

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 103/2015

State of Maharashtra & Anr.	... Petitioners
V/s.	
Shankar Janglu Godase	... Respondent

WITH
WRIT PETITION NO. 127/2015

State of Maharashtra & Anr.	... Petitioners
V/s.	
Ramesh Gangadhar Kunwar	... Respondent

Mrs. Vaishali Nimbalkar, AGP for the petitioners
Mr. Manoj Harit i/b Manoj Harit & Co. for the Respondents.

CORAM: K.K. TATED, J.
DATED : NOVEMBER 30, 2016

P.C. :

1. Heard the learned AGP for the petitioner and learned counsel for the respondents.
2. In the present proceedings, at the request of the learned AGP, this court had granted time till 16.11.2016, as a last chance, to enable them to file an additional compilation of documents. Today, when the matters were called out, the learned AGP submits that they have not received copies of relevant documents from their Department. Therefore, she seeks some time.

3. Considering the fact that the respondents have already filed contempt proceedings, which are stayed by this court because of pendency of the present Writ Petitions, the time sought by the learned AGP refused.

4. Since the courts below decided both the matters by a common judgment, both these Writ Petitions are being disposed of by the common order.

5. Few facts of the matters are, as under:

The respondents were working with the petitioner since April 1983 as Mail Majoor on daily wages. They worked for more than 240 days in the preceding year when their services were terminated by order dated 09.04.1987. Hence, the respondents filed complaint (ULP) under item 1a, b, d, f, g of Schedule-IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (said Act.)

6. In that complaint, the respondent placed on record various documents including record of work done by them being Exhibit- C-65 to show that they worked for more than 240 days in each year. The petitioner also examined their officer Kashinath Tilekar in their support. Considering the evidence on record, the labour Court, Nasik allowed the complaint (ULP) No.197/1994 and 199/1994 by common judgment dated 13.08.2012 directing the petitioners to reinstate the respondents as Mail Majoor with continuity of service and full back wages w.e.f. 09.04.1987. The Labour Court also directed to pay sum of Rs.2000/- to both the complainants towards costs.

7. Being aggrieved by the said order, the petitioner preferred Revision Application (ULP) No.42 and 43 of 2012 before the Industrial Court, Nasik u/s.44 of the said Act. The Industrial Court, considering the evidence on record, particularly, Exhibit-C-65 and the deposition of the petitioner's officer Mr. Kashinath Tilekar dismissed the petitioner's revision application with costs of Rs.1000/- each and upheld the judgment and order passed by the Labour Court. Hence, the Writ Petitions.

8. The learned AGP for the petitioner submits that both the courts below erred in coming to the conclusion that the respondents worked for more than 240 days in the preceding year on the date of issuance of termination letter. She submits that both the courts below failed to consider the fact that both the respondents were working with the Public Works Department (PWD) as Mail Majoor on daily work basis as and when work was available. She submits that both the courts below failed to consider the fact that the respondents were not appointed by following due process of law i.e. by publication of an advertisement in news paper and calling applications and scrutinizing the same or by conducting oral or written examination etc. Hence, there is no question of giving them permanency in the service. In support of this contention, the learned AGP for the petitioner relies on the judgment of the Apex Court in the matter of ***Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Ors. (2006) 4 SCC 1***. Paragraph 47 to 49 thereof read thus:

“47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment

could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. *It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles [14](#) and [16](#) of the Constitution.”*

9. On the basis of this submission, the learned AGP submits that the impugned orders passed by both the courts below are required to be set aside.

10. On the other hand, the learned counsel for the respondents vehemently opposed the Writ Petitions. He submits that there are concurrent finding of facts recorded by both the courts below. Therefore, in Writ Petition under Article 226 and 227, the Court should not re-appreciate the facts at the time of deciding the present Writ Petition unless and until the question of law involved to that effect.

11. The learned counsel for the respondent submits that both the courts below relied on Exhibit- C-65 i.e. record of the work done by the respondent with the petitioner i.e. PWD as Mail Majoor for road repairs. He submits that Exhibit- C-65 is a document which was maintained and in the custody of the petitioner. He further submits that even the petitioner's witness Kashinath Tilekar specifically deposed that there were no Rules and/or Regulations for appointment of Mail Majoor for road repairs at that time. He submits that the said witness also admitted that daily wager who worked more than five years in department they used to make him/them as a temporary permanent employee. He submits that the said witness specifically stated in his deposition that the work of the Department i.e. PWD was endless and therefore, they used to convert daily wage labour on temporary permanent basis after completion of five years. He mainly relied on paragraph 21 of the Industrial Court judgment.

12. The learned counsel for the respondent submits that before both the courts below, the petitioner failed to place on record any documentary evidence to show that the respondents were not working for more than 240 days in a year. He submits that the Authority relied

on by the petitioner in the matter of *Umadevi (3) (supra)* is not applicable in the facts and circumstance of the present case. He submits that in that case, the Apex Court held that if there is a procedure for appointment of employees, that has to be followed. In the case in hand, the witness of the petitioner Mr. Kashinath Telekar himself has admitted that they used to appoint Mail Majoor on the basis of availability of work. He further submits that, Mr. Kashinath Telekar, officer of the petitioner specifically stated in his deposition that at that time there were no Rules and Regulations for appointment of daily wager. Hence, the Authority relied on by the petitioner is not applicable in the facts and circumstances of the present case. Hence, there is no substance in the Writ Petition. Same be dismissed.

13. Heard both sides. It is to be noted that in the present proceedings the respondents brought on record the documents Exhibit-C-65 to show that both of them have worked for more than 240 days in a preceding year when the termination order was issued on 09.04.1987. Apart from that Mr. Kashinath Tilekar, officer of the petitioner specifically stated in his deposition that when the respondents were appointed, same were appointed on the basis of availability of work. Even the Kashinath Tilekar stated in his deposition that there was a practice in the PWD, if a daily wager works for more than 5 years, then they used to convert them into temporary permanent employee. These facts were considered by both the courts below. Paragraph 21 of Industrial Court's order is very clear on this point. The authority relied on by the petitioner is not applicable in the facts and circumstance of the present case because the petitioner has not placed on record any Rules and/or Regulations and procedure relating

to the appointment of daily wager in the year 1983.

14. Considering these facts, I do not find any substance in the Writ Petition by which the petitioner is challenging the concurrent finding of facts recorded by both the courts below. Hence, both the Writ Petitions stand dismissed.

15. At this stage, the learned AGP for the petitioner seeks stay of this order for a period of six weeks.

16. Considering the facts and circumstances of the present case, same is allowed. Operation of this order is stayed for a period of six weeks from today.

17. It is made clear that the respondents can proceed with the proceedings filed by them in the Trial Court according to law.

(K.K. TATED, J.)