

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

WRIT PETITION NO. 3379 OF 1997

- 1 The State of Maharashtra.
- 2 The Deputy Director,
Social Forestry Division,
Jalgaon.
- 3 Ropwan Adhikari Social
Forestry, Erandol,
District Jalgaon.
- 4 Member, Industrial Court,
Nashik.

....PETITIONERS

-VERSUS-

Bharat Naval Patil,
At Post Pokhari,
Taluka Erandol,
District Jalgaon.

...RESPONDENT

...
AGP for Petitioners : Shri N.T.Bhagat.
Advocate for Respondent : Shri G.V.Wani.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd December, 2016

Oral Judgment :

- 1 The Petitioner/ State is aggrieved by the judgment dated 07.02.1997 delivered by the Industrial Court by which Complaint (ULP)

No.798/1992 filed by the Respondent/ Employee was allowed and the Petitioner was directed to grant permanency with all benefits to the Respondent w.e.f. 01.01.1993 since he had completed one year of service in 1992 when the complaint was filed.

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

3 Shri Wani, learned Advocate for the Respondent/ Employee, has strenuously defended the impugned judgment. He submits that the Respondent had proved completion of 240 days in employment in the year January, 1992 to December, 1992. Though he had worked for 222 days in the said period, 52 weekly holidays were added by the Court and it was rightly concluded that he had put in continuous employment under Section 25-B of the Industrial Disputes Act, 1947. He submits that the Petitioner is an industry under Section 2(j) of the Industrial Disputes Act, 1947 and the Industrial Court, therefore, rightly answered Issue No.5 in the affirmative. He further submits that he was working from 01.10.1985 on daily wages. For some reason, he is not in employment from 01.04.1999. He, therefore, submits that this petition be dismissed and the Petitioner be directed to implement the judgment of the Industrial Court.

4 I find from the impugned judgment that though the Industrial Court has framed an issue as to whether, the Petitioner/ Establishment proves that it is not an industry under Section 2(j), there is no adjudication upon the said issue. In one single sentence, in paragraph 14, the Industrial Court has concluded that “*It is settled position that Social Forestry Division has been held as an industry by our High Court and as such, the Respondent is an industry*”. Such conclusion without any basis cannot be sustained.

5 Insofar as granting permanency from 01.01.1993 is concerned, the learned Division Bench of this Court in the matter of *Municipal Council Tirora vs. Tulsidar Baliram Bindhade*, **2016 (6) Mh.L.J. 867**, has come to the conclusion that in the State instrumentalities, unless a permanent vacant post is available, regularization or permanency cannot be granted on a non existing post.

6 The Respondent, in this case, has claimed to be a Watchman. There is no evidence on record to indicate that a permanent post of a Watchman was vacant and available and the Respondent was entitled to the same based on his seniority, to be regularized w.e.f. 01.01.1993. In *Municipal Council, Tirora judgment* (supra), this Court concluded that

Standing Order 4-C of the Standing Orders Act, 1946 would not be applicable.

7 This Court, in the matters of *Mukhyadhikari, Nagar Parishad, Tuljapur vs. Vishal Vijay Amrutrao*, **2015(5) Mh.L.J. 75** and *Municipal Council, Tuljapur v/s Baban Hussain Dhule*, **judgment 26.02.2015 in Writ Petition No.1843/2015**, has concluded that unless it is established that a permanent vacant post is available and the Claimant is entitled for absorption on the said post, the Industrial Court cannot issue directions to grant regularization from a particular date.

8 In the light of the above, this Writ Petition is partly allowed as under:-

- (a) The impugned judgment dated 07.02.1997 is quashed and set aside.
- (b) Complaint (ULP) No.798/1992 is restored to the file of the Industrial Court, Jalgaon for being decided afresh.
- (c) The litigating sides shall appear before the Industrial Court on 16.01.2017 and formal notices need not be issued by the Industrial Court.
- (d) The Industrial Court shall ensure that the issue as to whether, the Petitioner is an “industry” or not?, is decided on it's

merits. Similarly, the Industrial Court will have to conclude as to whether, the post of Watchman is available and as to whether, the Respondent/ Complainant was entitled to claim regularization on the said post based on his seniority.

- (e) The litigating sides are at liberty to adduce further oral and documentary evidence.
- (f) It is expected that the Industrial Court shall decide the complaint as expeditiously as possible and preferably on or before 15.10.2017.
- (g) It is clarified that if the Respondent/ Complainant is not in employment and has established a right to regularization, the Industrial Court may consider the option of granting compensation.

9 Rule is made partly absolute in the above terms.