

Ajay

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

WRIT PETITION NO. 1098 OF 2021

The State of Maharashtra,
Through Secretary to Government School
Education and Sports Department and Ors. .. Petitioners
Versus
Shanta Baban Sutar Respondent /
.. Complainant

**WITH
WRIT PETITION (ST) NO. 97082 OF 2020**

The State of Maharashtra,
Through Secretary to Government School
Education and Sports Department and Ors. .. Petitioners
Versus
Dattakumar Tukaram Kamble .. Respondent

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- Mr. S.H. Kankal, AGP for Petitioners – State in both Writ Petitions.
 - Mr. Nilesh Patil, Advocate for Respondent in both Writ Petitions.
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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 24, 2025.

JUDGMENT:

1. Heard Mr. Kankal, learned AGP for Petitioners – State and Mr. Patil, learned Advocate for Respondent.

2. This is a group of two Writ Petitions. Both the Writ Petitions are filed by the State of Maharashtra. Shanta Baban Sutar is the Respondent in Writ Petition No.1098 of 2021 who was employed as a Sweeper in the year 1998 in the office of Petitioner from 01.07.1998 to

30.09.2017. By order dated 29.09.2017 her services were terminated w.e.f. 30.09.2017.

2.1. She filed Complaint (ULP) No.61 of 2017 in the Labour Court. By order dated 23.08.2019, her complaint was allowed with a direction for her reinstatement in service with continuity in service, but with no backwages. Principal, Krida Prabodhini, Kolhapur and Deputy Director, Sport and Youth Services, Maharashtra State filed Revision Application to challenge the judgment of the Labour Court before the Industrial Court. By judgment and order dated 21.01.2020, the Industrial Court upheld the judgment of the Labour Court in Revision.

2.2. Being aggrieved, State of Maharashtra has filed the present Writ Petition No.1098 of 2021 to challenge the concurrent orders passed by the Labour Court dated 23.08.2019 and the Industrial Court dated 21.01.2020.

3. Similarly, Dattakumar Tukaram Kamble is Respondent in Writ Petition (St.) No.97082 of 2020. He was appointed as a Accounts Clerk on 21.08.1998 in the office of Petitioner. On 20.09.2001, he was promoted as a Hostel Rector and on 01.06.2002; he was again transferred back to the post of Junior Clerk on 07.06.2006; he was promoted to the post of Senior Clerk and since then he was in continuous and uninterrupted service upto 30.09.2017 with the Petitioners. By termination order dated 29.09.2017, his services were

terminated w.e.f. 30.09.2017.

3.1. He filed Complaint (ULP) No.59 of 2017 in the Labour Court. By order dated 23.08.2019, his complaint was allowed with a direction for his reinstatement in service with continuity in service, but with no backwages. Principal, Krida Prabodhini, Kolhapur and Deputy Director, Sport & Youth Services, Maharashtra State filed Revision Application to challenge the judgment of the Labour Court before the Industrial Court. By judgment and order dated 21.01.2020, the Industrial Court upheld the judgment of the Labour Court in Revision.

3.2. Being aggrieved, State of Maharashtra has filed the present Writ Petition (St.) No.97082 of 2020 to challenge the concurrent orders passed by the Labour Court dated 23.08.2019 and the Industrial Court dated 21.01.2020.

4. In view of the identical facts regarding employment of the aforesaid employees in the services of the same Respondent, both Writ Petitions are heard together and are disposed by this common judgment and order.

5. Mr. Kankal, learned AGP appearing on behalf of the State of Maharashtra would submit that both employees were appointed in the office of Krida Prabodhini, Kolhapur, Chhatrapati Shivaji Stadium, Khasbag, Kolhapur. He would submit that Krida Prabodhini is a venture of the State Government which is not to be equated as an

industry or for that matter, the Sports Department of the Government. He would submit that both the employees were appointed on temporary posts on daily wage casual basis, however their employment was continued for 20 years by giving them a break every 3 months and continuing with their services after the break for further tenure of 3 months in blocks.

5.1. He would submit that appointment of both the employees was never effected through the recruitment process or selection basis against clear vacant sanctioned posts and therefore Respondents had right to terminate their employment which was ended in the year 2017. He would submit that both the learned Labour Court and the Industrial Court failed to consider the aforementioned principal grievance about appointment of the employees not being against clear vacant sanctioned post and therefore it was not mandatory and incumbent upon the Respondents to continue their employment forever or for that matter grant them permanency. He would submit that office of Krida Prabodhini where the said employees were employed is not covered within the definition of industry under the Industrial Disputes Act, 1947 which has not been considered by both the Courts.

5.2. He would submit that appointment of the employees was not in accordance with law and the established principles of public policy

and selection process so as to entitle them for reinstatement or permanency in services until their retirement. He would submit that appointment of the employees was purely on casual daily wages basis and as such their employer – employee relationship established with them. He would submit that both the Courts while determining the complaint filed by the employees failed to appreciate that Model Standing Orders were not applicable to the said employees and therefore termination by Respondents could not have been challenged by them. He would submit that appointment of the employees was on the basis of their appointment being done due to outsourcing at the then time because there were no vacant sanctioned posts available for which Petitioner – School could take steps through the selection process.

5.3. He would submit that Petitioner’s Krida Prabhodhini does not fall within the definition of industry, the employees employed by them cannot invoke the jurisdiction of the Labour Court to challenge their termination. On a question being put by the Court as to what would be the remedy available to such employees who worked for 20 years, in that case he would reply that the jurisdiction lies with the Maharashtra Administrative Tribunal (for short “**MAT**”). If this response given by the learned AGP is considered, then *prima facie* it would entail that the employees were indeed employed by the Petitioner – Krida Prabodhini and there was an employer – employee

relationship between them for almost 20 years if they are required to approach the MAT according to him.

5.4. Mr. Kankal has heavily relied upon the decision in the case of *Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors.*¹ to contend that merely completion of 240 days service in a calender year *ipso facto* cannot give right of employment to the employees to claim any right or equity or for that matter permanency in service of Respondents. He would submit that appointment and employment of both the employees as Sweeper and Clerk was purely on a temporary basis for a specific period which came to an end by efflux of time and after a gap of one day they continued in employment afresh for another temporary period until their termination after 20 years.

5.5. He would submit that if the impugned judgments of the Labour Court and the Industrial Court are upheld, it would amount to such employees gaining a back door entry in the government instrumentality without there been availability of sanctioned vacant posts to accommodate them. He would draw my attention to the impugned judgments and orders of the Industrial Court dated 21.01.2020 passed in Revision (ULP) No.132 of 2019 appended at Exhibit “B” – page No.28 of Writ Petition No.1098 of 2021 and Revision (ULP) No.131 of 2019 appended at Exhibit “B” – page No.28 of Writ Petition (St.) No.97082 of 2020 and urge the Court that the

¹ AIR 2006 SC 1806

said judgments deserve to be interfered with by this Court in view of his above submissions.

5.6. In support of his submissions, he has referred to and relied upon the decision of the Supreme Court in the case of *State of Maharashtra and Anr. Vs. R.S. Bhonde and Ors.*² to contend that the Supreme Court has held in the said case that mere continuance every year of a seasonal worker during the period when the work was available does not constitute a permanent status unless there exists post and regularisation is done as stated in paragraph No.7 which emphasize the aforesaid propositions. However the facts in this case are completely different and not relevant or close to the facts in the present case. He would submit that since in the present case, there were no clear vacant sanctioned posts and regularisation of the employees was not effected for 20 years, they are dis-entitled for reinstatement as also any permanency of work as opined by the Labour Court and the Industrial Court. While considering this decision, it is seen that it does not squarely apply to the facts of the present case, since the facts before the Supreme Court in that case pertained to employees engaged on seasonal basis on daily wages. Such is not the case before me. Two employees before me worked continuously and uninterruptedly in the office of Krida Prabodhini for almost 20 years and most importantly the nature of duty performed by both the

² (2005) 6 SCC 751 : 2005 SCC OnLine SC 1198

employees was of a permanent nature admittedly.

5.7. Next Mr. Kankal has referred to and relied upon a decision of the learned Single Judge of this Court in the case of *Maharashtra Industrial Development Corporation, Chandrapur Vs. Member, Industrial Court, Nagpur and Ors.*³ to contend that it was the duty of the Labour Court and the Industrial Court both functioning under the ULP Act to first find out whether the relationship of employer is indisputable or unquestionable on account of its past acceptance which was denied by the employer existed and if there was any doubt about existence of such relationship, an appropriate enquiry ought to have been held by framing a specific issue. He would submit that once the employer has disputed and denied the relationship with the employee, it was incumbent upon the learned Labour Court and the Industrial Court to frame a specific issue to that effect and opine on the same which has not been done and therefore both the impugned judgments are required to be recalled.

6. *PER CONTRA*, Mr. Patil, learned Advocate appearing for Respondent in both Writ Petitions would submit that once it is an admitted fact that both employees were continued uninterruptedly from 1997-1998 to 2017 without a break in their services, it could not lie in the mouth of Respondents to contend that there was no employer employee relationship.

³ 2006 SCC Online Bom 180

6.1. He would submit that both the employees were employed with the office of the Krida Probodhini and performed work of a permanent nature and duty and gradually received increase in salary as also promotion. He would submit that Mr. Dattakumar Kamble was initially appointed as Clerk; thereafter promoted as a Hostel Rector; thereafter re-transferred back on the post of Junior Clerk and was promoted as Senior Clerk with increase in pay. Similarly, other employee Shanta Sutar when employed initially as a sweeper in the year 1998 received a salary of Rs.1,000/- which was gradually increased to Rs.4,000/- over a period of time. He would submit that termination letter dated 29.09.2017 issued to both the employees directing termination of their services w.e.f. 30.09.2017 is on the face an abuse of the due process of law in as much as after employing the Respondents for almost 20 years, Petitioners did not follow the principles of natural justice nor an enquiry was conducted or an opportunity was given to Respondents – employees and with a stroke of the pen their services were terminated overnight.

6.2. He would submit that if it is the Petitioners' argument that the post on which the employees performed their duty for almost 20 years were not clear vacant sanctioned posts, then it is not understood as to how their services were continued for this long. He would submit that if this submission of Petitioners' is accepted, it would amount to Petitioners arguing that all clear vacant sanctioned posts were filled up

by Petitioners for almost 20 years and this cannot be an argument which can ever be accepted merely across the bar.

6.3. He would submit that both the impugned judgments after directing reinstatement of employees ought to have directed payment of backwages which was not done. He would submit that once the Labour Court and the Industrial Court came to the conclusion that unfair labour practice was practiced by the employer and the termination is set aside on that account and reinstatement is granted, it would necessarily follow that the employees would be entitled to backwages because termination of the employees by the employer has been held to be illegal.

6.4. In the present case, backwages which is a loss to them altogether despite that they have not challenged the decisions of the Labour Court and the Industrial Court.

6.5. In support of his submission, he would refer to and rely upon the decision of the Supreme Court in the case of *Chief Conservator of Forests and Anr. Vs. Jagannath Maruti Kondhare and Ors.*⁴ wherein the Supreme Court in paragraph No.22 has held as under:-

“22. We have given our due thought to the aforesaid rival contentions and, according to us, the object of the State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is

4 (1996) 2 SCC 293

placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case inasmuch as from the materials on record we are satisfied that the 25 workmen who went to Industrial Court of Pune (and 15 to Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them of the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object as, it may be remembered, that the Pachgaon Parwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on increase because of increase in pollution. Permanency is thus writ large on the face of both the types of work. If even in such projects, persons are kept in jobs on casual for years the object manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants.”

6.6. While referring to the aforesaid finding of the Supreme Court, he would submit that the same squarely applies to the case of the employees herein because there can be no other reason for keeping the employees and taking their services as casual labourers for long years other than to deprive them of their permanent status so that the employer would have to pay them salary higher than the one fixed under the Minimum Wages Act, 1948 as also all other statutory benefits.

7. I have given due thought to the aforesaid rival contentions advanced by both the learned Advocates at the bar and perused the record and pleadings of the case. Submissions made by them have received due consideration of the Court.

8. I have also perused the twin judgments dated 23.08.2019 passed by the Labour Court in both Writ Petitions and the twin judgments dated 21.01.2020 passed by the Industrial Court in both Writ Petitions confirming the judgment delivered by the Labour Court.

9. It is seen that after considering the evidence placed on record which is oral as well as documentary, there is no denial of the fact that Petitioners had employed both the employees since 1997 – 1998, but did not confer permanency benefit of them since their appointment was not following the procedural prescribed by the Government.

10. To adjudicate the claim of the employees who have been continuously and uninterruptedly employed in services of the Respondents for almost 20 years, the fact that there is no denial by the employer becomes the primary aspect for consideration. The argument of the Petitioners that the employees were not appointed by following the procedural prescribed by the Government, in my opinion becomes secondary while adjudicating such a claim.

11. The Labour Court decision primarily explores the aforesaid finding through the cross-examination of the authorized representative of the Petitioners. The cross-examination of the employers' witness is recorded below Exhibit 'C-5' wherein he *prima facie* admits and accepts the fact that both the employees were appointed on posts

which were sanctioned by the Government. In fact the witness of the employer in his deposition has accepted that not only the employees were appointed on clear vacant sanctioned posts, but they were also entitled to differential payment and arrears of payment for which the office of the Petitioner - employer had carried out correspondence with the Deputy Director of Sport and Youth Services, Maharashtra State, Pune.

12. That apart, it was also accepted and admitted by the witness that before the termination the employer had not conducted any sought of enquiry in respect of termination of the said employees neither show cause notice was issued to them nor any compensation was paid to them. This part of the admissions on the part of the witness of the employer go to the root of the matter and are recorded below Exhibit 'C-5' which reads as under:-

“ प्रस्तुत फियरिदीची संपुर्ण कागदपत्रे मी पाहिली आहेत. हे म्हणणे खरे आहे की तक्रारदार ०१.०७.१९९८ पासून आमचेकडे कार्यरत होते. हे म्हणणे खरे आहे की दि. २९.०९.२०१७ रोजीच्या आदेशाने दिनांक ३०.०९.२०१७ पासून कामावरून कमी केले आहे. हे म्हणणे खरे आहे की तक्रारदार यांनी सन १९९८ पासून दिनांक ३०.०९.२०१७ पर्यंत सलगरित्या काम केले आहे. हे म्हणणे खरे आहे की त्यांना वेळोवेळी मानधन देण्यात आले आहे व त्यांचे पूर्वीचे मानधन रू. १०००/- असून त्यामध्ये वेळोवेळी वाढ होवून रू. ४०००/- पर्यंत मानधन देण्यात आले आहे.

निशाणी यू-४ सोबतचे सर्व आदेश मला आता दाखवण्यात आहे. सदर आदेश वि. प. कार्यालयाने पारीत केलेले आहेत. हे म्हणणे खरे आहे की तक्रारदार यांचे जागी बाह्यस्त्रोताद्वारे अन्य कर्मचारी घेण्याचे

असल्याने तक्रारदार यांना कामावरून कमी करण्यात आले. हे म्हणणे खरे आहे की तक्रारदार करीत होते ते आजदेखील वि. प. यांचेकडे उपलब्ध आहे. हे म्हणणे खरे आहे की तक्रारदार यांचेजागी बाह्यस्रोताद्वारे इतर कर्मचा—यांना अद्याप नोकरीवर घेण्यात आलेले नाही.

हे म्हणणे खरे आहे की शासनाच्या परिपत्रकानुसार तक्रारदार हे ज्या पदावर कार्यरत होते ते पर मंजूर पद आहे. हे म्हणणे खरे आहे की तक्रारदार यांचे थकीत मानधन देणेबाबत उपसंचालक, क्रिडा व युवक सेवा, पुणे यांचेशी आमचा पत्रव्यवहार झालेला आहे. तक्रारदार यांनी किती कालावधीकरीता सलगपणे काम केले आहे याकरीता उपसंचालक, क्रिडा व युवक सेवा, पुणे यांचेशी आमचा पत्रव्यवहार झालेला आहे.

हे म्हणणे खरे आहे की तक्रारदार यांचेविरूद्ध वि. प. यांनी कोणतीही विभागीय चौकशी केलेली नाही तसेच त्यांना कारणे दाखवा नोटीस दिलेली नाही. हे मला माहिती नाही की तक्रारदार यांना नुकसानभरपाई रक्कम दिली. हे म्हणणे खरे नाही की माझे पुरावा प्रतिज्ञापत्रामधील संपूर्ण मजकूर खोटा व चुकीचा आहे. हे म्हणणे खरे नाही की मी खोटी साक्ष देत आहे.”

13. From the above, it is seen that it now cannot lie in the mouth of the Petitioners to agitate that there was no employer – employer relationship between the parties in the wake of the aforesaid deposition by the Petitioners’ witness itself.

14. That apart, in the cross-examination of the Petitioners’ witness it is further deposed that services of both the employees were terminated because the Petitioners wanted to appoint employees on a contract basis and outsource the work and therefore such a drastic and extreme step of termination was taken without following the due process of law.

15. Once this is the position, any such termination would amount to victimization of the employees who have served in the services of the Petitioners continuously for more than 20 years admittedly and such termination would therefore have to be immediately interfered with by the Court. The learned Labour Court has considered the aforesaid aspects in much detail and returned cogent and reasoned findings while allowing the Complaint, despite returning affirmative findings fully in favour of the employees on the facts and circumstances in the present case.

16. Learned Labour has directed their reinstatement with continuity of service and other consequential benefits, but has not granted them backwages by rejecting the said relief.

17. Learned Industrial Court in Revision has considered the exercise undertaken by the Labour Court as required in its revisional jurisdiction under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and returned cogent and reasoned findings which in my opinion do not call for any interference whatsoever in the aforesaid facts of the Respondents' case before me.

18. From the record of the case, once it is an admitted position that both employees were infact working with the Petitioners against clear vacant sanctioned posts, then it was all the more mandatory and

incumbent upon the employer to follow the due process of law before their termination by issuing show cause notice and conducting a departmental enquiry. That has not been done admittedly.

19. In my opinion, both the judgments of the Labour Court and the Industrial Court do not call for any interference by this Court and deserve to be upheld.

20. The judgment and order passed by the learned Labour Court dated 23.08.2019 in Compliant (ULP) No.61 of 2017 appended at Exhibit “A” – page No.17 in Writ Petition No.1098 of 2021 and the judgment and order passed by the Industrial Court dated 21.01.2020 in Revision (ULP) No.132 of 2019 appended at Exhibit “B” – page No.28 of the Petition are confirmed.

21. Similarly, the judgment and order passed by the learned Labour Court dated 23.08.2019 in Compliant (ULP) No.59 of 2017 appended at Exhibit “A” – page No.17 in Writ Petition (St.) No.97082 of 2020 and the judgment and order passed by the Industrial Court dated 21.01.2020 in Revision (ULP) No.131 of 2019 appended at Exhibit “B” – page No.28 of the Petition are confirmed.

22. As a consequence of dismissal of the present Writ Petitions, both the employees in the Writ Petitions shall be entitled to all such benefits as are due and payable to them in terms of the judgment of the Labour Court which shall be complied with and paid over to them

by the office of the Petitioners within a period of four weeks from today. If both employees have not attained the age of superannuation, they shall be immediately reinstated forthwith in the services of the Petitioners with continuity in service and all statutory benefits as available to them in law. If the employees have passed the superannuation age, then the Petitioners shall compute their dues payable to them as per the Labour Court's order and pay the same to them within a period of four weeks from today.

23. The Secretary of the School, Education and Sports Department of the State of Maharashtra shall ensure strict compliance of this judgment and order as directed hereinabove.

24. Both Writ Petitions are dismissed in the above terms.

[MILIND N. JADHAV, J.]

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