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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10885 OF 2015
WITH
WRIT PETITION NO.10887 OF 2015
WITH
WRIT PETITION NO.10888 OF 2015.

- 1 The State of Maharashtra.
Through Deputy Director,
Vocational Education and
Training, Regional Office,
Bhadkal Gate, Aurangabad.
- 2 The Director,
Directorate of Vocational
Education and Training,
Maharashtra State, 3,
Mahapalika Marg,
Mumbai-01.

...PETITIONERS in all petitions.

-VERSUS-

Nagnath S/o Laxmanrao Chilakewar,
Age : 32 years, Occ : Nil,
R/o Winkar Colony,
Near Ganesh Mandir,
Taluka and District Nanded.

...Respondent in WP/10885/15

Digambar Vitthalrao Samindre,
Age : 42 years, Occ : Nil,
R/o Maligalli, Parbhani,
Taluka and District Parbhani.

...Respondent in WP/10887/15

Kailash Tulshiram Shahane,
Age : 36 years, Occ : Nil,
R/o Sundernagar, Near Saibaba
Mandir, Tq. & Dist.Nanded.

...Respondent in WP/10888/15

...

AGP for Petitioner/ State : Shri D.R.Korde.

Advocate for Respondents : Shri Mahesh P. Kale.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th November, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 All the three Respondents are identically placed. The Respondents in the first and the second petitions were working as “Karyashala Parichar” at Palam and Mukhed and the Respondent in the third petition was working as a “Watchman” at Mukhed, under the jurisdiction of the Vocational Education and Training, Regional Office, Aurangabad.

3 These three Respondents had preferred Complaint (ULP) Nos.15, 16 and 17 of 2012 placing reliance upon the Government Resolution dated 05.02.2007. By the judgment and order dated 20.06.2015 delivered in these three complaints, the Industrial Court has directed the Petitioners to absorb the Respondents from the date of the

impugned judgment and has awarded notional continuity of service for the purpose of pension, gratuity and retiral benefits.

4 Considering the common issue involved and similarity in the nature of services of the Respondents, I have taken up these three petitions together for adjudication.

5 The contention of the Petitioners is that these three Respondents were appointed on contractual basis in Class-IV category on daily wages. They were appointed under a scheme. The said scheme ended on 31.05.2007 and consequentially, these three Respondents were discontinued after 31.05.2007. After a passage of about five years, these three Respondents have preferred the above referred complaints before the Industrial Court praying for absorption on the contractual positions held by them by virtue of the Government Resolution dated 05.02.2007.

6 The Petitioners further contend that after the complaints were filed, the Petitioners entered it's Written Statement and denied the contentions set out by the Respondents. It was specifically contended that these Respondents were granted extension under the said Government Resolution and were continued till 31.05.2007. It was also averred in the Written Statement that the Finance Department of the Government of

Maharashtra did not accord permission to continue these contractual employees thereafter. This contention having been specifically made before the Industrial Court, it was incumbent upon the Industrial Court to consider the effect of the said contention.

7 The Petitioners further submit that the Industrial Court has misread the Government Resolution and presumed that the State Government and especially the Petitioner/ Department was obliged to abide by the terms set out therein and grant absorption to the Respondents.

8 A copy of the Government Resolution dated dated 12.12.2005 has been placed on record along with it's annexures and the same are collectively marked as Exhibit X for identification. However, the Respondents/ Complainants have based their complaints specifically on the Government Resolution dated 05.02.2007 which is not placed on record.

9 The Petitioners further submit that the Government Resolution referred above, permitted the Petitioners to extend the contractual engagement of the Respondents only upto 31.05.2007. Some of the positions were abolished and those positions which were specifically

created, were continued. As the Finance Department of the State Government did not accord its permission to continue the Respondents beyond 31.05.2007, these Respondents and similarly situated other employees were disengaged.

10 The Petitioners further submit that having been specifically terminated, unless the termination was quashed and set aside by the Court having jurisdiction under the MRTU & PULP Act, 1971 (herein after referred to as “the 1971 Act”), the Industrial Court could not have short circuited the procedure and granted absorption and directed notional continuity in service. It is, therefore, prayed that the impugned judgments in these petitions be quashed and set aside.

11 Shri Kale, learned Advocate appearing on behalf of the Respondents/ Employees, has strenuously supported the impugned judgments. He submits that a recurring cause of action had been raised before the Industrial Court. The termination w.e.f. 31.05.2007 was not challenged before the Industrial Court. No reinstatement was sought. The complaints were based on the Government Resolution dated 05.02.2007 and the jurisdiction of the Industrial Court was invoked only to the extent of the non-compliance of the said Government Resolution. Hence, Item-9 of Schedule-IV of the 1971 Act was invoked. He concedes that these

Respondents are not in employment from 01.06.2007 till the filing of the complaints in February, 2012.

12 Shri Kale strenuously submits that these Respondents gathered certain documents under the Right to Information Act, 2005. It was only through the communication dated 31.08.2012 by the Information Officer -cum- Assistant Director, Vocational Training and Education, Aurangabad that the Respondents could lay their hands on the Government Resolution dated 05.02.2007.

13 Shri Kale, therefore, submits that based on the documents received under the Right to Information Act, 2005, the Respondents established a case of failure to comply with the Government Resolution in granting absorption to the Respondents before the Industrial Court. Similarly, as on date of the judgments, the Respondents could prove that there were 78 vacancies in the permanent positions under Class-IV category. Shri Kale insists that these vacancies are only limited to the Marathwada region.

14 Shri Kale further submits that several other persons have been absorbed by the Petitioners and the Respondents have been singled out. Since the Industrial Court was convinced that the Government Resolution

was in force and there was no subsequent Government Resolution introduced to the contrary, the said Government Resolution will have to be interpreted to mean that the State Government was under an obligation to absorb the Respondents. He, therefore, prays for the dismissal of these petitions.

15 I have considered the submissions of the learned Advocates for the respective sides.

16 It is not in dispute that none of these Respondents are in employment after 31.05.2007. It is also not in dispute that they have not challenged their termination before the Labour Court and have not sought reinstatement and continuity in service before the Industrial Court. It is claimed that the Respondents are entitled for absorption. Hence, prayer clause (c) of the complaint assumes significance before the Industrial Court.

17 Prayer clause (c) set out in the complaints by these three Respondents is identical and the same reads as under:-

“(c) *The respondents may kindly be directed to absorb the complainant in service on the post of Watchman from the date of completion of five years services with all consequential monetary benefits.*”

18 The issue before the Industrial Court was as to whether, the complaint for absorption could be entertained without the Respondents questioning their termination. The Industrial Court has relied upon the Division Bench judgment of this Court in the case of *R.P.Sawant and others v/s Bajaj Auto Limited and another*, **2002 (1) Mh.L.J. 626**. The Industrial Court has reproduced paragraphs 46, 47, 49 and 50 of the said judgment, which read as under:-

“46. *In A-Z (Industrial) Premises Co-operative Society Ltd. v. A.T. Utekar and Ors., 1997(II) CLR 1033, a complaint had been filed alleging unfair labour practice both under Item 1 as also under Item 9 of Schedule IV of the 1971 Act before the Industrial Court. The learned Single Judge of this Court held that the Industrial Court had jurisdiction to try the Complaint under Item 9 of Schedule IV of the 1971 Act but lacked jurisdiction to try the Complaint under Item 1 of Schedule IV.*

47. *We are unable to read these two judgments in the manner in which the Industrial Court has read it for more than one reasons. Section 7 of the 1971 Act provides that it shall be the duty of the Labour Court established under the Act to decide Complaints relating to unfair labour practices prescribed in Item 1 of Schedule IV and to try offences punishable under the Act. The duties of Industrial Court enumerated in Section 5 of the 1971 Act do not include the duty to decide the Complaint relating to unfair labour practices under Item 1 of Schedule IV. Section 32 of the 1971 Act entitled "Power of Court to decide all connected matters" reads as under :-*

"Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or complaint referred to it for the decision under any of the

provisions of this Act."

48.

49. *As a matter of fact, in the Complaints filed before the Labour Court, the workmen had not invoked Item 1 of Schedule IV of the 1971 Act at all. As we have already pointed out, the Complaints invoked Items 5, 6, 7, 9 and 10 of Schedule IV. The Industrial Court was perfectly competent to entertain such Complaints. During the pendency of such Complaints, which, inter alia, invoked Item 6 of Schedule IV, the services of the workmen were terminated on the ground that they were temporary workmen. Even the amendment permitted pursuant to the directions of this Court made on 3rd September, 1998 did not seek to invoke Item 1 of Schedule IV. The amendment merely pointed out the circumstances, namely, that when the Complaints of the temporary employees invoking, inter alia, Item 6 of Schedule IV were pending before the Industrial Court, their services had been terminated with a view to frustrate the Complaints and, therefore, relief of reinstatement was sought. In our view, this is a far cry from invoking Item I of Schedule IV. Nor are we in a position to accept the contention of the Company that this amounts to entertaining a Complaint beyond the jurisdiction of the Industrial Court. Further, a reading of the Act suggest that the subject of termination of service is not totally alien or foreign to the jurisdiction of the Industrial Court. For example, Items 1 (a), 4(a), 4(b) and 4(f), though found in Schedule II of the Act pertaining to the exclusive jurisdiction of the Industrial Court, do suggest that the Industrial Court does have powers of interfering with orders of termination of service passed against employees. Thus, there certainly is some area of legitimate overlap in the respective jurisdictions of the two Courts. Even in Schedule IV, we notice that, to a certain extent, the jurisdiction of interfering with orders of discharge/dismissal given to the Labour Court under Item 1 Overlap with the powers of the*

Industrial Court to interfere with discharge and dismissal in Item 6 of the same Schedule. For these reasons, we are unable to read the two Judgments, namely, National General Mazdoor Union (supra) and A-Z (Industrial) Premises Co-operative Society Ltd., (supra), as excluding the jurisdiction of the Industrial Court to grant relief of interfering with termination of service of an employee even in a Complaint other than one falling under Item 1 of Schedule IV of the 1971 Act before the Industrial Court. If the said judgments are to be so read, then they would not be good law.

50. *Reliance placed by Mr. Singh on the judgment of a Division Bench of this Court in Maharashtra General Kamgar Union and Ors. v. Balkrishna Pen Pvt. Ltd., and Ors., 1988 Mh.L.J. 832 = 1987 11 CLR 374 is apt. The Division Bench of this Court pointed out that, notwithstanding the provisions of Section 25 of the 1971 Act, which gives exclusive jurisdiction to the Labour Court to declare the legality of a strike or a lockout, the Industrial Court also has the jurisdiction to decide whether the strike is deemed to be illegal under the Act. The Division Bench pointed out that the Industrial Court can assume this power as incidental to its power to investigate the Complaint under Section 30 of the Act; that the said power is implicit in it and should be read and deemed to have been vested in the Court under Section 30 read with Section 5(d) and Item 1 of Schedule III and Item 6 of Schedule II. The Division Bench emphasized the non-obstante clause of Section 32 as indicative of legislative intention and said "The language of this question is crystal clear and no further and other argument is necessary to vest the Industrial Court with the said incidental power. What is latent is made explicit by the aforesaid provisions. The section begins with the non-obstante clause and thus first negates the argument of the so-called exclusive jurisdiction of the Courts and proceeds to vest in them the power to decide all matters arising out of any application or complaint referred to it for decision under any of the*

provisions of the Act." (Emphasis ours.)."

19 The Industrial Court has concluded that initial complaint in the Bajaj Auto Limited case (supra) was not under Item 1 and hence, even after their disengagement, the Industrial Court exercised its jurisdiction under Section 32 of the 1971 Act which has been sustained in the said judgment by this Court.

20 Section 32 of the 1971 Act reads as under:-

“32. *Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or complaint referred to it for the decision under any of the provisions of this Act.*”

21 In my view, the Industrial Court apparently has lost sight of the observations of this Court in paragraph 49 of the Bajaj Auto Limited (supra) and specifically the following observations:-

“As a matter of fact, in the Complaints filed before the Labour Court, the workmen had not invoked Item 1 of Schedule IV of the 1971 Act at all. As we have already pointed out, the Complaints invoked Items 5, 6, 7, 9 and 10 of Schedule IV. The Industrial Court was perfectly competent to entertain such Complaints. During the pendency of such Complaints, which, inter alia, invoked Item 6 of Schedule IV, the services of the workmen were terminated on the ground that they were temporary workmen.”

22 Notwithstanding the distinction between the Bajaj Auto Limited case (supra) and the instant case in the light of the underlined portion as above, the Apex Court in the matter of *Bajaj Auto Limited v/s R.P.Sawant and others*, **(2004) 9 SCC 486**, has noted that the parties have settled the matter amongst themselves and hence, the questions decided by the High Court are left open and will not be treated as a precedent on law or on fact. The observations of the Apex Court in paragraph 4 read as under:-

“4. *As prayed by the learned counsel, the appeal is disposed of in terms of the aforesaid statements of Mr Cama and Mr Singhvi. In view of the settlement the questions decided by the High Court are left open and will not be treated as precedent on law or on fact.*”

 Therefore, the judgment of this Court in the R.P.Sawant and others v/s Bajaj Auto Limited, 2002 (2) Mh.L.J. 626, is no longer in existence and could not have been cited before the Industrial Court.

23 In *National General Mazdoor Union v/s M/s Nitin Casting Limited*, **1990 (II) CLR 641 : 1991(1) BCR 8** decided by this Court, it has been concluded that scope of Section 32 of the 1971 Act cannot be enlarged beyond the inherent jurisdiction vested in the Industrial Court by the 1971 Act. This Court has, therefore, dealt with the aspect that Section 32 of the 1971 Act cannot aid the litigating parties to expand the

jurisdiction of the Industrial Court beyond what is vested in the Industrial Court by the 1971 Act.

24 Nevertheless, this issue need not come in the way of the Respondents/ Employees since the issue pertains only to the extent of the reliefs claimed by the Respondents for the period 01.06.2007 till the date of the judgment of the Industrial Court dated 20.06.2015. If this aspect is to be ignored, the issue of absorption which is akin to the claim for regularization, could be entertained by the Industrial Court.

25 I have gone through the reasons adduced by the Industrial Court in support of its conclusions that there are 78 Class-IV vacant posts with the Petitioners and these Respondents can, therefore, be absorbed on the said positions. I, however, cannot find any discussion or reference to any document as regards, whether, these vacant positions are in the Marathwada Region or in the State of Maharashtra. So also, besides merely concluding that 78 positions are vacant, would not be a redressal for the Respondents since their entitlement to absorption despite being contractual employees, was the subject before the Industrial Court.

26 I do not find that the Industrial Court has dealt with this issue so as to conclude that these Respondents/ contractual employees covered

by the Government Resolution dated 05.02.2007 would be entitled for absorption despite the decision of the State Government in the said Government Resolution that they will not be continued beyond 31.05.2007 and in the light of the specific averment of the Petitioners in their Written Statement that these Respondents were not granted extension of absorption since the Finance Department did not accord its approval to their continuance or their absorption. It is not in dispute that these Respondents were appointed under specific contracts and the tenure of appointment was concluded by efflux of time.

27 In my view, the Industrial Court could have referred the proposal of the Respondents to Petitioner No.2/ Department at Mumbai for considering whether, the Respondents could be absorbed in the light of the Government Resolution dated 05.02.2007 and the contention of the Petitioners that there was no sanction for their continuance. By the impugned judgment, it appears that the Industrial Court has foisted these Respondents upon the Petitioners. More so, when they had put in a few years as contractual employees.

28 In the light of the above, these petitions are partly allowed. The declaration of ULP against the Petitioners is quashed and set aside. The direction imposing costs is also set aside.

29 The directions of the Industrial Court in clauses C, D and E in its operative order are modified as under:-

- (A) The Petitioners shall prepare the proposal of these Respondents setting out their actual tenure of engagement, manner of their engagement, nature of duties performed and their willingness to work anywhere in the State of Maharashtra in the light of the statement made by Shri Kale, on instructions from the Respondents, who are present in the Court.
- (B) The proposal shall be prepared within a period of TWELVE WEEKS from today.
- (C) The Petitioners shall state in the said proposal as to how many similarly situated, as like the Respondents/ Employees have been disengaged after 31.05.2007 and whether, they could also be considered for absorption under the Government Resolution dated 05.02.2007.
- (D) Petitioner No.2 and the appropriate Department of the State Government shall consider the cases of the Respondents along with similarly situated employees and shall take a policy decision as to whether, they can be absorbed by virtue of the Government Resolution dated 05.02.2007. This

decision shall be arrived at within a period of SIXTEEN WEEKS (16) from the date of receipt of the proposal.

- (E) The decision arrived at by the competent authority shall be communicated to the Respondents expeditiously and any grievance, if surviving, shall be raised by the Respondents depending on the legal remedy available.
- (F) The Petitioners and the Competent Authorities shall also consider the contention of the Respondents that some of the identical/ similarly situated contractual employees have already been absorbed by the Petitioners and if so, whether, the Respondents can be treated on parity with such absorbed employees.

30 It is made clear that this Court has not dealt with the aspect of the termination of the Respondents w.e.f. 01.06.2007 since the said termination has not yet been challenged by the Respondents before any court having jurisdiction to deal with the same.

31 Rule is partly made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)