

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4288 OF 2000

1. Oilseeds Specialist,
Krishi Sanshodhan Kendra,
Jalgaon,

2. Mahatma Phule Agricultural
University, Rahuri,
Dist. Ahmednagar

-- PETITIONERS

VERSUS

Chandrakalabai Shantaram Patil,
Age-47 years, Occu-Daily Wage Labourer,
R/o Shivaji Nagar, Near Bridge,
At and Post Dist.Jalgaon

-- RESPONDENT

Mr.Parag Shahane h/f Mr.P.L.Shahane, Advocate for the petitioners.
Mr.A.V.Rakh h/f Mr.G.V.Wani, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 29/06/2017

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment and order dated 30/06/2000 by which Complaint (ULP) No.519/1999 (Old No.430/1999) has been allowed by the Industrial Court and benefits of permanency and regularization have been granted to the respondent as a labourer from the date of the complaint.

2. This petition was admitted by this Court on 30/01/2001 and interim relief was granted in terms of prayer clause 'C' on 22/06/2001.

3. I have considered the strenuous submissions of the learned Advocates for the petitioners and the employee.

4. There is no dispute that the Industrial Court has allowed the complaint and granted permanency to the respondent on the basis of her completion of 240 days in each calendar year preceding the date of reference. Based on the same, the Industrial Court has concluded that she has attained the deemed status of permanency. Though Standing Order 4-C and 4-D of the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 have not been mentioned in the impugned judgment, the concept of completion of 240 days in a calendar year flows from Standing Order 4-C.

5. This Court, in the matter of Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others, [2015(5) Mh.L.J.75], Municipal Council, Tuljapur Vs. Baban Hussain Dhale in WP No.1843/2015 and connected matters decided on 26/02/2015 and the learned Division Bench in the matter of Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade [2016(6) Mh.L.J.867], have concluded that Standing Orders 4-C and 4-D would not be applicable to

State Instrumentalities as the concept of 'deemed permanency' will not be applicable to such Establishments. In the case of private Managements, they are not required to create posts or seek permission from the statutory authorities so as to grant permanency. With regard to State Instrumentalities, unless the posts are created and are vacant, there cannot be regularization or absorption on non-existing posts.

6. In the light of the law as is settled, the impugned judgment of the Industrial Court cannot be sustained.

7. However, learned Advocate for the petitioner/Establishment submits that after the impugned judgment was delivered, the Agricultural University had to resort to retrenchment of excess daily wagers, temporaries and casuals. The law of retrenchment was complied with. On similar set of facts, the Hon'ble Apex Court dealing with pending petitions involving the same petitioner Agricultural University, has delivered a judgment on 24/07/2001 in the matter of Mahatma Phule Agricultural University and others Vs. Nashik Zilla Sheti Kamgar Union and others [2001{III} CLR 4]. Vide the said judgment, the Agricultural University was directed to re-calculate the amount of compensation and in the event of any short fall, the same was to be paid to all such employees who had been retrenched. Learned Advocate for the petitioners submits that the respondent was accordingly paid

the remaining portion of compensation.

8. He further submits that as work was available, the petitioners issued an order dated 12/03/2003 and re-employed the respondent w.e.f. 17/03/2003. She was granted regularization and upon her superannuation on 30/06/2013, she was granted all retiral benefits including pensionary benefits as she had completed 10 years in regular employment.

9. Considering the above, this petition is allowed. The impugned judgment dated 30/06/2000 is quashed and set aside and complaint (ULP) No.519/1999 stands disposed of.

10. Needless to state, as the subsequent events indicate that the respondent was regularized in employment and is being granted retiral and pensionary benefits, no further grievance would survive.

11. Rule is made absolute in the above terms.

(Ravindra V.Ghuge, J.)