

Neutral Citation No. - 2024:AHC-LKO:79032

RESERVED

Case :- WRIT - C No. - 23326 of 2021

Petitioner :- Scooters India Ltd.Lko.Thru.Auth.Sign.Samarth Dave And Anr.

Respondent :- Pres.Off.Central Govt.Indus.Tribunal-Cum-Labour Court And Ors.

Counsel for Petitioner :- Avdhesh Shukla,Rakesh Chandra Tewari

Counsel for Respondent :- A.S.G.,Hem Raj Mishra,Laxmi Mohan Khare,Mohd.Altaf Mansoor,Pallavi Singh,Sankalp Dewari,Suneel Kumar Khare,Tanay Chaudhary

Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for the petitioners and learned Standing Counsel for the respondents.

2. The present writ petition has been filed by the petitioners challenging the orders dated 29.1.2021 and 24.5.2021 passed by the opposite parties nos.1 and 2 whereby the award was passed in favour of the applicant and against the petitioner's company and the petitioner was called to show cause as to why action should not be taken for non implementation of the award under Section 29 of the Industrial Disputes Act.

3. The facts in brief are that the opposite party nos.3 to 157 claimed that they were invited by the petitioner company for being appointed as 'Advance Trade Diploma Trainees' and were called for interview vide letter dated 30.1.2013 and were selected as Advanced

Trainees initially for a fixed period of two years in terms of the appointment letter issued to them.

4. Clause 10 and 11 of the appointment letters as contained in Annexure No.3 are as under :-

"10. After the expiry of this training period, the company will have no obligation to offer you any appointment and you will have no right, lien or preference for any appointment after the expiry of the said training period in any vacancy or post which may occur in future.

11. During the period of your training, you will be governed by the provisions of certified standing orders and other rules and regulations s may be enforced from time to time."

5. Learned counsel for the petitioners has pleaded that in terms of the conditions prevalent in the petitioner company while it was working are governed by the standing orders wherein the classification of the employees is as under :-

"1.3.1. Permanent.

1.3.2. Probation.

1.3.3. Temporary.

1.3.4. Trainees.

1.3.5. Casual.

1.3.6 Apprentice."

6. It is further pleaded that in clause 1.3.4, trainee is defined as under :-

"Trainee- "Trainee" is a learner recruited under the Company's trailing scheme on a fixed stipend and will be governed by terms of appointment/ agreement bond executed between the company and the trainee."

7. It is further pleaded that the opposite parties nos.3 to 157 continued as trainees in the project and their appointments were extended from time to time upto the year 2018.

8. The respondents claiming that they were entitled to regularisation raised in the Industrial disputes which was referred for adjudication. The reference was as under :-

"KYA PRABANDHAN SCOOTERS INDIA LIMITED LUCKNOW DWARA SARV SHRI SHANTANU VA 154 ANYA AUR SARV SHRI MANISH SINGH PAWAR VA ANYA 11 SUCHIYAN SANLAGN KO UNKE PAD KE ANUSAR SEVA MEIN NIYAMIT NA KARNA NYAYOCHIT EVAM VAIDH HAI? YAD NAHI TO KAAMGAAR KIS RAAT KO PAANE KA HAQDAAR HAIN?"

9. Petitioner company filed a reply and stated that the company has been referred to as BIFR in the year 2010 and thereafter they had inducted the advanced diploma trainees so that the profit of the company could be increased. The said persons were inducted on a fixed stipend and were never regular employees of the company. It is pleaded that the petitioner company ultimately became utterly sick and the production of

the company was stopped and a plan for disinvestment was proposed and auction was also made with the approval of the appropriate authority, however by means of the award impugned in the present writ petition, the Tribunal held that the trainees fall within the definition of 'workmen' and were duly recruited and after having successfully completed their probation, were entitled for regularisation from the date they successfully completed their probation and they were also entitled to service benefits at par with the other employees of the company including the back wages etc. Further cost of Rs.25,000/- was directed to be paid by the petitioner company.

10. The matter was heard at length and parties were directed to file their written arguments. The written arguments have been submitted by the petitioner company and the respondents.

11. The award in question is being challenged by the petitioner mainly on the ground that in terms of the standing orders, there was no provision for regularisation. It was however argued that the analogy that the respondents had completed the period of probation is flawed for the reason that Clause 1.3 of the standing order which classify the employees, keeps

the employees on 'probation' in a separate category from the employees who were appointed as trainees. It is also argued that the terms and conditions of the respondents were governed with the appointment letters issued to them.

12. Learned counsel for the respondents on the other hand argued that although the respondents were appointed as trainees, their employment continued from time to time and was extended upon the year 2018 which denotes that the work discharged by the employees was always available with the company and not regularising their services, would amount to 'unfair labour practices' and the Tribunal has rightly held that the continuance of the respondents for years with the object of depriving them of their status and privilege of the permanent workmen, is wholly unjustified.

13. It is further argued that the Hon'ble Supreme Court had considered the effect of 'unfair labour practices' and the power of the Tribunal to grant the relief of regularisation in terms of its statutory powers contained under the Industrial Disputes Act.

14. Specific reliance has been placed in paragraphs 26, 27 and 31 of the judgement of the Hon'ble Supreme Court in the case of ***Civil Appeal Nos.3433,***

3434, 3435, 3436 and 3437/2007 decided on 28.8.2009 in the case of **Maharashtra State Road Transport Corporation and others Vs. Casteribe Rajya P. Karmchari Sanghatana.** Relevant paragraphs 26,27 and 31 are quoted as under :-

" 26. The question that arises for consideration is: have the provisions of [MRTU & PULP Act](#) denuded of the statutory status by the Constitution Bench decision in *Umadevi* (2006) 4 SCC 1. In our judgment, it is not. The purpose and object of MRTU & PULP A Act, inter alia, is to define and provide for prevention of certain unfair labour practices as listed in Schedule II, III and IV. MRTU & PULP Act empowers the Industrial and Labour Courts to decide that the person named in the complaint has engaged in or is engaged in unfair labour practice and if the unfair labour practice is proved, to declare that an unfair labour practice has been engaged in or is being engaged in by that person and direct such person to cease and desist from such unfair labour practice and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate policy of the Act. The power given to the Industrial and Labour Courts under [Section 30](#) is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years , with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer. The provisions of [MRTU & PULP Act](#) and the powers of Industrial and Labour Courts provided therein were not at all under consideration in the case of *Umadevi*¹. As a matter of fact, the issue like the present one pertaining to unfair labour

practice was not at all referred, considered or decided in Umadevi. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in item 6 of Schedule IV and the power of Industrial and Labour Courts under [Section 30](#) of the Act did not fall for adjudication or consideration before the Constitution Bench. It is true that the case of Dharwad District PWD Literate Daily Wage Employees Assn.(2001) 1 SCC 574 arising out of industrial adjudication has been considered in Umadevi and that decision has been held to be not laying down the correct law but a careful and complete reading of decision in Umadevi¹ leaves no manner of doubt that what this Court was concerned in Umadevi was the exercise of power by the High Courts under [Article 226](#) and this Court under [Article 32](#) of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognized by the rules or procedure and yet orders of their regularization and conferring them status of permanency have been passed. Umadevi¹ is an authoritative pronouncement for the proposition that Supreme Court ([Article 32](#)) and High Courts ([Article 226](#)) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad-hoc employees unless the recruitment itself was made regularly in terms of constitutional scheme. Umadevi¹ does not denude the Industrial and Labour Courts of their statutory power under [Section 30](#) read with [Section 32](#) of MRTU & PULP Act to order permanency of the workers who have been victim of unfair labour practice on the part of the employer under item 6 of Schedule IV where the posts on which they have been working exists. Umadevi cannot be held to have overridden the powers of Industrial and Labour Courts in passing appropriate order under [Section 30](#) of MRTU & PULP Act, once unfair labour practice on the part of the employer under item 6 of Schedule IV is established.

27. There cannot be any quarrel to the proposition that courts cannot direct creation of posts. In [Mahatma Phule Agricultural University and Others vs. Nasik Zilla Sheth](#)

Kamgar Union and Others (2001) 7 SCC 346, this Court held:

"12. Mrs Jaising, in support of Civil Appeals Nos. 4461- 70 and 4457-60 [arising out of SLPs (C) Nos. 418-21 of 1999 and SLPs (C) Nos. 9023-32 of 1998] submitted that the workmen were entitled to be made permanent. She however fairly conceded that there were no sanctioned posts available to absorb all the workmen. In view of the law laid down by this Court the status of permanency cannot be granted when there are no posts. She however submitted that this Court should direct the Universities and the State Governments to frame a scheme by which, over a course of time, posts are created and the workmen employed on permanent basis. It was however fairly pointed out to the Court that many of these workmen have died and that the Universities have by now retrenched most of these workmen. In this view of the matter no useful purpose would be served in undergoing any such exercise.

13. To be seen that, in the impugned judgment, the High Court notes that, as per the law laid down by this Court, status of permanency could not be granted. In spite of this the High Court indirectly does what it could not do directly. The High Court, without granting the status of permanency, grants wages and other benefits applicable to permanent employees on the specious reasoning that inaction on the part of the Government in not creating posts amounted to unfair labour practice under Item 6 of Schedule IV of the MRTU & PULP Act. In so doing the High Court erroneously ignores the fact that approximately 2000 workmen had not even made a claim for permanency before it. Their claim for permanency had been rejected by the award dated 20-2-1985. These workmen were only seeking quantification of amounts as per this award. The challenge, before the High Court, was only to the quantification of the amounts. Yet by this sweeping order the High Court grants, even to these workmen, the wages and benefits payable to other permanent workmen.

14. Further, Item 6 of Schedule IV of the MRTU & PULP Act reads as follows:

"6. To employ employees as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees."

The complaint was against the Universities. The High Court notes that as there were no posts the employees could not be made permanent. Once it comes to the conclusion that for lack of posts the employees could not be made permanent, how could it then go on to hold that they were continued as "badlis", casuals or temporaries with the object of depriving them of the status and privileges of permanent employees? To be noted that the complaint was not against the State Government. The complaint was against the Universities. The inaction on the part of the State Government to create posts would not mean that an unfair labour practice had been committed by the Universities. The reasoning given by the High Court to conclude that the case was squarely covered by Item 6 of [Schedule IV of the MRTU & PULP Act](#) cannot be sustained at all and the impugned judgment has to be and is set aside. It is however clarified that the High Court was right in concluding that, as per the law [laid down by](#) this Court, status of permanency could not be granted. Thus all orders wherein permanency has been granted (except award dated 1-4-1985 in IT No. 27 of 1984) also stand set aside."

31. Thus, there is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive. It is also true that the status of permanency cannot be granted by the Court where no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the Courts. However, the factual matrix of the present controversy reveals that it was an admitted position before the Industrial Court, Thane in Complaint (ULP) No. 442/92 that the posts of cleaners in the Corporation were in existence. The Industrial Court, Thane recorded the following findings:

"9. Undisputedly, there are posts of cleaners in the Corporation and not only these employees but the other regularly appointed are working under the supervision and control of the Corporation's officers and Supervisors. The Respondent Corporation has filed the statement showing attendance of these Complainants in different depots showing the day from which the work was allotted during the period from 1992 to 1994. It is at Ex.C-9. This document is already [referred above](#). Therefore, the case of the complainants that they are working in different depots is not a disputed one. It is for the corporation to

point out how many posts are in the depot and how many persons are working in those depots. Therefore, it cannot be said that for want of any material on record that all these persons cannot be absorbed in permanent posts. When there is deliberate attempt on the part of the corporation not to employ them as regular employees in the posts of cleaners for years together the intention is very clear and in my opinion, this is the fit case where the declaration under item 6 of [Schedule V of the Act](#) will have to be given."

15. He also draws my attention to the said judgement wherein it was held that the judgement of the Hon'ble Supreme Court in the case of ***Uma Devi : 2006 Volume 4 SCC 1*** does not denude the industrial labour court and their statutory powers to order permanency of the workers who have been the victim of unfair labour practices.

16. He thus, argued that the writ petition is deserves to be dismissed.

17. Considering the arguments raised at the bar as referred to above, it bears from the record that the appointments of the respondents were in terms of the appointment letters issued to them containing clause 10 and 11, as extracted above. The said appointments were also made after the petitioner company was referred to BIFR. Although the respondents claimed to have worked on extension from time to time upto the year 2018, however, the fact remains that in terms of

the standing orders or any other provision, there was no provision for regularisation of the workmen who were engaged for a regular time as such it is not clear as to under what circumstances, the Tribunal has granted the relief of regularisation that too in respect of the company which has been referred to BIFR. Even the reference before the Tribunal was confined to 'whether the respondents were entitled for regularisation and if not as to what reliefs they were entitled'. As the reference in question was a very limited reference, the award of the Tribunal holding that the respondents were entitled to regularisation, is neither based upon any rationale nor any standing order of the company. Merely because the Tribunal felt that the act of the petitioner company was amounting to unfair labour practice, the same *ipso facto* would not lead to any conclusion that the respondents would be entitled to regularisation as has been done by means of the impugned award.

18. Analysing the judgement of the Hon'ble Supreme Court in the case of Maharashtra State Road Transport Corporation (*supra*), it is no doubt true that the Hon'ble Supreme Court had held that the judgment of Uma Devi (*supra*) would not curtail or override the powers

conferred upon the Tribunals under the Industrial Disputes Act. However, in same judgement, the court had held that the creation of posts is not within the domain of the judicial function which is in the domain of executive function and the status of permanency cannot be granted by this court where no post exists and that the executive functions and powers with regard to creation of posts cannot be arrogated by the courts.

19. In the present case, there is no pleadings/ foundation that any permanent posts existed on which directions for regularisation have been passed nor any analysis being done with regard to the total number of posts available / vacant posts. Thus, the impugned award is not founded on any material facts with regard to the existence of any post on which the regularisation has been ordered.

20. Finding, that the order passed under award is neither based upon any rationale nor any standing order, the same is clearly not sustainable and is liable to be quashed.

21. Accordingly, the writ petition is ***allowed.*** The impugned award is hereby quashed.

Order Date :- 27.11.2024/Shukla