

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4144 OF 2002

Conservator of Forests, Nashik Circle,	]	
Old Agra Road, Nashik & anr.	]	Petitioners
Vs.		
Shri Kalu Daulat Bendkuli	]	Respondent

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Ms. Jyoti Jadhav, A.G.P, for petitioners.
Mr. Pratik B. Rahade, for respondent.

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CORAM : R.G. KETKAR, J.

DATE : 13th JULY, 2017.

P.C.

Heard Ms. Jadhav, learned A.G.P for petitioners and Mr. Rahade, learned Counsel for respondent.

2. By this Petition under Article 226 of the Constitution of India, petitioners have challenged the judgment and order dated 11th December, 2001 passed by the learned Industrial Court, Nashik [for short 'Tribunal'] in Complaint [U.L.P] No. 785 of 1998 along with other 79 complaints. By that order, Complaint (ULP) Nos. 770 to 794/98, Complaint (ULP) Nos. 1 to 3/99, Complaint (ULP) Nos.410,411,412,413,414,415,416,418,419,420,421,422,423,424, 425,426,429,430,432,433,434,437,438,440,441,442,443, 444/99 and Complaint (ULP) No. 180,181,185, 186, 188, 189, 190, 191,

192, 194, 195, 196, 197, 200, 203 and 204/2000 are allowed by the Tribunal and Complaint (ULP) Nos. 413,417,421,427,428,431,435, 436, 439/99 and Complaint (ULP) Nos. 182, 183,184,187,193,198,199,201,202/2000 stand dismissed. The Tribunal declared that petitioners have committed unfair labour practices under items 5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 [for short 'Act']. The Tribunal directed the petitioners to cease and desist from engaging such unfair labour practices and directed them to regularize the complainants in services and grant them benefits of permanency in 'D' category of Class IV employees by taking necessary sanction from the Government within six months from the date of the order and consequential benefits be given to them with effect from 1st December, 2001. Petitioners were further directed to maintain the seniority of the complainants in all respect by rectifying the mistake if any.

3. In support of this Petition, Ms. Jadhav strenuously contended that Tribunal committed serious error in holding that Department of Conservator of Forest is an 'Industry' as per Section 2(j) of the Industrial Disputes Act, 1947 [for short 'I.D. Act']. She further submitted that respondent herein relied upon Government Resolution dated 15th October, 2012 which lay down that employees who have put into 240 days continuously for five years as on 31st January, 1996 can be regularized subject to conditions stipulated in the Government Resolution dated 31st January, 1996. She submitted that respondent herein did not complete 5 years

continuous service by putting in 240 days in a year and, therefore, is not entitled to benefit of Government Resolution dated 16th October, 2012.

4. On the other hand, Mr. Rahade supported the impugned order. He submitted that by the impugned order, Tribunal disposed of 80 complaints. He invited my attention to paragraphs 12 and 13 of the impugned order. In paragraph 13, Tribunal after perusing original evidence adduced by the complainants as also perusing various documents and extract of working days of the complaints below Exhibit-C-9 produced by the petitioners observed that respondent herein had completed 240 days in each year and had put in five years continuous service. He relied on decision in the case of **Conservator of Forests & Anr. Vs. Savala Dhondiba Pise, Writ Petition No. 3274 of 2002** and companion Writ Petitions dated 8th September, 2010 of this Court [Coram: Smt. Nishita Mhatre, J.]. He submitted these Petitions were also instituted challenging the very impugned order.

5. I have considered rival submissions of learned Counsel for the parties. I have also perused material on record. In paragraph 13 of the impugned order, the Tribunal has observed thus:

“Complainants have examined some of the employees in complaints and placed all the facts on record. After perusal of the oral evidence adduced by the complainants, it becomes crystal clear that most of the complainants have completed 240 days in each year and 5 years continuous service. Therefore work performed by the complainant being of permanent and

perennial in nature. They are entitled to be made permanent. It is further clear that though the complainants have worked under various schemes then also after completion of those schemes, services of complainants were never terminated and they were engaged under the various schemes. Respondent department has filed on record various documents and abstract of working days of the complaints below Ex. C-9 in complaint (ULP) Nos. 108 to 204/2000 and below Exh. C-12 in Complaint (ULP) No. 410 to 444/99 and below Exh.C-9 in complaint (ULP) No. 778 to 794/98. After perusal of these abstracts of working days, it becomes crystal clear that most of the complainants have completed 240 days in each year and 5 years continuous service.

6. As noted earlier, by impugned order, Tribunal had disposed of 80 complaints. Several Petitions were instituted in this Court. By order dated 8th September, 2010, this Court had dismissed all the Petitions. This Court dealt with contention that Department of Conservator of Forests is not an 'Industry' as also contention that merely because complainants had put into 240 days in a year that itself is not sufficient for their absorption. All these contentions were repelled by this Court. In view of the finding of the Tribunal in paragraph 13 extracted hereinabove and for the reasons recorded in the order dated 8th September, 2010 in Writ Petition No. 3274 of 2002 and other companion Writ Petitions, I do not find that the Tribunal committed any error in allowing the complaint filed by the respondent. Hence, Petition fails and the same is dismissed. Rule is discharged. In the circumstances of the case, there is no order as to costs.

[R.G. KETKAR, J.]