

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

WRIT PETITION NO.3826 OF 2001

Doodh Kamgar Sabha	...	Petitioner
Versus		
State of Maharashtra And Others	...	Respondents

**ALONGWITH
WRIT PETITION NO.3701 OF 2001**

M/s Cattle Breeding and Rearing Farm Another	...	Petitioners
Versus		
Doodh Kamgar Sabha	...	Respondent

.....

Mr. N.M Ganguli a/w Mr. Karuna Yadav for the Petitioner in WP/3826/01 and the Respondent in WP/3701/01.
Mrs. M.S. Bane 'B' Panel Counsel for the Respondents in WP/3826/01 and the Petitioners in WP/3701/01.

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CORAM : S.C.GUPTE, J.

DATE : 4 AUGUST 2016.

P.C. :

. Heard learned Counsel for the parties.

2 These two cross Petitions challenge an award by the Industrial Tribunal in a reference made to it under Section 10(i)(d) read with Section 12(5) of the Industrial Disputes Act, 1947. The Industrial dispute, which was referred to the Tribunal, pertains to 37 daily rated workmen represented by the Union, Doodh Kamgar Sabha (the Petitioner in Writ Petition No.3826 of 2001). It was the grievance of the Union that these

daily rated workmen, who were employed at Cattle Breeding & Rearing Farm of the State of Maharashtra at Palghar in District Thane since about 1985 or 1986, were not made permanent inspite of having worked for more than 240 days in a year for the last many years. The Union accordingly prayed for making these workmen permanent.

3 The impugned award, challenged both by the Union as well as the employer-establishment, did not consider claims of 13 employees, who were already made regular pending the reference. It considered the claims of other 24 daily rated workmen. The Tribunal held that these workmen were entitled to the status of permanent employees with the undertaking in the scale of Farm Assistants from 14 November 1990, i.e. from the date of the demand letter. The challenge to the award on the part of the Union is on the footing that all employees, including those whose claims were not considered due to their regularization in the interregnum, ought to be made permanent respectively from the dates when they completed 240 days in the year, and not from the date of the demand letter. The challenge of the establishment, on the other hand, is on the basis that the posts in which the employees were working were not sanctioned permanent posts and a mere long period of work does not *ipso facto* entitle them to permanency.

4 Much water has flown since the filing of these Petitions. The Petitions were filed in the year 2001, we are now in the year 2016. The developments during the pendency of these Petitions have been placed on record by the State Undertaking, in the affidavits of Dairy Engineer and Farm Superintendent, dated 16 January 2015 and 1 July 2015, respectively.

The position emerging from these affidavits is that of the thirteen workers who have been regularized with effect from 23 June 1998, about eight have already superannuated between the years 2000 and 2011, two have expired, respectively, in the years 2007 and 2010, and two others have been transferred in the years 2008 and 2011 to other departments of the State Government, whereas one is still working as Class IV employee in the post. Even this workman has superannuated on 15 November 2015. As for the remaining twenty four workmen, about ten of them have either expired or voluntarily resigned or superannuated or removed from the service before the Industrial Tribunal passed the impugned award. This is reflected in Exhibit-3 to the Additional Affidavit of the Farm Superintendent dated 1 July 2015. As for the other fourteen, even they have either died or superannuated during the period 4 January 2000 and 20 February 2013. The dates of their superannuations and deaths are also reflected in Exhibit-3 of the Affidavit 1 July 2015. There is no response filed by the Union to this Affidavit and in the premises, the statement made by the Farm Superintendent in Exhibit-3, cannot be disputed. There is no question, in the premises, of making anyone permanent as of today.

5 Mr. Ganguly, learned Counsel for the Union, submits that with effect from the respective dates of completion of 240 days of the employees, being in the years 1986 and 1987, all workmen should be treated as confirmed in permanent service and accordingly benefits be awarded to their legal heirs. Considering the legal position so far as employment under the State is concerned, it can hardly be disputed now that mere completion of 240 days of service in a year by daily rated workmen does not entitle them to the status of permanent workmen. The leading

Supreme Court cases on the point, namely, **State of Karnataka Vs. Umadevi**¹, **Maharashtra State Road Transport Corporation Vs. Casteribe Rajya Parivahan Karmachari Sanghatana**² and **Hari Nandan Prasad Vs. Food Corporation of India**³, indicate the various factors, which need to be considered by industrial adjudicators, before the claim for regularization of a workman employed by the State is accepted. None of these elements are considered by the Industrial Tribunal. The impugned order, in the premises, cannot be sustained. Considering the want of pleadings in this behalf and also in the light of the developments noted above, no purpose would be served by remanding the matter at this point of time.

6 Learned AGP states that as and when posts were sanctioned, suitable office orders were passed regularizing the workmen. Accordingly, thirteen workmen have been regularized. Most others have either died or superannuated, as noted above, before any post could be sanctioned and regularized. No relief is possible, in the premises, in the reference.

7 Rule is accordingly discharged in Writ Petition No.3826 of 2001 and made absolute in Writ Petition No.3701 of 2001, by quashing and setting aside the impugned award. No order as to costs.

(S.C.GUPTE, J.)

1 (2006) 4 SCC 1

2 (2009) 8 SCC 556

3 (2014) 7 SCC 190