

## IN THE SUPREME COURT OF INDIA

## CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3182 OF 2023

(@ SLP (C) No. 11738/2019)

THE ZILLA PARISHAD AURANGABAD

Appellant(s)

VERSUS

MIRZA SUBHAN BAIG &amp; ANR.

Respondent(s)

O R D E R

1. Leave granted.

2. We have heard Shri Sudhanshu S. Choudhari, learned counsel appearing for the appellant and Shri Amol B. Karande, learned counsel, appearing for Respondent No.1.

3. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 20.03.2018 passed by the High Court of Judicature of Bombay, Bench at Aurangabad in Writ Petition No. 2779 of 2016, by which the High Court has directed the appellant to refer the proposal of Respondent No.1-original writ petitioner to the Divisional Commissioner for considering the claim for regularization on the strength of his long service as a part time *Parichar-cum-Peon* of the lines of the permanency, by relaxing the age limit so that the competent department is expected to prepare a scheme for regularizing the services of Respondent No.1-original petitioner and other similarly situated employees as full time *Parichar*, the appellant-employer has preferred the present Appeal.

4. At the outset, it is required to be noted that Respondent No.1

raised an Industrial Dispute before the Industrial Court, Aurangabad and by Award dated 18.10.2007, the Industrial Court directed as under:-

"1. The Complaint of the Complainant is being allowed partly.

2. It is declared that the respondent has adopted the Unfair Labour practice and is directed that he should refrain from it.

3. It is directed that the respondent should pay the monthly Minimum Pay admissible to the post of Part-Time Scavenger from the date of appointment i.e. from 10-10-91.

4. Whenever the respondent shall fill in the vacant post of Full Time Attendant, he should consider the complainant on priority by relaxing the Condition of age if he fulfils the criteria.

5. There are no Orders as to costs."

5. It appears that the case of Respondent No.1 was considered for regularization and he was permitted to appear in the written test, pursuant to the advertisements published by the appellant even by giving the age relaxation, however, Respondent No.1 was unsuccessful.

6. Therefore, in fact, in para 14, the High Court specifically observed that no relief of appointment and regularization as a Full Time Parichar can be granted to Respondent No.1, which he failed to secure directly by appearing for that two recruitment tests. Despite the above, in the operative portion of the order and while disposing of the writ petition preferred by the Respondent No.1, the High Court has directed to consider the case of the respondent for regularization and permanency which, as such, is self contradictory.

7. Even otherwise on merits also, once the respondent was given opportunity to appear in the written test by relaxing the age and thereafter was unsuccessful, there was no question of any further direction by the High Court still to consider his case for permanency/regularization. It is required to be noted that, as such, the appellant complied with the judgment and Award passed by the Industrial Tribunal dated 18.10.2007. At the cost of repetition, it is observed that the observations made by the High Court in para 16 is just contrary to the observations made by the High Court in para 14 referred to hereinabove.

8. In view of the above and for the reasons stated above, the present Appeal is allowed. The impugned judgment and order passed by the High Court to the extent the directions issued in para 16 of the impugned judgment and order is hereby quashed and set aside.

The present Appeal is, accordingly, allowed. No costs.

.....J  
(M.R. SHAH)

.....J  
(J.B. PARDIWALA)

New Delhi;  
April 28, 2023

ITEM NO.25

COURT NO.4

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 11738/2019

(Arising out of impugned final judgment and order dated 20-03-2018 in WP No. 2779/2016 passed by the High Court Of Judicature At Bombay At Aurangabad)

THE ZILLA PARISHAD AURANGABAD

Petitioner(s)

VERSUS

MIRZA SUBHAN BAIG &amp; ANR.

Respondent(s)

IA No. 68192/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT & IA No. 68193/2019 - EXEMPTION FROM FILING O.T.

Date : 28-04-2023 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH  
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s) Mr. Sudhanshu S. Choudhari, AOR

For Respondent(s) Mr. Amol B. Karande, AOR  
Mr. Sravan Kumar, Adv.  
Mr. Narendar Rao Thaneer, Adv.  
Mr. Veshal Tyagi, Adv.  
  
Mr. Omkar Deshpande, Adv.  
Mr. Siddharth Dharmadhikari, Adv.  
Mr. Aaditya Aniruddha Pande, AOR  
Mr. Bharat Bagla, Adv.  
Mr. Sourav Singh, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The present Appeal is allowed in terms of the signed order.

Pending applications stand disposed of.

(R. NATARAJAN)  
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)  
ASSISTANT REGISTRAR

(Signed order is placed on the file)

