

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

WRIT PETITION NO. 12342 OF 2015

Swami Ramanand Tirth Marathwada
University Nanded, Dist. Nanded
Through its Registrar,
R/o : Vishnupuri, Nanded,
Dist. Nanded.

... Petitioner.

Versus

1. Shri.Ranoji S/o.Yadavrao Hambarde,
Age : 42 years, Occu. Service,
2. Shri.Vishnu S/o Thankajirao Dhanwade,
Age : 45 years, Occu. Service,
3. Shri.Sainath S/o. Trimbakrao Mamidear,
Age : 45 years, Occu. Service,
4. Shri.Pradip S/o.Dadarao Bhosle,
Age : 48 years, Occu. Service,
5. Shri.Balaji S/o Laxmanrao Shinde,
Age : 45 years, Occu. Service,
6. Shri.Ramrao S/o.Gynoba Pimple,
Age : 47 years, Occu. Service,
7. Shri.Vivek S/o.Dajisaheb Bhosle,
Age : 46 years, Occu. Service,
8. Shri.Syed Gaffar S/o.Syed Sattar,
Age : 48 years, Occu. Service,
9. Mrs. Shaikh Hajibegum Abdul Aziz,
Age : 46 years, Occu. Service,
10. Shri.Susheel S/o.Subhashrao Kharwadkar,
Age : 46 years, Occu. Service,
11. Shri.Prakash S/o. Gopalrao Chitte,
Age : 47 years, Occu. Service,

12. Shri.Subhash S/o.Govindrao Thete,
Age : 47 years, Occu. Service,
13. Shri.Suresh S/o. Pandurang More,
Age : 47 years, Occu. Service,
14. Shri.Laxman S/o.Anandrao Jadhav,
Age : 44 years, Occu. Service,
15. Shri.Ananda S/o. Gangaram Hambarde

All Respondent R/o. C/o. Swami
Ramanand Tirth Marathwada
University, Nanded, Vishnupuri,
Nanded, Dist. Nanded.

... Respondents.

...

WITH

WRIT PETITION NO. 12343 OF 2015

Swami Ramanand Tirth Marathwada
University, through its Registrar,
Vishnupuri, Nanded.

... Petitioner

Versus

Kailas s/o Murlidhar Hambarde
Age 37 years, Occu: Temprary,
R/o C/o Swami Ramanand Tirth
Marathwada University, Nanded,
District Nanded.

... Respondent

...

WITH

WRIT PETITION NO. 12344 OF 2015

Swami Ramanand Tirth Marathwada
University Nanded, Dist. Nanded
Through its Registrar,
R/o : Vishnupuri, Nanded,
Dist. Nanded.

... Petitioner.

Versus

1. Shri. Dasrao S/o. Madhavrao Hambarde
Age : 47 years, Occu. Service,
2. Shri. Govind S/o Dattaram Hambarde,
Age : 37 years, Occu. Service,
3. Shri. Kishor S/o. Govindrao Hambarde,
Age : 37 years, Occu. Service,
4. Shri. Gopalraj S/o. Baburao Hambarde,
Age : 33 years, Occu. Service,

All R/o. C/o.Swami Ramanand Tirth
Marathwada University, Nanded,
Vishnupuri, Nanded, Dist. Nanded.

...

WITH**WRIT PETITION NO. 12345 OF 2015**

Swami Ramanand Tirth Marathwada
University Nanded, Dist. Nanded
Through its Registrar,
R/o : Vishnupuri, Nanded,
Dist. Nanded.

... Petitioner.

Versus

Smt. Simintini Shailesh Rahutikar
Age : 31 years, Occu. Service,
R/o. 78, Yeshwant Nagar, Nanded,
Dist. Nanded.

...

Mr. U.S. Malte, Advocate for Petitioners;

Mr. T.K.Prabhakaran, Advocate h/f Mr. U.S.Sawji,
Advocate for Respondents

...

CORAM : P.R. BORA, J.
Dated : 29th June, 2016

...

ORAL JUDGMENT:-

1) Rule. Rule made returnable forthwith. Heard finally, with consent of the parties.

2) All these petitions are filed by Swami Ramanand Tirth Marathwada University, Nanded, District Nanded. In all these petitions, the petitioner has challenged the order passed by Industrial Court, Jalgaon, whereby the said Court has rejected the request of the petitioner for impleading the State Government as a party respondent in ULP complaints filed against the petitioner by the respondents in the present petitions.

3) The Respondents in the present petitions have filed the complaints before the Industrial Court at Jalna seeking permanency and the allied benefits. It is the contention of the respondent employees in the said complaints that, since they have been continuously working with the petitioner University and have worked for more than 240 days in the preceding years, they are entitled to get the

permanency benefits and need to be permanently absorbed on the establishment of the petitioner University. As against it, the University has taken a stand in the said complaints that, it is not within the powers of the University to create new posts of teachers, officers or other employees or to revise their Pay etc. and in the circumstances, the petitioner has to employ the workers as and when required on a temporary basis. It is further contention of the petitioner university that, if the dispute raised by the complainants is to be resolved and if any benefit of permanency as has been asked by them is to be extended to them, the Government of Maharashtra is a necessary party since the State Government only can create the posts, on which the complainants can be absorbed or regularised. That was the reason that the petitioner University filed an application in all the Complaints pending before the Industrial Court, with a prayer that the State of Maharashtra shall be impleaded as party Respondent. The Industrial Court, has, however, rejected the request so made by the petitioner. The petitioner University, has, therefore, invoked the jurisdiction of this Court, with a prayer

that the order passed by the Industrial Court be quashed and set aside and consequently, the State of Maharashtra be impleaded as party respondent in the ULP Complaints pending before the Industrial Court.

4) Shri U.S.Malte, learned Counsel for the petitioner referring to provisions of Section 8 of the Universities Act, 1994 submitted that it is not within the domain of the University to create new posts of teachers, officers or the other employees or to revise their pay. The learned Counsel further submitted that, in absence of vacancies in the sanctioned posts and for lack of power to create new posts, there is no other option for the University to get the work done by employing a required number of workers/employees on purely temporary basis. The learned Counsel further submitted that the employees who have filed the complaints seeking permanency benefits and regularization of their services, cannot be extended with the benefits as prayed by them unless, the Government of Maharashtra is impleaded as party respondent in the said complaints. The learned Counsel further submitted that in the circumstances,

the learned Industrial Court ought not have rejected the applications filed by the petitioner. The learned Counsel therefore prayed for setting aside the impugned order and to direct the Industrial Court to allow the impleadment of the State Government as party respondent.

5) Shri T.K. Prabhakaran, learned Counsel appearing for the respondents opposed the submissions advanced on behalf of petitioners. Relying upon the Judgment of this Court in the case of Ichalkaranji Municipal Council Vs. Praveen Shivgonda Patil & anr. 2010(6) MAH. L.J. 465, submitted that, the State Government is not the necessary party to the proceedings before the Industrial Court and the Industrial Court, therefore, has rightly rejected the request of the petitioner. The learned Counsel, therefore, prayed for dismissal of the petitions.

6) After having heard the learned Counsel appearing for the respective parties and on perusal of the impugned judgment, apparently, it does not appear to me that the Industrial Court has committed any error in rejecting the applications filed by the

petitioner university. The complaints which have been filed in the Industrial Court, are admittedly filed under section 28 of the MRTU & PULP Act. As provided under the said section, the complaint of unfair labour practices can be filed by the employees or their union against the employer. In the complaint, so filed, petitioner University is the employer of the complainants therein. The State Government is not the employer of the said Complainants. Whatever relief is sought by the complainants in the said complaints is as against the petitioner university. In such circumstances, it does not appear to me that the State Government is a necessary or a proper party to be impleaded in the said complaints, as party respondent.

7) Even if the contention of the petitioner university is accepted that the salary grants and the funds are provided to the University by the State Government and further that the University cannot create a new post/s of teachers, officers or of the other employees, without prior approval of the State Government, since there is no relationship between

the complainants and the State Government as employee – employer, the State Government cannot be impleaded as party respondent in the complaints of unfair labour practices filed under section 28 of the MRTU & PULP Act.

8) In the case of Ichalkaranji Municipal Council Vs. Praveen Shivgonda Patil & anr. (cited supra) an objection was raised by the Municipal Council that, the complaint filed by the respondent therein alleging unfair labour practices on part of the Municipal Council ought to have been dismissed by the Industrial Court for non joinder or misjoinder of parties as the State Government was a necessary and was not arrayed as a respondents in the said complaints. The learned Single Judge of this Court, however, rejected the contention so raised by making following observations:

“10. The first submission of Mr. Ingale about misjoinder or non joinder of parties is misconceived. The complaint has been filed by the Respondent alleging unfair labour practices on the part of his employer. The State Government is not his employer and therefore is not a necessary party”.

Similar facts are involved in the present petitions and the observations so made as aforesaid would therefore squarely apply to the facts of present petitions also. Though, the learned Counsel for the petitioner has relied upon the judgment of this Court in the case Solapur University vs. Radhika Nadhukar Yele and Anr. 2015 (3) MAH. L.J. 906, the law laid down in the said judgment may not apply to the facts of the present case.

9) In the circumstances, it does not appear to me that, the Industrial Court has committed any error in rejecting the request of the petitioner University. The Writ Petitions are devoid of any substance and deserve to be dismissed and are accordingly dismissed. Rule discharged.

9) The learned Counsel appearing for the petitioner submitted that, during the pendency of the present petitions, the proceedings before the Industrial Court were not prosecuted further in view of the undertaking given by the learned Counsel appearing for the respondent employees that, they will not prosecute the complaints filed by them before the

Industrial Court till the decision of the present petitions. The learned Counsel submitted that, the decision rendered by the Court, in the present petitions be stayed for further four weeks so as to enable the petitioner University to approach the Hon'ble Apex Court. When the learned Counsel appearing for the respondent employees was asked to respond to the request so made on behalf of the petitioner University, the learned Counsel submitted that, the respondent employees will not prosecute the complaints filed by them before the Industrial Court till next four weeks. In view of the submissions so made, no further order is required to be passed.

(P.R. BORA, J.)

SPR