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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8829 OF 2011

Daund Nagar Parishad, Daund	...Petitioner
vs.	
Shri. Sudhir Dattatraya Nirgudkar	...Respondent

.....

Mr. Milind Deshmukh, for the Petitioner.

Mr. Avinash Belghe, i/b. Mr. Nitin A. Kulkarni, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED: JULY 13, 2016

P.C.:

. Heard learned Counsel for the parties. The petition challenges an order passed by the Industrial Court at Pune in a complaint under Section 28(1) read with items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act. By the impugned order, the learned Member of the Industrial Court directed the Petitioner to make the Respondent employee permanent from the date he completes 240 days of continuous service with the Petitioner with all consequential benefits.

2. It is the case of the Petitioner that the Petitioner, after seeking a permission from the Collector, appointed the Respondent as temporary driver for a period of 60 days from 1 October 1996. The appointment order specifically mentions that his appointment would come to an end automatically on completion of 60 days. Before this period of 60 days ended, the Respondent preferred a complaint under the MRTU & PULP Act and applied for interim reliefs restraining the Petitioner from terminating the Respondent's services. By an ex-parte order dated 30 November 1996, ad-interim injunction was granted by the Labour Court. Since the Petitioner did not receive any notice or summons from the Labour Court till 27 March 1997, the Respondent was relieved by it from its service on and from 27 March 1997. After the Petitioner learnt about the interim order passed by the Court, the Petitioner reappointed the Respondent on and from 8 March 1999. On 1 November 1999, the Petitioner filled-up the post of the driver by following due process and appointing a candidate from the reserved category through Employment Exchange. After appointing the particular candidate, in the permanent post, the Respondent was relieved from service with effect from 1 November 1999. Once again, a complaint under the MRTU & PULP Act was preferred by the Respondent with an interim application. The Court granted interim relief to the Respondent and, once again, the Respondent was appointed in the services of the Petitioner from 11 September 2000. On 19 April 2002, the Respondent was removed from service due to mis-conduct. Once again, the Respondent approached the Labour Court by filing a complaint under the MRTU & PULP Act and secured an interim relief and continued to be in the employment of the Petitioner from 17 September 2003. Finally, in

or about 2006, the Respondent filed the present complaint under Section 28(1) read with items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act complaining that the Respondent, despite being in continuous employment of the Petitioner, was kept as casual, badli or temporary for years together with a view to deprive him of the status and privilege of permanency. On this complaint, the impugned order came to be passed.

3. A perusal of the record of the case clearly indicates that the Respondent was appointed as a temporary driver for a period of 60 days. Ever since the expiry of the period of his appointment as a temporary driver, the Respondent has continued to be in the services of the Petitioner only by virtue of various interim orders passed by the Courts. A perusal of the orders makes it clear that the Respondent was directed to be reinstated in the services of the Petitioner, in all cases as a temporary employee. Firstly, there is no case either that he was appointed in a permanent post or that the post held by him was of a perennial nature. Secondly, it cannot be said that the Respondent had completed 240 days from the date of his initial appointment so as to raise a claim for permanency except under interim orders of the Court. Thirdly, the post is clearly a post under the State. It is for the Executive Government to apply its mind and take a decision to create a permanent post. Once such post is created, it has to be filled up by following due process. None of these aspects is considered by the Industrial Court in the present case. The impugned order of the Industrial Court, in the premises, requiring the Petitioner to treat the Respondent as permanent employee and reinstate him on that basis, cannot be sustained.

4. The rule is, accordingly, made absolute and the impugned order of the Industrial Court is quashed and set aside.

(S.C. GUPTE, J.)