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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 3661 OF 1999

Haffkine Bio-Pharmaceuticals
Corporation Limited, a Government
of Maharashtra Undertaking having its
Head Office at Acharya Donde Marg,
Parel, Mumbai – 400 012 and having
its Anti-Taxis Sera Department at
Pimpri, Pune – 411 018.

... Petitioner.

V/s.

1. Mr. Tribhuan R. Jaiswar
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical
Corporation, Pimpri, Pune - 411018.
2. Mr. Sujit D. Gangurde
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical
Corporation, Pimpri, Pune - 411018.
3. Mr. Santosh P. Tame
Indian Inhabitant, having his
address at Sant Tukaram Nagar,
Pimpri, Pune – 411 018.
4. Mr. Uttam L. Gaikwad,
Indian Inhabitant, having his
address at Sant Tukaram Nagar,
Pimpri, Pune - 411 018.

5. Mr. Krishna M. Gawada
Indian Inhabitant, having his address
at Haffkine Bio-Pharmaceutical Corpo-
-ration, Pimpri, Pune - 411 018.
6. Mr. Satish S. Bahot
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical
Corporation, Pimpri, Pune - 411018.
7. Mr. Parasnata B. Jaiswar
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical
Corporation, Pimpri, Pune - 411018.
8. Mr. Mangesh R. Gaikwad
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical
Corporation, Pimpri, Pune - 411018.
9. Mr. Sanjay D. Walke
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical
Corporation, Pimpri, Pune - 411018.
10. Mr. Anil N. Amble
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical
Corporation, Pimpri, Pune - 411018.
11. Mr. Sanjay J. Kamble
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical
Corporation, Pimpri, Pune - 411018.
12. Mr. Arjun K. Jaiswar
Indian Inhabitant, having his

address at Haffkine Bio-Pharmaceutical Corporation, Pimpri, Pune - 411018.

13. Mr. Nasir N. Desai
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical Corporation, Pimpri, Pune - 411018.
14. Mr. Arvind R. Tambe
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical Corporation, Pimpri, Pune - 411018.
15. Mr. Govinda S. Sanjanna
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical Corporation, Pimpri, Pune - 411018.
16. Mr. Sachin B. Gangawane
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical Corporation, Pimpri, Pune - 411018.
17. Mr. Ashok L. Gaikwad
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical Corporation, Pimpri, Pune - 411018.
18. Mr. Kannan R. Naidu
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical Corporation, Pimpri, Pune - 411018.
19. Mr. Rakesh M. Jaiswar
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical Corporation, Pimpri, Pune - 411018.

20. Mr. Rajendra S. Amble
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical
Corporation, Pimpri, Pune - 411018.
21. Mr. Datta E. Kudale
Indian Inhabitant, having his
address at Waghare,
Pimpri, Pune - 411 018.
22. Mr. Hanumanji B. Mungse
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical
Corporation, Pimpri, Pune - 411018.
23. Mr. Keshav D. Ghadge
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical
Corporation, Pimpri, Pune - 411018.
24. Mr. Anil S. Katkar
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical
Corporation, Pimpri, Pune - 411018.
25. Mr. Venkatesh D. Gawda
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical
Corporation, Pimpri, Pune - 411018.
26. Mr. Ramesh R. Bhandari
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical
Corporation, Pimpri, Pune - 411018.
27. Mr. Sitaram D. Jadhav
Indian Inhabitant, having his

address at Haffkine Bio-Pharmaceutical Corporation, Pimpri, Pune - 411018.

28. Mr. Keshav D. Gorkha
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical Corporation, Pimpri, Pune - 411018.
29. Mr. Tushar Laxman Khadekar
Indian Inhabitant, having his
address at Haffkine Bio-Pharmaceutical Corporation, Pimpri, Pune - 411018.
30. Mr. Hanif T. Haldipur
Indian Inhabitant, having his
address at Ramkrishna Nagar,
Kolewadi, Pimpri, Pune - 411018.
31. Mr. Ramakant T. Haldipur
Indian Inhabitant, having his
address at Ramkrishna Nagar,
Kolewadi, Pimpri, Pune - 411018.
32. Mr. Sunil Basuram Jaikwar
Indian Inhabitant, having his
address at Ramkrishna Nagar,
Kolewadi, Pimpri, Pune - 411018.
33. Bharatiya Kamgar Sena,
C/o. Haffkine Bio-Pharmaceutical
Corporation Compound, Pimpri,
Pune – 411 018.
34. Mr. S.G. Kadam,
Member, Industrial Court,
Pune.

... Respondents.

Mr. S.K. Talsania, Senior Advocate a/w. Sagar Sheth and Ms. Radha Ved i/b. M/s. Sanjay Udeshi & Co. for the Petitioner.
Mr. A.P. Vanarase for Respondents 1 to 17 and 19 to 33..

CORAM : N.M. JAMDAR, J.

DATE : 15 FEBRUARY, 2016.

ORAL JUDGMENT :-

By this Writ Petition the Petitioner challenges the order passed by the Industrial Court, Pune dated 25 January 1999 granting permanency to the Respondents with effect from 14 October 1996. Short issue that arise for consideration in this Petition is whether the Respondents are entitled to grant of permanency from 14 October 1996 or from 1 October 1998.

2. The Respondents filed their respective complaints in the Industrial Court, Pune under Items 5,6,9 and 10 of Schedule IV of MRTU and PULP Act, 1971. It was their contentions that they were working since the year 1994 as daily rated workers, they had completed 240 days service, and as per the Industrial Employment (Standing Orders) Act, 1946, they should have been made permanent. It was contended by them that inspite of calling upon the Petitioner to make them permanent, the Petitioner failed to do so and accordingly, they sought that the Petitioner be directed to make them permanent when they first completed 240 days service in a year. The Petitioner filed it's say and contested the claim. It was stated that the Petitioner, who was initially a Government

Department is now a Corporation, it has a procedure for filling in posts of its employees through employment exchange and by public participation and after interview. If the candidates are found suitable and sanctioned posts are available, then appointments are made. It was stated that the Petitioner did make efforts to ensure that the Respondents are made permanent, however, they could not be made permanent in view of certain directions issued by the Government.

3. After the complaint was filed, Union – Bhartiya Kamgar Sena, which was recognized on 19 November 1997, made an application for impleadment which was granted by the Industrial Court. The Respondents gave their no objection for the impleadment. The Petitioner and the recognized Union entered into a settlement on 9 November 1998. It was agreed that the Respondents and the other workmen whose names were shown in the list annexed would be entitled for permanency with effect from 1 August 1998 and they will not claim benefits for the earlier period. Thereafter, an application was made by the Petitioner for disposal of the complaint in view of the settlement, which application was rejected by the Industrial Court on 24 December 1998. The matter was heard on merits. Parties led oral and documentary evidence. The Industrial Court concluded that there was no unfair labour practice committed by the Petitioner under Items 5 and 10, however, as regard Item 6 and Item 9 of Schedule IV, the Industrial Court held against the Petitioner. The Industrial

Court concluded that since the Respondents had worked for more than 240 days since 1994 from date of filing of the complaint i.e. 14 October 1996, they should be made permanent. This order has been challenged in the present Writ Petition.

4. I have heard Mr. Talsania, Senior Advocate for the Petitioner and Mr. Vanarase, learned Counsel for the Respondents.

5. The Industrial Court has concluded the entire case against the Petitioner in one paragraph. The Industrial Court appears to have taken into consideration clause 4(c) of the Industrial Employment (Standing Orders) Act, 1946 which reads as under :-

“ A badli or temporary workman who has put in 190 days' uninterrupted service in the aggregate in any establishment of seasonal nature or 240 days “uninterrupted service” in the aggregate in any other establishment, during period of preceding twelve calendar months, shall be made permanent in the establishment by order in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of the said twelve calendar months.”

However, the Industrial Court has not noticed Clause 32 which reads as under :-

“ Nothing contained in these Standing Orders shall operate in derogation of any law for the time being in

force or to the prejudice of any right under a contract of service, custom or usage or an agreement, settlement or award applicable to the establishment.”

Mr. Talsania relied upon the decision of the Division Bench of this Court in *Pune Municipal Corporation & Ors. V/s. Dhananjay Prabhakar Gokhale [(2006) II CLR 105]*, in which the Division Bench has considered the effect of Clause 32 on the claims based under Clause 4(c). In paragraph 9 the Division Bench proceeded to hold as under :

“ It is then sought to be contended that the Model Standing Orders clearly provide under Clause 4(c) that the employees who have completed 240 days of uninterrupted service would be entitled for permanency in service. Undisputedly, inspite of this Clause 4(c) of the Model Standing Orders, the employees' Union of which the respondent was a member, had entered into a settlement being settlement of September, 1989 and in terms thereof it was agreed that the claim of permanency would be available to the employees only on completion of continuous service of five years. It is also not in dispute that all other employees who have completed five years continuous service have been granted permanency in accordance with the settlement of September, 1989 as and then permanent vacant post duly approved by the competent authority had become available with the appellants. Besides, the Clause 4(c) of the Model Standing Orders cannot be read disjunctively and ignoring the well-settled law repeatedly reiterated by the Apex Court in various decisions. Once it is settled principle of law that mere completion of 240 days in service, in the absence of availability of permanent vacant post duly approved by the competent authority,

would not be sufficient to claim permanency, and at the same time one cannot ignore the lawful settlement of September, 1989, arrived at between the parties. Besides, the Clause 32 of the same Standing Orders clearly provides :

“ Nothing contained in these Standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under a contract of service, custom or usage or an agreement, settlement or award applicable to the establishment.”

Once it is not in dispute that under the valid and lawful settlement of September, 1989, the employees had agreed with the appellants that their claim for permanency would be available only on completion of five years of continuous service and depending upon the availability of permanent vacant post duly approved by the Government, no claim under Clause 4(c) of the Standing Orders ignoring the settlement arrived at can be entertained.”

That the Union is a recognized Union is not disputed, the Industrial Court has held that the settlement stipulates that the workmen would give up their earlier right and such settlement itself amounts to an unfair labour practice. It is not shown as to how a settlement arrived at between an employer and a recognized union *ipso facto* is an unfair labour practice.

6. The Industrial Court has also not considered the position before filing of the complaint, which is necessary since

permanency is being sought in the services of the Petitioner, which is governed by rules which includes public participation at the time of the employment. If the settlement entered into by the Petitioner and the recognized union is to be kept aside, then there is hardly any right shown by the Respondents - workmen for grant of permanency on the date of filing the complaint based solely on Clause 4(c). Clause 4(c) operates in different spheres in respect of a private employer and a public body who fills in permanent vacancies by a procedure involving public participation. However, since the Petitioner has agreed to make the services of the Respondents - workmen as permanent from 1 August 1998 and that position has continued for several years, it is not necessary now to go behind the settlement and ascertain the otherwise foundation of Respondents rights.

7. All the Respondents are now in permanent service and it is also informed that some of them have been promoted. A grievance made by Mr. Vanarase that in the orders of appointment and subsequent communications, the Petitioner has referred them as on probation. Mr. Talsania has clarified that those were standard format appointment orders and the probation mentioned therein was for a limited period, which has now since long expired and the Respondents are treated as permanent and not on probation. This statement, which is accepted, will take care of the apprehension, expressed by Mr. Vanarase.

8. In the circumstances, benefits of permanency will have to be given to the Respondents from 1 August 1998, based on the settlement between the Petitioner and the recognized union. The Respondents will be given all the benefits of the settlement dated 9 November 1998 arrived at between the Petitioners and the recognized union.

9. Accordingly, the following order :-

- (i) Clauses (2) and (3) of the impugned order are quashed and set aside.
- (ii) Clause 4 of the impugned order stands modified as under :

“The Petitioners are directed to grant status of permanency to the Respondents with effect from 1 August 1998 and grant them all benefits of permanency and such monetary benefits within period of three months, if not already paid to the Respondents.”

10. Rule is made absolute in above terms. No costs.

(N.M. JAMDAR, J.)