

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 246 OF 2015**

The State of Maharashtra & Ors

..Petitioners

Vs.

Bhartiya Kamgar Sena

..Respondent

Mr. P. G. Sawant AGP for the Petitioners

Mr. N. A. Kulkarni for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 19th AUGUST, 2016

P.C.

1 The above Writ Petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 30-10-2010 passed by the Learned Member Industrial Court Pune by which order, the complaint filed by the Respondent No.1 Union being Complaint ULP No.27 of 2002, came to be partly allowed and the declarations and directions as appearing in the operative part of the impugned order came to be issued. The said declarations and directions are reproduced herein under for the sake of ready reference :

1. Complaint filed by the complainant is hereby partly allowed.

2. It is hereby declared that by no making remaining employees in Annexure 'A' to the complaint except 82 employees who have been made permanent, the employees who dies during the pendency of the matter and the employees who left the employment the respondents have continued unfair labour practice under item 6 of Schedule IV of MRTU and PULP Act.

3. The respondents are hereby ceased and desist from proved unfair labour practice and to take affirmative action by issuing letter of permanency in favour of the remaining employees in Annexure 'A' to the complaint from 1 January 2007 within 60 days from the date of receipt of this order.

4. The respondent is further directed to calculate the difference of wages for which the employees are entitled as permanent employees from 1-1-2007 and to pay the remaining employees within 60 days from the date of receipt of this order.

5. Remaining prayer of the complainant are hereby rejected.

6. Parties to bear their own costs.”

2 The Respondent No.1 herein is a Union representing some of the class IV employees working in the Sasoon General Hospital Pune which is a Government run hospital as it is fully funded by the State Government. The Respondent No.1 by filing the complaint in question was espousing the cause of about 150 badli / casual / temporary workers who are working in the said Sasoon Hospital. the said workers are working since the year 1998 and have been given casual breaks. The principal relief sought in the complaint was that the said 150 workers should be made permanent and by not making them permanent the Respondent No.1 sought a declaration that the Petitioners were indulging in unfair labour practice as covered by clause 9 of Schedule IV of MRTU & PULP Act 1971. In the said complaint a Written Statement came to be filed on behalf of the Petitioner wherein various defences were sought to be taken as regards the relief sought by the Respondent No.1 in the said

complaint. The said defences were inter alia to the effect that there are many unions operating in the Respondent No.1 who are representing the class IV employees, that there are no posts available for making the said class IV employees permanent etc. The parties also adduced evidence in respect of their respective assertions. It has come on record in the said proceedings that there were about 70 post which were vacant. During the course of adjudication of the complaint by 82 badli / casual / temporary workers were granted permanency out of 150 workers whose cause the Respondent No.1 was espousing.

3 It is an undisputed position that today only 44 workers are remaining to be granted the benefit of permanency. The judgment of the Industrial Court is of the year 2010. The above Petition has been filed sometime in September 2013 and has been appearing from time to time. In the year 2015, the State Government issued a G. R. in respect of the permanency to be granted to the badli / casual / temporary workers working in the Government Hospitals all over Maharashtra. It is pursuant to the said G. R. that the figure of the workers who have not been granted permanency has come down to 44 as out of 48, 3 have expired and 1 has already been made permanent. As indicated above, whilst the complaint was being adjudicated there were 70 posts which were vacant and therefore the Industrial Court has observed that keeping the said badli / casual / temporary workers as

temporary and not granting them permanency, amounts to an unfair labour practice under item 9 of Schedule IV of the MRTU and PULP Act 1971. The Industrial Court has also recorded a finding that the Petitioner that is the Sasoon Hospital is an “industry” and that the workers in question have been continued on a temporary basis since long past and have completed more than 240 days of service in the calendar year. In so far as the above Petition is concerned, a reference to the same has been made in the said G.R. dated 7-12-2015 and it has been stated in the said G. R. that in so far as the workers covered by the instant Petition are concerned, the State Government would take an appropriate decision on the basis of the outcome of the above Writ Petition.

4 In the background facts as above, where the workers have continued on a temporary basis since the year 1998 or thereabouts and since already a large number of them have been made permanent as also the G. R. has been issued by the State Government regulating as to how the temporaries working in the Government Hospitals are to be made permanent as also considering the fact that in so far as the workers covered by the instant Petition are concerned, the State Government has deferred the application of the G.R. awaiting the outcome of the above Petition. In my view, it is not necessary to interdict with the impugned order passed by the Industrial Court. Hence no case for interference is made out. The Writ Petition is accordingly

dismissed. However this court hopes and trusts that the State Government would apply the said G. R. to the remaining 44 workers in the spirit in which, and the purposes for which it is issued.

[R.M.SAVANT, J]