

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.3723 OF 2000**

Plantation Officer, Social Forestry ..... Petitioners  
Range Khed, Division Pune & Ors.

Vs.

Shri. Sanjeev Chintaman Maghade ..... Respondent

Mr. A.D. Kanugo, AGP for the Petitioner.

Mr. S.A. Agarkar i/by U.B. Nighot, Advocate for the respondent.

**Coram : Smt. R.P. SondurBaldota, J.**

**Date : 9<sup>th</sup> April, 2015.**

P.C.

1            This petition by the State of Maharashtra through it's Social Forestry Department is to challenge the judgment and award dtd. 22<sup>nd</sup> February, 1999 of the Labour Court, Pune, which is confirmed by the Industrial Tribunal, by it's order dtd.27<sup>th</sup> September, 1999 passed in the Revision Application preferred by the petitioner. The impugned award declares that the petitioners have engaged in an unfair labour practice under Item 1(f) of Schedule IV of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short), by orally terminating the services of the respondent w.e.f. 1<sup>st</sup> April, 1992. The petitioners have been directed to reinstate the respondent on his original post and also pay full back-wages at the rate of Rs.12/- per day to him.

2           The brief statement of facts alleged by the respondent in his complaint is as follows:

          The respondent was employed by Deputy Director, Social Forestry Department under the direct control of Plantation Officer, Social Forestry Department, Range Khed, since 1<sup>st</sup> September, 1983. Later he was transferred to the Plantation on 1<sup>st</sup> July, 1991 on the post of Watchman. After serving continuously for a period of 8 years and 6 months, i.e. till the end of 30<sup>th</sup> March, 1992, his services were orally terminated by the respondent. Therefore, he filed complaint alleging that the petitioners had engaged in an unfair labour practice under Items 1(a)(b)(d) and (f) of Schedule IV of MRTU & PULP Act. According to the respondent, the termination of his employment is by way of victimisation and in colourable exercise of the employer's right. He alleges that at the time of his termination, neither due procedure was followed nor the legal dues paid to him.

3           The petitioners resisted the claim of the respondent denying the allegations of adoption of unfair labour practices. The petitioners did not dispute that the respondent was working at Wafgaon on various schemes of the various departments for the period of 8 years. He was working at Wafgaon till 30<sup>th</sup> June, 1991. Thereafter, whenever the work was available as per the grants from the Government, he worked with the petitioners. As per the Scheme, his wages were Rs.8/- per day and Rs.12/- per day. The petitioners denied that he was ever paid wages of Rs.23.50 ps. as claimed by him. They

contend that on 30<sup>th</sup> June, 1991, the temporary plantation where the respondent was working was closed and the garden land had been handed over to Gram Panchayat as per the rules. The respondent therefore was orally ordered to work on plantation area at another place. Instead of joining the other place as per the oral directions, the respondent filed a false complaint of his oral termination. The petitioners allege that in the month of February, 1992, the respondent was asked to work at Rajgurunagar or Kharoshi as the Mazdoor, but he insisted for the work at Wafgaon.

4            Since the orders impugned in the petition hold that the only unfair labour practice established on the part of the petitioners is under Item 1(f) of Schedule IV of MRTU & PULP Act, the consideration to the impugned award and order is to be restricted to that unfair labour practice. The Labour Court on appreciation of the evidence before it, held that admittedly the respondent had served with the petitioners for a period of 8 years. Therefore, as per Section 25(f) of the Industrial Disputes Act, was attracted and the petitioners were liable to pay him his legal dues. The petitioners, however, had failed to follow the procedure laid down under Section 25(f) of the Industrial Dispute Act. There was also no seniority list published by the petitioners. Therefore, termination of the respondent was illegal. Since the due procedure of law was not followed, the Labour Court held that the petitioners had engaged in an unfair labour practice under Item 1(f) of Schedule IV of MRTU and PULP Act.

5           Being aggrieved by the judgment and award, the petitioners had approached the Industrial Tribunal vide Revision Application (ULP) No.23 of 1999. The Industrial Tribunal dismissed the revision application, by its judgment and order dtd.27<sup>th</sup> September, 1999 holding that the award by the Labour Court was based on the material on record and on proper appreciation of the provisions of law. The Tribunal appreciated the award as well founded, based on documentary and oral evidence on record and found that there is no apparent error on the face of the record to interfere with the award.

6           Mr. Kanugo, the learned AGP submits that the impugned award suffers from non-consideration of the material on record and hence is perverse. He submits that the courts below did not give weightage and consideration to the fact that the respondent was employed as a daily-wager under a temporary scheme. On the Scheme coming to an end, no order in writing of termination of service of the respondent was required. In fact, even on the scheme at Wafgaon coming to an end, there was no termination of service of the respondent because on 28<sup>th</sup> July, 1993, he was ordered to work either at Rajgurunagar or at Kharoshi as per his choice. The respondent had refused the offer and insisted upon working at Wafgaon.

7           The second argument of Mr. Kanugo is that the respondent was a daily-wager being employed temporarily in a Scheme by the Government, therefore, on the Scheme coming to an end, the services

of the respondent automatically came to an end. He argues that the award is contrary to the law laid down in various decisions of this Court and the Apex Court. The Apex Court has taken a view that a daily-wager has no legal right to claim permanency, more so in the absence of “sanctioned vacant post” in the establishment.

8           The third argument of Mr. Kanugo to attack the award of reinstatement is that admittedly the respondent is elected as a Member of Gram Panchayat, Wafgaon during the pendency of the proceedings. Therefore he is gainfully employed and the order of his reinstatement was unnecessary.

9           Mr. Kanugo relies upon decision of the Apex Court in Delhi Development Horticulture Employees Union vs. Delhi Administration, Delhi and Others, reported in AIR 1992, Supreme Court, page 789. In the said decision, the Apex Court has held that to get an employment under a scheme which was intended to tackle the problem of poverty and then to claim the regularisation and permanency on the basis of the said employment is to frustrate the scheme itself and no Court can be a party to such exercise.

10          The second decision cited is also of the Apex Court in Chandra Shekhar Azad Krishi Evam Prodyogiki Vishwavidyalaya vs. United Trades Congress and Another, reported (2008) 2 Supreme Court Cases, page 552. In that decision, the Apex Court was

considering the dispute raised for regularisation of services of a daily-wager working with the Agricultural University. The Apex Court held that what was necessary to be considered was the nature of the work undertaken by the University, which undertakes Projects, for which it may to employ a large number of persons. Their services had to be temporary in nature. Even for that the provisions of Articles 14 and 16 are required to be complied with. In the event, the constitutional and statutory requirements are not complied with, the contract of employment would be rendered illegal. Under such circumstance working for more than 240 days continuously by itself does not confer any right upon the workman to be regularised in service.

11           The third decision cited by Mr. Kanugo is the unreported decision of Division Bench of our Court in The State of Maharashtra and Another, vs. Pandurang Sitaram Jadhav (Letters Patent Appeal No.14 of 2008). One of the questions raised by the Division Bench for it's consideration was "whether daily-wagers" have any legal right to claim permanency, more so in the absence of "sanctioned vacant post" in the establishment. After considering various decisions of the Apex Court, the Division Bench answered the question in the negative.

12           Mr. Agarkar, the learned advocate for the respondent relies, on the other hand, upon decision of Single Judge of our High Court in Divisional Manager, Division Wanprakalpa Office (West), Forest Development Corporation of Maharashtra Ltd., Nashik vs. Chimna

Arjun Jadhav, reported in 2001 (4) Maharashtra Law Journal, page 97, wherein this court was considering regularisation of the service of daily-wage earners engaged by the petitioner Forest Development Corporation doing work under the Government Afforestation Scheme. In the facts of that case, this court held that since the Labour Court had given a clear finding that the work performed by the employee was of permanent nature and perennial one, then as a necessary corollary, it is the duty of the Court to issue direction to the employer to create sanctioned post so as to give him status and privileges of a permanent employee. The Court had noted in the facts of that case that the petitioner before it had been specifically created for development of potentially productive forests of the state and it was not under any obligation to take prior approval of the State Government before appointing any employee to discharge duty for implementing the schemes. Further in that case recommendations had already been made for creation of post. It is thus seen that the facts of the case cited by Mr. Agarkar, for the respondent are different from the facts of the present case.

13           The petitioner herein is a government department. The appointment of the respondent was as a daily-wager under the scheme of plantation, which was for a period of three years. The appointment was not to any existing sanctioned post. The appointment being purely temporary on the scheme coming to an end, he had no legal right to demand reinstatement and continuity in service. Besides, in the facts

of the case in hand, it cannot even be said that services of the respondent were terminated. Once the scheme undertaken by the petitioner at Wafgaon was complete and closed with the nursery handed over to the Gram Panchayat, the work at Wafgaon was over. The services of the respondent under the circumstance came to an end. Despite the fact, the petitioner had offered him work under similar schemes at different places i.e. Rajgurunagar and Kharoshi. The respondent did not accept that work and insisted for working at Wafgaon. In the circumstances, even if it is to be held that the employment of the respondent did not come to an end automatically with completion of the scheme, there was no termination of his service. He had no legal right to demand work at a specific place i.e. Wafgaon. On this ground, in fact the complaint of the respondent was not even maintainable. Since the appointment of the respondent as a daily-wager was under a scheme, it was obviously without compliance of statutory and constitutional requirements. Under the circumstances, he had no legal right to seek reinstatement with continuation in service. Therefore, the orders impugned in the petition cannot be sustained. The petition is allowed. The rule is made absolute in terms of prayer clause (a).

(Smt. R.P. SondurBaldota, J.)