

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

WRIT PETITION NO. 4557 OF 2014

Dattu Bapu Bhokare
Age: 57 years, Occu.: Labour,
R/o Khadambe Khurd,
Tq. Rahuri, Dist. Ahmednagar.

..PETITIONER

VERSUS

Mahatma Phule Krushi Vidyapeeth,
Rahuri, Tq. Rahuri, Dist. Ahmednagar.
Through its Registrar.

..RESPONDENT

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Mr. P.V. Barde, Advocate for petitioner.
Mr. P.L. Shahane, Advocate for respondent.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 9th FEBRUARY, 2016**

ORAL JUDGMENT :

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

2. The petitioner is aggrieved by the impugned judgment of
the Labour Court dated 06.08.2013 by which Reference IDA No.
19/2009 has been answered in the negative.

3. The contentions of the petitioner in brief are as follows:

(A) The petitioner joined the respondent in 1982 as a tractor driver on daily wages.

(B) He has continued in employment till 01.07.2006 when he was orally terminated.

(C) Without issuance of a notice of change under Section 9(A) of the Industrial Disputes Act, 1971, his service conditions were altered by the introduction of 11 months appointment orders in each calender year from 2000 onwards.

(D) On 01.07.2006, he has been orally terminated on the ground that the appointment order was of contractual nature and upon conclusion of the contract, his services came to an end.

(E) An advertisement was published subsequently for inviting applications for appointment in the respondent-university.

(F) The petitioner applied pursuant to the advertisement, but was not selected on the ground that he is over age.

(G) Having been frustrated, the petitioner raised an industrial dispute in 2009 for questioning his oral termination dated 01.07.2006.

(H) The Reference IDA No. 19/2009 was before the Labour Court, Ahmednagar for adjudication.

(I) By the impugned judgment dated 06.08.2013, the Reference is answered in the negative only on two counts. Firstly, Section 2(oo)(bb) of the Industrial Disputes Act, 1947 is squarely applicable to the case and secondly, the Apex Court has not granted regularisation to daily wagers in its judgment in the matter of *Secretary, State of Karnataka Vs. Umadevi* reported in *AIR 2006 SC 1806*.

(J) The petitioner is presently 57 years old.

4. Mr. Barde, learned Counsel for the petitioner therefore submits that when the work continued and the petitioner was engaged as a daily wager and subsequently on 11 months appointment, the exception to retrenchment under Section 2 (oo)

(bb) would not be attracted. The said section is not applicable to such nature of work which is of perennial character.

5. He further submits that the ratio laid down by the learned Apex Court in the Umadevi judgment (supra) has been misconstrued and misunderstood by the Labour Court. The distinction between irregular appointments and illegal appointments has not been properly considered by the Labour Court. The factum of employment of the petitioner has therefore not been considered.

6. Mr. Shahane, learned Counsel for the respondent-university has strenuously supported the impugned judgment. His contention is that the engagement of the petitioner on daily wages from 1982 till 2000 has been denied by the respondent. It was also denied that he has been continuously working as a daily wager. It was reiterated that he was given 11 months appointment from the year 2000 and after the conclusion of his last contractual engagement, he stood disengaged on 01.07.2006 by efflux of time.

7. The statutes applicable to the respondent-university and especially statute 84, prohibits the university from issuing appointment orders except to those persons who have been selected by a properly constituted selection committee. The Labour Court has considered this aspect and has noticed that no statutory selection committee has selected the petitioner.

8. Mr. Shahane further submits that Section 2 (oo)(bb) was rightly made applicable to the facts of this case. A contractual employee who has been engaged on 11 months contract, has no right to claim regularisation. Similarly, he cannot challenge the appointment order since it is a contractual engagement. Section 2 (oo)(bb) is applicable to contractual engagement and hence the Labour Court has rightly rejected the reference.

9. Mr. Shahane further submits that the ratio laid down in the Umadevi (supra) judgment has been properly followed by the Labour Court and the reference has been rejected since the appointment of the petitioner could be termed as a back door entry.

He therefore submits that this petition is without merit and deserves to be dismissed.

10. I have considered the submissions of the learned Counsel.

11. It is settled law that Section 2 (oo)(bb) is not applicable to such nature of work which is of a perennial character. In short, if the nature of work continues and the said work is available, Section 2(oo)(bb) would not be applicable. Appointments for 11 months followed by a break and re-engagement with same appointment order for 11 months have already been considered by the learned Apex Court as well as this Court in several matters (read *H.D. Singh Vs. Reserve Bank of India* reported in *1985 SCC (4) 201*). Such device of engaging employees with the intention of creating artificial breaks in service has not been acceptable to law. Section 2(oo)(bb) would therefore not be applicable in the facts and circumstances of this case.

12. The impugned award is an outcome of a reliance placed upon the judgment of Umadevi (supra) by the Labour Court.

However, I find that paragraph nos. 42 and 44 of the said judgment have not been considered by the Labour Court. It would be apposite to reproduce paragraph nos. 42 and 44 as under:-

“42. The argument that the right to life protected by Article 21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39(a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in Government service or in

the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the Court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 32 of the Constitution.

44. *One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in **S.V. Narayanappa** reported in **AIR 1967 SC 1071**, **R.N. Nanjundappa** reported in **AIR 1972 SC 1767** and **B.N. Nagrajan** reported in **AIR 1979 SC 1676** and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularisation of the services*

of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

13. In the light of the above, I find that the Labour Court has failed in applying its mind to the facts and circumstances of this case. It appears to have got carried away by the application of

Section 2(oo)(bb) upon considering the ratio of the learned Apex Court in the case of Umadevi (supra).

14. As such, this petition is partly allowed. The impugned judgment and award dated 06.08.2013 is quashed and set aside. The Reference IDA No. 19/2009 is remitted to the Labour Court, Ahmednagar. The litigating sides shall appear before the Labour Court on 22.02.2016. Formal notices need not be issued by the Labour Court.

15. The Reference IDA No. 19/2009 shall be considered by the Labour Court on its own merits. Opportunity of leading additional oral and documentary evidence to the litigating sides is granted. The Labour Court however shall not apply Section 2(oo)(bb) to this case and shall consider the effect of paragraph nos. 42 and 44 of the Umadevi judgment (supra) while deciding the reference proceedings.

16. Since the petitioner is 57 years old today, in the event he reaches the age of superannuation, during the pendency of

Reference IDA NO. 19/2009, the second party employee petitioner herein is at liberty to request the Court for quantification of compensation only in the event the reference is to be allowed.

17. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)