

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6791 OF 2009

1. Shri. Raghu Dasma Ghadaga
2. Shri. Vanshya Ramji Javliya
3. Shri. Prakash Dharma Paryad } **..Petitioners**

V/s.

1. Project Officer, Dapchari Dugdha
Prakalpa
2. The Regional Dairy, Development Officer
3. The Dairy Development Commissioner,
Maharashtra State.
4. The Principal Secretary, Agricultural Dairy
Development and Fishery Department } **..Respondents**

Ms. Anjali Purav i/by. M/s. Anjali Purav & Co., for the Petitioners.

Ms. Sulbha Chipade, AGP for State-Respondents.

CORAM : SANDEEP V. MARNE, J.

Judgment Reserved on : 21 March 2024.

Judgment Pronounced on : 2 April 2024.

JUDGMENT :

1) Three Petitioners have filed this petition in a representative capacity on behalf of 32 workers (including Petitioners) challenging the

Judgment and Order dated 22 April 2009 passed by the Industrial Court, Thane dismissing Complaint (ULP) No. 172 of 2007. The complaint was filed by the Petitioners on behalf of 32 workers for implementation of Judgment and Order dated 4 August 1995 passed by the Industrial Court in Complaint (ULP) No. 211 of 1987 and for grant of benefit of permanency on the date of completion of 240 days of service. It appears that four workers had died by the time of filing of the complaint and therefore a prayer was made for payment of permanency benefits to the legal heirs of the said four workers. Dismissal of complaint by the Industrial Court has led to filing of the present petition.

2) The Government of Maharashtra had undertaken the exercise of giving impetus to production of milk and milk products and in the process established various projects such Aarey Dairy, Worli Dairy, Kurla Dairy and Palghar Dairy. It was decided that for conducting research and production of good quality cross breed calves and for their supply to members of cooperative milk societies at reasonable rates, a Gaushala (Cow Centre) was established at Dapchari, in Palghar District. Establishment of milk project at Dapchari was also aimed at creating job opportunities to the local tribal population. It is Petitioner's case that lands of 32 workers listed in Exhibits A and B of the Petition were acquired for setting up Dapchari Milk Project. Since their lands were acquired for setting up of Dapchari Milk Project, they were engaged during the year 1984 to work in the Project. In 1987, a Union named Sarva Shramik Sangha filed complaint of unfair labour practice under Item Nos. 6, 9 and 10 of Maharashtra Recognition of Trade Unions &

Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**) on behalf of listed members seeking, *inter-alia*, the benefit of permanency. The said Complaint (ULP) No. 211/1987 came to be allowed by the Industrial Court on 4 August 1995, in terms of prayer clauses 9(iii) and (iv) of the complaint. In those prayer clauses, the Union had sought direction for grant of permanency to the employees listed in Annexure-A to the Complaint from the date of completion of 240 days of service. In prayer clause 9(iv), a prayer was made for implementation of various service benefits such as provident fund, gratuity, life insurance, pension etc. as enjoyed by the permanent employees. Thus, the Industrial Court directed grant of permanency status to the employees listed in Annexure-A to the Complaint (ULP) No. 211/1987.

3) It is Petitioner's case that despite passing of Judgment and Order dated 4 August 1995 in Complaint (ULP) No. 211/1987, Respondents failed to regularise all the daily rated workers of Dapchari Milk Project. That some of the Petitioners filed criminal complaint under Section 48 of the MRTU & PULP Act complaining about non-implementation of the order of the Industrial Court, but, according to Petitioners, due to financial constraints, the said criminal complaint could not be prosecuted.

4) In the above background, Complaint (ULP) No. 172 of 2007 came to be filed by three Petitioners on behalf of 32 workers (including them) whose details were stated in Annexure-A to the complaint.

Petitioners claimed benefit of permanency to all the 32 workers, except for 4 workers, who had died and in their respect, prayer was made for payment of benefits of permanency to their legal heirs. The complaint was resisted by the State Government raising the issue of *res-judicata* contending that the complainants could not file a fresh complaint when earlier Complaint (ULP) No. 211/1987 was already adjudicated. It was contended that the original purpose of setting up Dapchari Project was to shift the cattle owners in Mumbai to Dapchari, which could not fructify. Reliance was placed on the Government Resolution dated 30 June 2000, under which the Government took decision to shut down of the Animal Husbandry Section of Dapchari and that the cross breeding program was completely closed in Dapchari in 2000 and that the staff working in Animal Husbandry Section and Agricultural Section were rendered surplus and absorbed in other government departments. It was contended that the engagements of Petitioners were not against sanctioned available posts and therefore the complainants were not entitled for permanency.

5) On an application being made by the Complainants, the Industrial Court permitted inspection of records of three years by the complainants. The complainants led oral evidence. Respondents chose not to lead oral evidence and filed purshis to that effect. After hearing both the sides, the Industrial Court proceeded to pass Judgment and Order dated 22 April 2009 and dismissed Complaint (ULP) No. 172 of 2007.

6) Aggrieved by the Industrial Court's judgment and order dated 22 April 2009, Petitioners have filed the present petition. The petition is filed and affirmed only by three individuals viz. Raghu Dasma Ghadaga, Vanshya Ramji Javliya and Prakash Dharma Paryad. However, it is stated in para-1 of the petition that the petition is filed on behalf of workers listed at Exhibit-A to the petition. Somehow, there is no Exhibit-A to the petition. However in the chart annexed at Exhibit-B, details regarding the 32 workers are mentioned. It therefore appears that the petition is filed on behalf of 32 workers listed at Exhibit-B to the petition.

7) When the petition came up before this Court on 27 January 2010, the same was admitted granting liberty to apply for interim relief. The State Government has filed Affidavit-in-reply opposing the petition and has relied upon the G.R. dated 30 June 2000 in support of their contention that the Animal Husbandry Section of Dapchari Project has been closed. It is stated in the reply that the Complaint (ULP) No. 211/1987 was filed on behalf of 18 workers, out of which 8 were granted permanency whereas 2 workers had left the job. The remaining 8 workers could not be made permanent on account of non-availability of vacancies. It is further stated in the reply that those 8 workers plus 24 additional new workers filed Complaint (ULP) No. 172/2007.

8) During pendency of the petition, Petitioners have filed Interim Application No. 3871/2023 stating that during pendency of the petition, the workers continued in the employment. That during the year 1995 till July 2022, 15 workers out of 32 workers retired and 10 workers

have died. That only 7 workers continue to be in service. That from 19 July 2022, those 7 workers were prohibited from performing their duties and were handed over copies of orders dated 18 July 2022 terminating them from service with effect from 18 July 2022. In the Interim Application, prayer has been made for direction to the Respondents for continuing the employment of the said 7 workers.

9) Ms. Purav, the learned counsel appearing for Petitioners would submit that the Industrial Court has erred in dismissing the Petitioners' complaint without considering the same on merits. That the Industrial Court has dismissed the complaint holding that the reliefs sought in Complaint (ULP) No. 172/2007 were identical to the one sought in Complaint (ULP) No. 211/1987. That the Industrial Court ought to have followed its decision in Complaint (ULP) No. 211/1987. That all the workers who filed Complaint (ULP) No. 172/2007 were not parties to previous complaints. That 24 new workers were complainants before the Industrial Court in Complaint (ULP) No. 172/2007. That the Industrial Court adopted a hyper-technical approach by ignoring the fact that the concerned workers belonged to the lower strata of the society and are being exploited by Respondents without granting them the benefit of permanency.

10) Ms. Purav would contest the claim of the State Government about Dapchari Milk Project being shut down. She would place reliance on various communications issued to some of the Petitioners on 7 April 2016 and 30 April 2020 to demonstrate that the activities at the Project

are still functional. She would also submit that if the Project was indeed shut, there was no occasion for continuation of service of 7 workers and their terminations on 18 July 2022. She would therefore submit that the Project is fully functional and that the services of workers are/were exploited, most of whom who have retired/expired without receiving any service benefits. That the balance seven workers are also unceremoniously terminated from service without paying them any statutory dues.

11) Ms. Purav would further submit that the concerned workers have rendered substantially long period of service and that they are otherwise entitled to be regularized in service. That the Project of the Respondents is an 'industry' and is governed by Model Standing Orders and therefore the workers are entitled for permanency on completion of 240 days of service. She would therefore pray for setting aside the order of the Industrial Court and for award of benefit of permanency to each of the 32 workers so that either they or their family members receive pay and pension as payable to regular employees.

12) *Per-contra* Ms. Chipade, the learned AGP appearing for the State Government would oppose the petition submitting that the Industrial Court has rightly dismissed the complaint filed by Petitioners as they have been repeatedly approaching the Industrial Court for same reliefs. She would further submit that the Project itself is closed by G.R. dated 30 June 2000, and there is no question of either employing any worker or grant of any permanency benefit to any of the workers in

respect of the Project. She would take me through the GR dated 30 June 2000 alongwith other related documents to demonstrate that several workers in Dapchari were rendered surplus on account of closure of Animal Husbandry activities in the project. That the regular employees were accordingly absorbed in several other departments of the Government. She would accordingly submit that there is no question of grant of permanency benefits to any of the workers who are employed in the erstwhile Dapchari Milk Project in Animal Husbandry Division. She would pray for dismissal of the petition.

13) Rival contentions of the parties now fall for my consideration.

14) Before proceeding to examine the factual position in the present case, it would be first necessary to consider the position of law with regard to the right of temporary employees/workers engaged by the State Instrumentalities for regularization in service. The issue as to whether temporary workers employed in State Instrumentalities could seek grant of permanency under Clause-4(C) of the Model Standing Orders formulated under the provisions of Industrial Employment (Model Standing Orders) Act, 1946 attracted attention of Full Bench of this Court in *Municipal Council, Tirora V/s. Tulsidas Baliram Bindade* 2016 6 Mh.L.J. 867. The Full Bench of this Court held that the Industrial Court cannot grant permanency by invoking Clause-4C of the Model Standing Orders to the employees employed in State Instrumentalities. The view was taken on account of the fact that several State

Instrumentalities such as local bodies, Zilla Parishads, etc cannot create post on their establishments in absence of approval by the State Government. In respect of State Instrumentalities, the power to create posts vests in the State Government and merely because a State Instrumentality chooses to engage services of any person in excess of its sanctioned strength, the same does not create any right in favour of such employees to create regularization under Clause-4C of the Model Standing Orders upon completion of 240 days of service. The reference to the Full Bench was required to be made on account of conflict of views in some of the judgments of this Court. Finally, in ***Municipal Council, Tirora***, the law is settled that Industrial Court cannot grant permanency to the employees of State Instrumentalities merely upon completion of 240 days of service in accordance with Clause-4C of the Model Standing Orders. The Full Bench answered the Reference as follows:

21. Thus, in the light of this discussion, it follows that in absence of vacant sanctioned posts with the Municipal Council, a workman who has put in continuous service of 240 days or more in span of 12 months, cannot invoke Clause 4C of the MSO to claim either permanency or regularization. We accordingly answer the question referred. Registry to place the writ petitions before the learned Single Judge as per roaster assignment for further consideration.

15) The judgment of the larger Bench in ***Municipal Council, Tirora*** has been followed by the Single Judge of this Court (*Ravindra Ghuge, J.*) in ***Raigad Zilla Parishad V/s. Kailash Balu Mhatre and Ors.*** (Writ Petition No. 407 of 2018) decided on 5 January 2022. In ***Raigad***

Zilla Parishad, this Court held that regularization cannot be automatic on completion of 240 days of service under Clause-4C of Model Standing Orders in absence of sanctioned vacancies. However instead of completely rejecting the claims of daily workers, this Court directed the Zilla Parishad to send a proposal to the State Government for sanction of vacancies for the purpose of consideration of cases of the concerned employees for grant of benefit of permanency.

16) After considering the law laid down of the Full Bench of this Court by *Municipal Council, Tirora* as followed by the Single Judge in *Raigad Zilla Parishad*, grant of benefit of permanency to the workers engaged by State Instrumentalities on completion of 240 days of service under Clause 4C of the Model Standing Orders cannot be automatic. Regularisation of such employees cannot be ordered by Labour/ Industrial Court in absence of their engagements against regular sanctioned posts. In short, Labour/ Industrial Courts are not empowered to create posts on establishments of State Instrumentalities by directing grant of permanency to a casual, daily rate or temporary workers upon completion of 240 days of service, if such worker does not hold any sanctioned post as per staffing pattern sanctioned by the State Government.

17) Keeping in mind the above broad principles, I proceed to examine the claim of Petitioners for grant of benefit of permanency in the present case. As observed above, the petition though filed by three workers, is sought to be prosecuted on behalf of total 32 workers listed at

Exhibit-B to the petition. It appears that most of the said 32 workers are engaged in Dapchari Milk Project during the years 1985 to 1987. As of now, out of the total 32 workers, 15 have retired, 10 have expired and 7 who were working upto 18 July 2022, when their services were terminated. It thus appears that the concerned workers have continued to work on the Project till their retirements/deaths and in respect of 7 workers, their continuation is till 18 July 2022. There is therefore no doubt to the position that the concerned workers have been continued for a substantial period of time. It appears that they were converted on Regular Temporary Establishments (CRTE) which dates are also disclosed under a column with erroneous heading 'date of permanency' at Exhibit-B to the petition. The workers are not granted the benefit of permanency, which is the reason why they are prosecuting the present petition. What is granted to them in the third column of Chart at Exhibit-B is Conversion to Regular Temporary Establishments (CRTE) which is distinct from grant of benefit of permanency. The said 32 workers therefore never attained the status of permanency which is the reason why they approached the Industrial Court.

18) Perusal of the Order passed by the Industrial Court would indicate that the case of the Petitioners is not properly considered on merits. The Industrial Court has essentially shut its doors on Petitioners on the ground that Complaint (ULP) No. 211/1987 seeking similar/identical reliefs was already decided on 4 August 1995 and therefore it was impermissible for the 32 workers to once again knock the

doors of the Industrial Court. The relevant findings recorded by the Industrial Court are to be found in para-21 of the Order read thus :

21. Thus both the rival counsels by taking me to the contents of the citations and case laws and the orders which are there on the record placed by the complainants it reflects from the contents therein that the said judgment and order which have been referred by the learned counsel are regarding getting permanency in the employment for which the learned counsel for the respondent have not disputed the ratio therein. But if we peruse the contents of the oral evidence which is placed on the record and the cross examination taken by the complainant i.e. The workers concerned Mr. Raghu Ghadga below exhibit U-10 and he had categorically admitted that for the similar cause of action and the reliefs they have filed Complaint (ULP) No. 211/87 before this court and the same was decided in favour of the present complainants and it is also admitted in the cross that it is not possible for him to narrate what has been transpired on the date 04.00.05 i.e. cause of action to file the present complaint and there Government Resolution on the record to close down the said respondent Dugdha prakalpa which cannot be disputed as it is also admitted position that after filing the criminal complaint as the respondents have not obeyed the order passed in COMPLAINT(ULP)NO. 211/87 before the concerned Labour Court. After hearing the parties the said criminal complaint have been dismissed. Thus it reflects that the present complaint which is filed by the complainant for similar cause of action for getting permanency as such but as it is fact on the record, the order which is passed in COMPLAINT (ULP)NO. 211/87 is still in existence. Hence the reliefs which have been prayed have been already granted in the said complaint by the predecessor of this court. Hence the complaint is hit by (resjudicata and regarding the reliefs of the permanency as prayed therein and as such the order dated 04.08.95 is still in existence and no explanation have been placed on the record what steps have been taken by the complainant for getting implementation of the said order and it also fact on the record that the criminal complaint which was lodged by the workers concerned was dismissed after hearing the parties. As per the documents which are there on the record list exhibit U-9 the inspection report which has been

submitted by the learned counsel for the complainant as per the directions of this court after inspecting the documents of the respondents it reflects that the workers concerned in the complaint have signed the muster roll after June 08 and the same are there on the record for which there is no rebuttal placed by the respondents. Hence in this connection and the facts there is also prayer in the complaint that the respondents be directed to implement the order of this court dated 04.08.95 passed in COMPLAINT(ULP)NO. 211/87. Nowhere it reflects on the record the complainants have taken any steps but it is the case of the respondent that as department is closed down as per the Government directions, and accordingly the written reply is there on the record i.e. Written statement at exhibit C-2. Thus in limit it reflects that the said project and activities of the said respondents prakalp have been stopped by the Government Resolution dated 30.05.2000 and it has been stated categorically therein that it is not possible for the respondent to give status of permanency to the complainants. As all the activities have been stopped. Thus apart from all the said facts it reflects that the complaint which is filed by the complainant for which the reliefs have been already granted le. Regarding status of permanency in previous complaint. Hence as the complainants have miserably failed to prove that the respondents have contravened provisions of law and violated the order which is in question le passed in COMPLAINT(ULP)NO. 211/87 dated 04.08.95 and in the present case the reliefs which have been prayed are also reflects to be Identical in nature. Hence considering the ratio of our Apex court and the facts which are there on the record I conclude that the complainants have failed to prove that the respondents have engaged and are engaging unfair labour practices, under item nos. 5,9 of schedule Iv of the Act as alleged in the present complaint. Hence for the reasons and taking into consideration the present position and provisions of law I pass the following order :

19) It appears that the manner of couching the prayers in the Complaint (ULP) No. 172/2007 made the Industrial Court believe that all the workers in the complaint were also part of previous Complaint (ULP) No. 211 of 1997. This is because Petitioner raised a prayer for

implementation of the judgment and Order dated 4 August 1995 in Complaint (ULP) No. 211 of 1987. Though the Industrial Court's order is silent on the issue, it has now transpired that only 8 complainants in previous Complaint (ULP) No.211 of 1987 were part of Complaint (ULP) No. 172 of 2007. The rest 24 workers were not parties to the previous complaint. What the complainants essentially desired was grant of same benefit as was granted in Complaint (ULP) No. 211 of 1987. However, the prayer was erroneously couched as if the complainants were seeking implementation/execution of the order passed in the previous complaint. In my view, considering the background of the workers, the Industrial Court ought to have ignored the technicalities and considered the cases of the workers on merits.

20) After having held that the complaint filed by the 32 workers was barred by *res-judicata*, it appears that some attempt is made by the Industrial Court to deal with on merits by making a reference to the GR dated 30 May 2000. However, such attempt on the part of the Industrial Court to enter into the merits is not full-fledged and the same is half-hearted. With the result, there is no adjudication on the debate between the parties about the effect of G.R. dated 30 May 2000 on entitlement of 32 workers for grant of benefit of permanency. In ordinary course, this Court would be justified in remanding the complaint to the Industrial Court for fresh decision on merits to consider the effect of G.R. dated 30 May 2000. However, as observed above, most of the workers have already retired/expired and it would cause injustice to them if the complaint is to be remanded at such distant point of time. I accordingly

proceed to decide the exact impact of G.R. dated 30 May 2000 on Petitioner's right to seek permanency.

21) Ms. Purav has vehemently submitted that Dapchari Project is not closed and that the same continues to operate. On the contrary, it is Ms. Chipade's contention that the entire activities of Animal Husbandry Section of Dapchari Project are closed and all the workforce employed therein has been rendered surplus and absorbed in other departments. The G.R. dated 30 June 2000 is placed on record by Respondents alongwith their Affidavit-in-reply. English translation of the G.R. dated 30 June 2000 is produced by the Respondents as under:

Close down of Animal Husbandry Schemes (Goshala Yojana) and Distribution of Pregnant Cross-bred heifers at Aarey, Palghar, Dapchari.

*Government of Maharashtra
Agriculture, Animal Husbandry, Dairy
Development and Fisheries department
G.R. No. AAMC 102000/Pra-Kra-436/ADF- 8
Mantralaya Extension Mumbai-400 032
Date 30 June 2000*

*Read:- Dairy Development Commissioner's letter No.ADV-3
(2)/2000/ARP/cow scheme-date 18 March 2000*

Preface :-

Under Dairy Development Department a cow unit is functioning at Aarey. Palghar and Dapchari. The purpose of these Cow Unit Schemes were to

study of capability of cross- breed cows and produce superior quality heifers and provide these heifers to members of milk cooperative societies at the reasonable rate. Among the other purposes, it is also aimed to popularise and spread the cross- breeding programme. In the year 1970-71 only 1437 cross-breed calves were reproduced, later the numbers was increased to 4,07,410 in the year 1997-98 by Artificial Insemination. It reveals large scale success of artificial fertilization programme. Such type of programme are being carried out by Departments of Animal Husbandry, Zilha Parishad, Dairy Cooperative Unions Pangerpole and Indian Agriculture Industrial trust. Therefore now there is no necessity of these units to be run by the Govt. Sector. Hence Govt. has taken following decision to void unnecessary financial Expenditure.

Decision :

Cow Units (Cross-Breeding Scheme) at Aarry, Palghar and Dapchhari functioning under Dairy Development Department are being closed. The order for absorption of the regular employees and disposing of the cattle under the scheme is given as below.

A) Regular Employees: *1) After closing Cow Units of Aarey, Palghar and Dapchhari the employees of class-1-7 posts, class 11-5 posts and class III-33 posts shall be absorbed in the department on equivalent grade or posts*

2) 363 posts of class IV at Aarey Cow Units shall be absorbed in vacant post of Greater Mumbai Milk Scheme. The class IV posts under Dapchhari and Palghar shall be absorbed in vacant post of another sections of that scheme or elsewhere. The same vacant post should be filled, if vacant posts required to be filled. otherwise staff shall be treated as Surplus and shall be transferred to surplus cadre.

B) Cattle Disposal :

1) 50% productive cows shall be sold to farmers by auction basis. Remaining cows shall be sold to poor farmers under different Govt. Scheme viz. Village Development Department under Poverty eradication programme, the scheme under Nucleus Budget or any other welfare programme in Tribal

Development Department. If there is no demand from above schemes then these cattle shall be sold by auction.

2) Cross-breed pregnant heifers/calves shall be sold by action.

3) The cows which are not sold out should be sold to Mumbai Jeevadaya Mandal or some other organization.

4) The auction shall be made within 3 months for the cattle disposal.

C) The order will be issued separately for stables (Goshala), Stores and other buildings of three farms after disposal of cross-breed animals under Goshala Scheme

By the name and order of Government of Maharashtra

(sd/-)

Desk Officer, M.S.

Agril. A.H. D.D. Dept. & Fisheries

22) Thus, what is closed by G.R. dated 30 June 2000 is Goshala (Cross Breeding Scheme) in Dapchari Project. It was decided to absorb 7 Officers on Class-I post, 5 Officers on Class-II post, 33 employees in Class-3 categories working in Goshalas at Aarey, Palghar, Dapchari in other departments. It was decided that 363 pots of Class-IV in Aarey Goshala shall be absorbed in vacant posts under Greater Mumbai Milk scheme. So far as Dapchari and Palghar Goshalas were concerned, all Class-IV posts were directed to be absorbed in other sections of that Scheme or any other departments. It was further provided that if vacant posts were not available, the Class-IV workers were to be rendered surplus for being transferred to surplus cadre.

23) It appears that on 16 December 2023, the State Government published list of 4920 surplus posts, out of total sanctioned 13,501 posts in Dairy Development Department. It appears that the said 4920 posts were abolished and list of workers, which was rendered surplus, was published.

24) Relying on the G.R. dated 30 June 2000 and Order dated 16 December 2003, the State Government contends that far from availability of any posts for grant of permanency benefit to the 32 workers employed in the present petition, the State Government faced an uphill task of absorption of as many as 4920 personnel which was rendered surplus in the Dairy Development Department. The Government has contended that so far as Class-IV workers in Dapchari Project is concerned, since the Project came under the Konkan Division, regular staff was absorbed in several other departments throughout Konkan Division. The State Government has also contended that there was a proposal for shifting of cattle available in Mumbai region to Dapchari which project has not fructified till date. That therefore there is no requirement of any manpower at Dapchari Project.

25) As against the above assertion of the State Government, Ms. Purav has relied upon some of the documents to demonstrate that some workers were continued at Dapchari Project. Reliance is placed on Office Order dated 30 April 2020 by which some staff and workers were directed to arrest tree felling. The order includes names of some of Petitioners.

Similarly, reliance is placed on Order dated 7 April 2016 issued in respect of Petitioner No.3-Vanshya Ramji Zavalia by which he was directed to report at Sheetakaran Kendra (Chilling Plant) at Dapchari instead of working at transportation department.

26) While Ms. Purav may not be entirely incorrect in contending that all activities of Dapchari Project are not closed, however what seems to have been closed is the Animal Husbandry Section. The Government has taken a conscious decision to close the activities of Cross Breeding Sections of Goshalas in Dapchari Unit. It was therefore decided to dispose of the livestock of the Dapchari Project. Though Government intended to shift the Tabelas and livestock therein from Mumbai City to Dapchari, the said Project has not yet fructified. It thus appears that the staff, which the Government required till the year 2000, for the operation of Animal Husbandry Section as well as the agricultural Section at Dapchari Project, is no longer required after closure of cross breeding section. It is not Petitioner's case that the activity of cross breeding of cows, which was being undertaken at Dapchari, is still being continued at the Project. Since Government owns the land and has set up a large-scale milk project at Dapchari, the Government is bound to deploy some staff to take care of land and the project after closure of the Animal Husbandry Section.

27) After considering the overall conspectus of the case, it is seen that engagement of 32 workers were not made against regular sanctioned posts nor any regular sanctioned posts are available for grant

of benefit of permanency to them. Permanency or regularization cannot be granted in Government departments or its Instrumentalities in absence of availability of regularly sanctioned posts. The Industrial Court does not have jurisdiction to create posts on establishment of Government departments or the State Instrumentalities.

28) In this regard, useful reference can be made to somewhat similar case decided by Division Bench of this Court relating to claim for permanency by daily rated staff of Government Milk Scheme, Chiplun in ***State of Maharashtra v. Pandurang Sitaram Jadhav***, 2009 Supp Bom CR 840 : (2008) 119 FLR 224 in which this Court held as under:

4. The order passed by the Industrial Court was challenged by filing a writ petition before the learned Single Judge of this Court. The appellant had contended before the learned Single Judge that in the absence of sanctioned posts and available vacancies to accommodate the daily wagers, issuance of direction by the Industrial Court to grant permanency is contrary to the law laid down by the Supreme Court in case of (Secretaries, State of Karnataka v. Umadevi)¹, reported in 2006 DGLS (soft) 217 : (2006) 4 SCC 1 : A.I.R. 2006 S.C. 1806. The said submission was turned down by recording the following reasons.

“In the present case, admittedly, the respondent workmen were employed in the Dairy run by the Government Milk Scheme. The Dairy is a factory, employing more than 50 employees. Consequently, the Industrial Employment (Standing Orders) Act would be applicable to the undertaking. There are no Certified Standing Orders applicable to the Dairy and, therefore, the Model Standing Orders would govern the employment of the workmen of the undertaking. Under the Model Standing Orders, the employees

are entitled to be made permanent after they complete 240 days in service.

Therefore, in my view, Uma Devi's case does not apply to the facts and circumstances in the present case. The Supreme Court was not dealing with an industrial establishment to which the Industrial Employment (Standing Orders) Act applies.”

20. Reverting back to the facts in the present case, it is crystal clear that there are no sanctioned posts and vacancies in existence in the petitioner's concerned department. Hence the claim for permanency could not have been granted by the Industrial Court. By observing that sanction for the posts could be asked for and obtained from the State by the authority concerned clearly indicate absence of sanctioned vacant posts. No finding has been recorded either by the Industrial Court or by the learned Single Judge that the respondents were appointed in adherence to the rules regulating appointment. The respondents did not even claim that they were appointed in adherence to the procedure prescribed for appointments. From the very nature of appointment as ‘daily wagers’. It is obvious that the respondents have not been appointed in compliance of the procedure prescribed for making the appointments. As the respondents have failed to demonstrate that their appointments were made in accordance with the procedure prescribed for selection and appointment and as they have further failed to establish that there exists sanctioned vacant posts, it would be wholly unjust to direct the appellants to grant permanency to the respondents. The learned Single Judge has concluded the issue by placing reliance on the Model Standing Orders which regulates the terms and conditions of service in the matter of grant of permanency on completion of 240 days of service without dealing with the effect of non availability of sanctioned posts and the requisite vacancies. In our considered view, the order passed by the learned Single Judge cannot be sustained. Provisions of Model Standing Order by themselves cannot and does not confer any right of permanency unless and until the other two pre-requisites are satisfied i.e. (1) appointment being in conformity with the rules relating to appointment and (2) permanent sanctioned vacant posts being in existence.

21. In the above premise, we conclude that the appellant State is obliged to make appointments in adherence to the constitutional scheme of Pub-

lic employment which regulate the appointments in the Government's Milk Scheme. We also hold that as the respondents/'Daily Wagers' were appointed without following the prescribed procedure for selection by passing public participation, they do not acquire any legal right to claim permanency. We also hold that the provisions of Model Standing Orders are subject to the Rules regulating selection and appointment so also subject to the constitutional scheme of public employment.

29) Thus, in *Pandurang Sitaram Jadhav* the Division Bench set aside the order of the Single Judge, who had held that the judgment of Apex Court in *State of Karnataka vs. Umadevi* has no application to claim for permanency before Industrial Court under Model Standing Orders. The judgment of Division Bench of this Court in *Pandurang Sitaram Jadhav* would squarely apply to the present case.

30) Thus, none of the 32 workers have any right to seek permanency/absorption in government service. The prayer for grant of permanency sought for by the 32 workers, therefore deserves to be rejected.

31) Writ Petition is thus without merits and liable to be dismissed. Writ Petition is accordingly **dismissed**. Rule is made absolute.

[SANDEEP V. MARNE, J.]

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signed by
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