

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11468 OF 2014

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Sunil Krishna Dhond

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 147 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Balkrishna Sitaram Jadhav

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 149 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Sunil Jagannath Rane

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 152 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Harishchandra Narayan Patil

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 153 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Sambhaji B. Malav

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 158 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Suhas Gajanan Kulkarni

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 159 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Ravindra Sakharam Kanade

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 160 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Yashwant Bhau Bambark

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 289 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Kaustub Shantaram Redakar

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 319 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Ramchandra Janardan Pangam

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 342 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Yashwant Vishram Kanade

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 480 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Ramakant Rajaram Surve

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 481 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project

Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Ashok Krishna Bahutule

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 552 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Chandrakant Ganpat Salvi

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 1592 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Shantaram Keshav Sonawane

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 1593 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,

.....Petitioner

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(sr. no.22)
Monday,29.6.2015

: V/S :
Shri. Mohan Dhondi Surve

.....Respondent

ALONGWITH
WRIT PETITION NO. 1594 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,

.....Petitioner

: V/S :
Shri. Sandip Ramchandra Gandhi

.....Respondent

ALONGWITH
WRIT PETITION NO. 1595 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,

.....Petitioner

: V/S :
Shri. Ranjan Yashwant Kavitkar

.....Respondent

ALONGWITH
WRIT PETITION NO. 1596 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,

.....Petitioner

: V/S :
Shri. Gajanan Bhau Bambarkar

.....Respondent

ALONGWITH
WRIT PETITION NO. 1597 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Rajiv Rajaram Kanade

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 1598 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Manohar Ramchandra Shinde

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 1599 OF 2015

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,
: V/S :
Shri. Ramakant Ramchandra Karmarkar

.....Petitioner

.....Respondent

ALONGWITH
WRIT PETITION NO. 11469 OF 2014

State of Maharashtra through
The Executive Engineer, Hydrology Project
Division, Kalwa, Thane (Earlier known as
The Executive Engineer,
Irrigation Project Investigation Division
Kuwarbau, Sinchan Bhavan, Ratnagiri,

.....Petitioner

: V/S :
Shri. Ramchandra Laxman Lad

.....Respondent

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Mr. A.D. Kango, AGP for the petitioner.

Mr. M.S. Topkar, Advocate for the respondents.

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

29th JUNE, 2015.

P.C. :-

1). This is a common order on the above petitions, which challenge the common order dated 2nd May, 2014 passed by the Industrial Tribunal, Kolhapur partly allowing the Revision Applications preferred by the respondents and setting aside the orders of dismissal of the complaints filed by the respondents under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices

Act (“MRTU & PULP Act” for short) by the Labour Court. The impugned order directs the petitioner to reinstate the respondents with continuity of service but without back-wages. In case of retired employees, it is held that they are entitled for continuity of service till their retirement alongwith the retirement benefits.

2). The respondents filed complaints under Section 28 read with Items 1(a), (b), (d) and (f) of Schedule IV of MRTU & PULP Act alleging unfair labour practices on the petitioner and seeking reinstatement with continuity of service and back-wages. The respondents were working as “Khalashi, Mapivachak” (Gauge Reader) on various posts at several centres. Since their appointments, during the period 1979 to 1991, they have worked continuously and completed more than 240 days of service from year to year. They had clean and unblemished service records. According to the respondents, the work they were doing is perennial in nature. However, the petitioner with a view to deprive them of permanency benefits, had treated them as temporary employees. In the year 1995, the petitioner suddenly terminated all the respondents from service by not allowing them to join duties. Undisputedly, the respondents were neither given any notice of termination nor notice pay nor any compensation. There were 17 more persons similarly employed, who had approached the Industrial Tribunal

for continuation in service and benefits of permanency. The Industrial Tribunal had allowed their complaints. The decision of the Tribunal was challenged in the higher Courts and has finally been upheld by the Apex Court. Consequently, the petitioner had confirmed the 17 employees in service. The respondents claimed parity before the Labour Court with the 17 employees contending that they were also, similar to the 17 employees, entitled to continuation in service and benefits of permanency. However, the petitioner had terminated their services without notice or compensation. The petitioner had also not published any seniority list for the purpose of observing the principle of “Last come first go”. The petitioner had thus victimized the respondents and resorted to unfair labour practice.

3). The petitioner contested the complaint contending that, the respondents were neither “workmen” under Section 2(s) of the Industrial Disputes Act (“I.D. Act for short) nor the petitioner an “industry” under Section 2(j) of the I.D. Act. On merit, the petitioner contended that, the respondents were seasonal workers and appointed for rainy season only. Therefore, their appointments were governed by Section 2(oo)(bb) of the Industrial Disputes Act. They being seasonal workers, their appointments came to an end with efflux of time. Therefore, the respondents had no right to permanency benefits.

4). The Labour Court, by its order dated 9th September 2011 dismissed the complaints. It held that the respondents failed to establish that their services were terminated illegally by the petitioner. It gave a finding that the services came to end by efflux of time on expiry of the specified period of appointment. Their appointments were governed by Section 2(oo) (bb) of the I.D. Act. For that purpose, the Labour Court relied upon decision of the Apex Court in the case of **Secretary, State of Karnataka and others vs. Umadevi and others**, reported in **2006 (II) C.L.R. page 261**.

5). Being aggrieved by the judgment and order of the Labour Court, the respondents preferred Revision Applications before the Industrial Tribunal, Kolhapur. By the judgment and order dated 2nd May, 2014, the Industrial Court partly allowed the Revision Applications. It set aside the order of dismissal of the complaints and partly allowed the same by directing the petitioner to reinstate the respondents with continuity of service, but without back-wages. In case of retired employees, it held that they are entitled to continuity of service and retirement benefits.

6). The Industrial Tribunal opined that Umadevi's judgment, which formed the basis of dismissal of the complaints was misinterpreted by the Labour Court. It observed that the respondents have approached the

Labour Court under the provisions of MRTU & PULP Act and the judgment in Umadevi's case has not resulted into denuding the provisions of the MRTU & PULP Act. Therefore, if the respondents have worked with the petitioner, for years together and completed 240 days of continuous service in each and every year, they would be entitled to be continued in the service by the petitioners. The Tribunal next noted that the work performed by the respondents was of perennial nature and the posts on which they were appointed were continuous. In the circumstances, issuance of appointment orders for specific period by the petitioner to the respondents must be treated as with intent to deprive them of permanency and to give colour to appointment orders as being under Section 2(oo)(bb) of I.D. Act. It further noted that the respondents were doing the same work as the 17 persons, who have been reinstated in service and granted benefits of permanency. There is no dispute about this fact. Consequently, the respondents are required to be treated on par with the 17 persons. As regards the back-wages, the Tribunal noted that there is no evidence on record of the gainful employment of the respondents. Therefore, they cannot insist upon grant of back-wages and denied back-wages to them.

7). In my opinion, there is no infirmity whatsoever in the impugned order. The view taken by the Tribunal in the facts of the case is the

correct view. The respondents being on par with the 17 persons, who have been reinstated in service in every respect could not have been treated differently by the Labour Court, so as to deny them reinstatement in service. It is unfortunate that the petitioner which is the State of Maharashtra has taken a partisan stand in respect of the respondents and has been dragging it's feet in implementation of the impugned order.

8). The petitions are dismissed.

(SMT. R.P. SONDURBALDOTA, J)