

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1320 OF 2010

The State of Maharashtra & Ors.] Petitioners

Vs.

Maharashtra Rajya Chaturtha Shreni]

Sarkari Karmachari Sanghatana, Mumbai.] Respondent

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Ms. M.S. Bane, 'B' Panel Counsel for petitioners-State.

Mr. Mahesh Rawool, for respondent.

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CORAM : R.G. KETKAR, J.

DATE : 6th JULY, 2017.

P.C.

Heard Ms. Bane, learned A.G.P for petitioners-State and Mr. Rawool, learned Counsel for respondent.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 1st December, 2008 passed by the learned Member, Industrial Court, Kolhapur [for short 'Tribunal'] in Complaint [U.L.P] No. 25 of 1993. By that order, Tribunal allowed the Complaint filed by the respondent/Union under Section 28 read with Items- 6,9 and 10 of Schedule-IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 [for short 'Act'] and declared that petitioners have engaged in and continue to

engage in unfair labour practice under item 6 & 9 of Schedule-IV of Act and directed to cease and desist them from continuing to engage in the said unfair labour practice by granting permanency to the concerned six employees whose names appear in the annexure to the complaint from the date of filing of the complaint i.e from 1st December, 1993. The Tribunal directed to extend benefit of permanency from the date of the order. The relevant and material facts, giving rise to the present Petition, briefly stated, are as under.

3. Along with the Complaint, respondent/Union enclosed Annexure 'A' containing names of six employees [for short 6 workmen'] details whereof are as under:

List of 6 workmen:

Sr. No.	Names and Addresses of Workmen	Date of Joining
[1]	Janu Dhulaji Gawade	01.01.1981
[2]	Prakash Dhondu Shinde	16.01.1981
[3]	Jijabai Tukaram Devli	02.01.1986
[4]	Lakshmi Bhagwan Dhuri	02.06.1979
[5]	Bala Babu Dhuri	02.06.1979
[6]	Mangesh Bhiva Morye	01.10.1981

Respondent contended these workmen are working with petitioners continuously. They have completed 240 days in a year continuously and, therefore, petitioners were bound to make them permanent after completion of 240 days in a year.

4. Petitioners filed written statement resisting the

complaint, inter alia, contending that Department of Horticulture is not an 'Industry' and, therefore, provisions of the Industrial Disputes Act, 1947 [for short 'I. D. Act'] are not applicable to them. The petitioners denied that 6 workmen completed 240 days in a year continuously and contended that they are not entitled to claim permanency as also benefits of permanency. During pendency of the complaint, Union filed application Exhibit-U-17 for injunction restraining the petitioners from filling up six vacant posts in Annexure 'A' category. By order dated 4th August, 2008, Tribunal allowed the application and restrained the petitioners from filling up six vacant posts in Annexure 'A' category.

5. On the basis of pleadings of the parties, the Tribunal framed necessary issues. Parties led evidence. After considering the material on record, the Tribunal allowed the complaint as indicated hereinabove. It is against this order, Petition is instituted under Article 227 of the Constitution of India.

6. In support of this Petition, Ms. Bane strenuously contended that there are no sanctioned posts, hence, Tribunal was not justified in allowing the complaint. She submitted that six workmen were not continuously working for more than 240 days in 12 months. She relied on paragraph 36 of the decision in the case of **Secretary, State of Karnataka Vs. Umadevi & Ors, 2006 (1) Supreme Court Cases 1**. In paragraph 36, the Apex Court referred to decision in the case of **Teri Oat Estates (P) Ltd. Vs. U.T. Chandigarh, (2004) 2 Supreme Court Cases 130** and extracted paragraph 36 of that decision. That decision kept in

mind the distinction between 'regularisation and 'permanency' and laid down that regularization is not and cannot be the mode of recruitment by any State. It was also held that regularization cannot give permanence to an employee whose services are ad-hoc in nature. Ms. Bane submits that six workmen were working on ad-hoc basis. By ordering regularization will amount to mode of recruitment in the employment of petitioners which is not permissible. She also relied upon decision of this Court in the case of **Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade, 2016 (6) Mh. L. J, 687** and in particular paragraph 15 thereof to contend that merely because an employee continued to render service for 240 days in a year that by itself will not be sufficient for him to claim permanency in the post unless he is able to establish that such a permanent post duly approved by the competent Authority is vacant and the claimant is duly eligible for being appointed in such post.

7. Ms. Bane submits that Department of Horticulture is not an Industry and, therefore, provisions of I.D Act are not applicable. She has taken me through the complaint filed by the Union, written statement filed by the petitioners as also oral evidence adduced by the parties as also register of daily wagers for the period from 1979-1980 to 2006-2007.

8. On the other hand, Mr. Rawool supported the impugned order. He submitted that Department of Horticulture is an Industry. In support of this proposition, he relied upon following decisions:

- [1] Chief Conservator of Forests and another Vs. Jagannath Maruti Kondhare and others, (1996) 2 Supreme Court Cases 293.
- [2] Kisan Atmaram Kasti Vs. Forest Development Corporation of Maharashtra Ltd. & Ors., 2011 (3) Mh. L. J. 774.

He submitted that in the written statement, petitioners did not contend that no sanctioned posts are available. He submitted that no case is made out for interfering with the impugned order.

9. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused material on record. I have already extracted Annexure 'A' to the complaint. The Tribunal has considered evidence of petitioners' witness and in particular admissions given by him during cross-examination. Petitioners examined Bhau Sitaram Patade, Assistant Administrative Officer with Agricultural Department. He admitted that:

“It is correct to say that employees concerned are working from the dates mentioned in the Annexure to the complaint. It is correct to say that employees concerned are working as on date from the date of joining as to availability of the work. It is correct to say that respondents require services of the employees concerned as per availability of work. There are no employees working in the cadre of Mazdoor, apart from those mentioned in the annexure to the complaint”.

10. Ms. Bane submitted that in examination-in-chief this witness stated that there are no posts of 'Mazdoor' of permanent nature available with the respondents. She, therefore, submitted that as posts of mazdoor are not available, the Tribunal was not justified in allowing the complaint.

11. As noted earlier, perusal of the written statement does not indicate that such plea was taken in the written statement. In fact, while allowing the complaint, the Tribunal has considered evidence of petitioners' witness in paragraph 7 as also that petitioners nowhere made statement that there are no sanctioned posts available, and the employment provided to the six employees is not by following due process of law. They have nowhere contended that appointment of the concerned employees does not have sanction or without there being approval from the appropriate authority, and, therefore, not proper and legal. In view thereof, statement in examination-in-chief of witness Patade is beyond the pleadings and cannot be relied upon.

12. With the assistance of the learned Counsel for the parties, I have also perused register produced by the petitioners before the Tribunal. A perusal of the register shows that:

[1] Janu Dhulaji Gawade joined on 1st January, 1981. He had worked for 258 days in the year 1982-1983, for 261 days in the year 1983-1984, 241 days in the year 1984-1985 and for 254 days in the year 1990-1991.

[2] Mr. Prakash Dhondur Shinde joined on 16th September, 1981. He had worked for 272 days in the year 1983-

1984 and for 260 days in the year 2000-2001.

- [3] Smt. Jijabai Tukaram Devli joined on 2nd January, 1986. She had worked for 253 days in the year 2000-2001, for 271 days in the year 2004-2005 and for 282 days in the year 2005-2006.
- [4] Smt. Laxmi Bhagwan Dhuri joined on 2nd June, 1979. She had worked for 279 days in the year 1979-1980. , for 288 days in the year 1980-1981, for 303 days in the year 1981-1982, for 295 days in the year 1982-1983, for 291 days in the year 1983-1984 and for 291 days in the year 2000-2001.
- [5] Mr. Bala Babu Dhuri joined on 2nd June, 1979. He had worked for 285 days in the year 1981-1982, for 295 days in the year 1982-1983, for 301 days in the year 1983-1984, for 257 days in the year 2002-2003, for 326 days in the year 2004-2005, for 346 days in the year 2005-2006 and for 244 days in the year 2006-2007.
- [6] Mr. Mangesh Bhiva Morye joined on 1st October, 1981. He had worked for 271 days in the year 1983-1984, for 259 days in the year 1986-1987, for 261 days in the year 2002-2003, for 274 days in the year 2003-2004, for 308 days in the year 2004-2005 and for 320 days in the year 2005-2006.

13. In my opinion, controversy raised in this Petition is concluded by the decision of this Court in the case of **Conservator of Forests & Anr. Vs. Savala Dhondiba Pise in Writ Petition No.**

3274 of 2002 and other companion Writ Petitions decided by this Court [Coram: Smt. Nishita Mhatre, J.] on 8th September, 2010. This Court referred to the decision of the Apex Court in the cases of;

- [1] **Secretary, State of Karnataka and others Vs. Umadevi (3) and others, (2006) 4 Supreme Court Cases, 1.**
- [2] **Official Liquidator Vs. Dayanad and others, (2008) 10 Supreme Court Cases 1,**
- [3] **Division Bench judgment of this Court in the case of The State of Maharashtra & Anr. Vs. Pandurang Sitaram Jadhav, Letters Patent Appeal No. 14 of 2008 arising from W.P. No. 4141 of 2006 and of learned Single Judge in the case of;**
- [4] **The Conservator of Forests & Anr. Vs. Shri Bajarang Popat Kale in Writ Petition No. 5954 of 2003 decided on 10th December, 2008 by this Court [Coram: Chandrachud, J.]**

14. This Court also considered decision of the Apex Court in the case of **MSRTC & Anr. Vs. Casteribe Rajya Parivahan Karmchari Sanghatana, (2009) 8 SCC 556**. In paragraph 18, this Court summarized the ratio laid down in various decisions. In paragraph 21, this Court referred to the decision of the Apex Court in the case of **Chief Conservator of Forests & Anr. Vs. Jagannath Maruti Kondhare, 1996 1 CLR 680** which held that Forest Department of the State of Maharashtra is an Industry. In my opinion, controversy is squarely covered by the decision of this

Court in the case of **Conservator of Forests & Anr**, [supra] Writ Petition No. 3274 of 2002 and companion Writ Petitions.

15. The Tribunal has referred to the decision of **Umadevi** [supra] and held that Act of the petitioners amounts to indulgence in unfair labour practice under Items 6 and 9 of Schedule IV of the Act.

16. In the light of the above discussion as also for the reasons recorded in the decision of **Conservator of Forests & Anr**, [supra] **Writ Petition No. 3274 of 2002** and companion Writ Petitions decided on 8th September, 2010 as also for the reasons recorded by the Tribunal in paragraphs 7 onwards, I do not find that the Tribunal has committed any error while passing the impugned order. Petitioners are not in a position to demonstrate that findings recorded by the Tribunal are contrary to the evidence on record or that the findings are not supported by evidence on record. Petitioners were not in a position to demonstrate that findings recorded by the Tribunal are perverse. Merely because on the basis of the evidence on record, another view is possible, that itself is not ground for invocation of powers under Article 227 of the Constitution of India. In the result, Petition fails and the same is dismissed. Rule is discharged with no order as to costs.

[R.G. KETKAR, J.]