

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.10204 OF 2014**

Karveer Kamgar Sangh (Through its Secretary) ...Petitioner

V/s.

State of Maharashtra, Through the Collector and Others ...Respondents

WRIT PETITION NO.71 OF 2015

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Mr. Sandesh Shukla, a/w. Ms. Prerana Patil, i/b. Abhay Nevagi & Associates, for the Petitioner.

Mr. Kishor K. Malpathak, for Respondent No.3.

Mrs. M.S. Bane, 'B' Panel Counsel, for Respondent Nos. 1 and 2.

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CORAM : S.C. GUPTE, J.

JUNE 20, 2016

P.C. :

. Heard learned Counsel for the parties. The petitions challenge orders passed by the Industrial Court at Kolhapur on complaints by the Petitioner Union under Section 28 read with items 5, 6, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971.

2. The workmen, on whose behalf the complaints were filed by the Petitioner Union, were appointed as temporary workmen under the Maharashtra Employment Guarantee Scheme framed under the Maharashtra Employment Guarantee Act performing activities such as

maintaining gardens, nurseries and other allied activities. The workmen are said to have been employees from 1988-89 to 2001 and have worked for more than 240 days during each calendar year. The complaints were for making the workmen permanent. Under the impugned orders, the Industrial Court came to the conclusion that there was no material placed on record by the Petitioner Union that the workmen had worked on permanent sanctioned vacant posts and not as temporary employees. The record produced before the Court by the Respondents showed that the work of plantation of trees was done under the Employment Guarantee Scheme in talukas Gadhinglaj, Chandagad, Ajara and Bhudargad of Kolhapur District through Respondent No.2 herein. It is not disputed that any work under the employment guarantee scheme is of a temporary nature. The employment guarantee scheme does not provide for regularization or permanency to persons employed under the scheme. The work is essentially of a temporary nature and depends on the exigencies of work. The only contention of the Petitioner Union is that since the Respondents are held to be an industry and the workmen whose cause is espoused by the Union are held to have worked for more than 240 days in a calendar year, they ought to be made permanent. We are not concerned here with a private employer but the State employing people specifically under the Employment Guarantee Scheme framed under the statute. If the employment guarantee scheme allows the State to employ temporary workmen depending on exigencies of the work, it cannot possibly be suggested that after the workmen work for 240 days in a calendar year, they must be made permanent. The fact of the matter is, and it is not disputed seriously, that the appointment itself was not on a permanent post. The appointment was for temporary work. In the premises, the impugned orders of the Industrial Court do not suffer from any infirmity.

3. Learned Counsel for the Petitioner submits, in the alternative, that leaving aside the question of permanency of the workmen, the workmen having worked for more than 240 days in a calendar year during 1988-89 to year 2001, their claim for retrenchment compensation ought to have been considered under Section 25-F of the Industrial Disputes Act, 1947. Such a claim was not before the Industrial Court. The complaints seek permanency and not retrenchment compensation either in substitution or in the alternative. The Industrial Court had no occasion to apply its mind to such relief. This Court, in its writ jurisdiction in a challenge to the impugned orders, cannot consider such relief for the first time. In case the workmen are entitled to any such relief, they will be at liberty to agitate for such relief before an appropriate forum. With that liberty, the petitions are dismissed. No order as to costs.

(S.C.GUPTE, J.)