

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 25, 2025.

P.C.:

1. Heard Mr. Nair, learned Advocate for Petitioners and Mrs. Nimbalkar, learned AGP for Respondent - State.

2. In the present Writ Petition, contesting Respondent are the functionaries of the State Government namely the Irrigation Department. Challenge in the present Petition is to the judgment and order dated 31.03.2017 passed in Complaint (ULP) No.79 of2009.

3. Present Petition is heard for the first time today after a long hiatus of 7 years after it being filed. Admittedly it is borne out from the record that Petitioners were engaged in the work of measurement of rainfall, water-level in the river, river flow and all allied and incidental issues pertaining thereto during monsoon season every year for the last more than 18 years before passing the impugned order dated

31.03.2017 came to be passed. Though it is argued by Respondents that their services were engaged only during the monsoon season, record of the case *prima facie* speaks to the contrary as it is an admitted position that all Petitioners before me have been completed 240 days in every calendar year for which they were paid wages. It is also borne out from record that initially Petitioners were issued appointment orders intermittently by giving them an artificial brake after every three months and were also paid salary/wages, but subsequently appointment letters were not issued by Respondents but services of Petitioners were continued regularly thereafter from year to year. Basis of the impugned order *prima facie* is the ground that Petitioners were engaged through a Contractor and therefore there would exist no employer - employee relationship between the Irrigation Department and Petitioners.

4. Oral and documentary evidence is before Labour Court is in the form of deposition of Petitioners which *prima facie* shows that appointment orders were placed on record by Petitioners which were issued to them by Respondents and by virtue of which they were originally engaged in direct employment of Respondents under regular pay scale. Copies of evidence and deposition are appended at Exhibit 'C' of the Petition which *prima facie* relate to the above.

5. Ms. Nimbalkar, learned AGP would submit that she will have to take appropriate instructions and file Affidavit-in-Reply to oppose the Petition. She would persuade the Court to grant one last opportunity to the Respondents to file its reply.

6. Mr. Nair, learned Advocate for Petitioners would submit that admittedly Petitioners were employed initially directly by issuing appointment letters to them in regular pay scale of Rs. 200 - 285 with revision granted to them, but since Petitioners were simple people namely local adivasi people staying in remote places in Taluka Vikramgad, Respondents have taken undue advantage of their simplicity, ignorance, illiteracy and poverty. He would submit that Petitioners were engaged as workers in the river guage department and worked as River Guage workers in Range Guage rather alongwith similarly placed workers who were regular employees of the Respondents. He would submit that Petitioners were engaged by the Department of Hydrology Project Division, Kalwa as employees and in view of they completing the statutory period of 240 days in every calender year on year to year basis, they would be covered by the benefit arising out of the provisions of Kalelkar Award and entitled to permanency status.

7. Ms. Nimbalkar would also submit that there is an element of delay. Be that as it may, at the request made by Ms. Nimbalkar,

Respondents are permitted to file their Reply within a period of four weeks today positively. No further time shall be granted.

8. It is clarified that if Affidavit-in-Reply is not filed by Respondents, the present Petition shall be heard and decided on its own merits since it is seen by the Court that there is substantial material placed on record by Petitioners in the form of documentary evidence before the learned Labour Court which can be considered by this Court to determine the Petition. That apart it is seen that Petition was filed in 2018 and has remained pending since then for 7 long years for no fault of the Petitioners. Hence it is made clear that on the next date, this Petition shall be decided after considering the affidavit of Respondents and if not filed, then in accordance with law on the basis of available record.

9. Stand over to **22nd September 2025 at 03:00 p.m.**

[MILIND N. JADHAV, J.]

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signed by AJAY
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