

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.174 OF 2010
IN
WRIT PETITION NO.5786 OF 1997**

1 Vishwanath Shankar Sadafule	)
having his residential address at	)
House No.552, North Sadar,	)
Sadar Bazar, Solapur (East)	)
(now residing at)	)
Fakruddin Nagar, Solapur 410 003)	
2 Smt. Vimal Vishnu Mane	)
3 Anil Vishnu Mane	)
4 Sudhir Vishnu Mane	)
5 Pramod Vishnu Mane	)
Appellants 2 to 5 are the legal heirs of	)
Vishnu Tukaram Mane deceased employee)	
having their address at	)
Room No.97, Sanjay Nagar,	)
Kumatha Naka, Solapur,	)
6 Revan Damu Suyavanshi	)
having his address at	)
Vasti Ambrai, Degaon Naka	)
House No.505, Solapur,	)
(now residing at)	)
At Dhekari, Post- Tuljapur	)
Dist Usmanabad	)
6-A Smt. Pushpa Revan Survase	)
Alias Suryavanshi Age 51 years	)
6-B Manoj Revan Survase	)
Alias Suryavanshi Age 35 years	)
6-C Dilip Revan Survase	)
Alias Suryavanshi Age 32 years	)

6-D Rajendra Revan Survase)
Alias Suryavanshi Age 30 years)

(the Applicants 1-A to 1-D all are)
having their address at Dhekari,)
Post – Tuljapur, Dist Usmanabad)
Pin Code 413 601)

6-E Punam Dayanand Phadke)
Married daughter having her address)
at Post Kemwadi)
Taluka Tuljapur, Dist Osmanabad) ..Appellants

Vs

1 Maharashtra State Electricity)
Distribution Co. Ltd.)
Constituted under the Electric Supply)
Act 1947, through its Controller of)
Vehicles Workshop, Pune 411 053)

2 R. U. Ingale, Member)
Industrial Court, Maharashtra,)
at Solapur) ..Respondents

ALONGWITH
CIVIL APPLICATION NO.152 OF 2011
IN
LETTERS PATENT APPEAL NO.174 OF 2010
IN
WRIT PETITION NO.5786 OF 1997

Maharashtra State Electricity Distribution Co. Ltd. ..Applicant
(Orig. Respondent)

Vs.
Vishwanath Shankar Sadafule & Ors. ..Respondents

Ms Nayana Buch i/b Mr. S. K. More for the Appellants in Letters Patent
Appeal and for the Respondents in Civil Application
Mrs. Anjali Raghunath Shiledar Baxi, for the Respondent No.1 in Letters
Patent Appeal and for the Applicant in Civil Application

**CORAM :R. M. SAVANT, &
SARANG V KOTWAL, JJ
RESERVED ON: 11th October, 2017
PRONOUNCED ON : 10th November, 2017**

JUDGMENT (PER R. M. SAVANT J.)

1 The above Letters Patent Appeal is filed challenging the judgment and order dated 26-2-2010 of the Learned Single Judge of this Court (Anoop V. Mohta J.) by which order the above Writ Petition being No.5786 of 1997 filed by the Respondent No.1 came to be allowed and resultantly the judgment and order dated 29-4-1997 passed by the Learned Member of the Industrial Court, Solapur in Complaint ULP No.210 of 1989 and companion ULP's came to be set aside.

2 The facts involved in the above Letters Patent Appeal can in brief be stated thus:

The original complainants i.e. the Appellants herein were ex-servicemen and had applied for the post of watchman with the Respondent No.1 herein which is an Electricity Distribution Company. The said application was made by the complainants sometime in the year 1988. The complainants were appointed to the post of watchman on 15-2-1988 on contract basis on a fixed tenure on an consolidated salary of Rs.400/- per month. The

complainants rendered continuous services for a period of over 19 months and were given a break of two days and thereafter reemployed on contract basis and subject to the terms and conditions which were applicable to their earlier appointment. Since the complainants were not made permanent or their services were not regularised that they filed complaint under Section 28 read with Item 6, 9 and 10 of the Schedule IV of the MRTU and PULP Act 1971. The said Complaints were numbered as 210 of 1981, 211 of 1981 and 212 of 1981. In the said Complaints the principal prayer of the complainants was a direction to the Respondent No.1 to confer the status and privileges of the permanent employees on the complainants. It was the case of the complainants that they have worked for more than 240 days and that the work discharged by the complainants was permanent and perennial in nature. It was further their case that the Respondent No.1 has framed regulations for appointing and regularising the services of the employees like the complainants. It was their case that they were entitled for regularisation as the model standing orders are applicable to them and that in not conferring them the benefits of permanency, the Respondent No.1 has committed a breach of the standing orders. It was the case of the complainants that the Respondent No.1 has opened vehicle service centers at many District places and hence the services of the complainants were required by the Respondent No.1. It was therefore the case of the complainants that by not giving them the benefits of permanency the Respondent No.1 has committed unfair labour

practice under Items 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971. The Complaints came to be amended as after filing of the complaint, the services of the complainants came to be terminated having regard to the terms of their appointment. The complainants therefore prayed for their reinstatement with effect from 4-1-1990 with continuity of service and payment of back wages.

3 In the said Complaints the Respondent No.1 filed its Written Statement. The Respondent No.1 at the outset questioned the territorial jurisdiction of the Industrial Court, at Solapur as according to it the Industrial Court Pune would have jurisdiction. It was the case of the Respondent No.1 that since the complainants were ex-servicemen and had approached the Respondent No.1 for employment on account of their financial stringency, the Respondent No.1 had with a view to help the complainants financially, had engaged them for a fixed period on a consolidated salary for providing additional security to the vehicles in the workshop. The Respondent No.1 averred in the Written Statement that the complainants having not been recruited by following the regular procedure prescribed for recruitment, could not claim any right on the basis of their said appointment. In so far as their continuance in the post of watchman is concerned, it was the case of the Respondent No.1 that the services of the complainants were required to be terminated with the final contractual period coming to an end on 3-1-1990. It

was the case of the Respondent No.1 that no unfair labour practice was committed by the Respondent No.1 and that since the construction of the car washer room which was in progress that the complainants were engaged for the sake of security and on completion of all the construction work their contractual period came to an end on 3-1-1990. It was also averred by the Respondent No.1 that there is no sanctioned post of watchman in the District Vehicle Service Center at Solapur.

4 The Industrial Court on the basis of the aforesaid pleadings framed only one issue which was to the following effect:

“ Whether the complainants have proved that the Respondent has engaged in or is engaging in unfair labour practices under Item 6, 9 and 10 of the Schedule IV of the MRTU and PULP Act 1971”.

In support of their assertions, the complainants did not adduce any oral evidence but relied upon the documentary evidence. In so far as the Respondents are concerned, the Respondent No.1 adduced evidence of their Deputy Executive Engineer, CW-1. The Industrial Court Solapur on the basis of the material on record came to a conclusion that the Respondent No.1 has committed unfair labour practice under Item 6, 9 and 10 of the Schedule IV of the MRTU and PULP Act 1971, as a consequence the Industrial Court directed

the Respondent No.1 to confer upon the complainants status and privileges of permanent employees in the post of watchman from the date of completion of 240 days. The Industrial Court consequently also set aside the termination of the services of the complainants being illegal and nonest.

5 The gist of the reasoning of the Learned Member of the Industrial Court was that since the complainants had rendered services during the period 15-2-1988 to 3-1-1990 which is a period of more than 240 days in a calendar year, they were entitled to permanency in the Respondent No.1. The Learned Member observed that the case of the Respondent No.1 that the complainants were engaged on a contract basis could not be accepted as a perusal of the application form submitted by the complainants to the Respondent No.1 manifest that the complainants had applied for being provided employment and not for engaging them on a contract basis. In support of the said observation, the Learned Member relied upon the cross-examination of the witness of the Respondent No.1 i.e. the Deputy Engineer who according to the Learned Member has admitted in his cross-examination that the application forms were submitted by the complainants for employment and not for work on contract basis. The Learned Member further observed that the said witness had also admitted that duties discharged by the complainants were of a regular watchman. The Learned Member observed that by not granting them the permanency the Respondent No.1 had committed unfair labour practice

under Item 6 and 9 of the Schedule IV of the MRTU and PULP Act, 1971. The Learned Member observed that though it was the case of the Respondent No.1 that there were standing orders framed by the Respondent No.1, the same were not placed on record and therefore the case of the complainants based on the model standing orders was required to be accepted. The Learned Member also deemed it appropriate to draw an adverse inference against the Respondent No.1 in view of the fact that the register of the employees was not produced before it. The Learned Member also did not accept the case of the Respondent No.1 that on account of non availability of the work, the services of the complainants were required to be terminated on 3-1-1990. The Learned Member relied upon the cross-examination of the Deputy Engineer who has stated that there is no evidence to show that on 4-1-1990 the work assigned to the complainants was over. As indicated above the Learned Member has accordingly allowed the Complaints and issued the directions which are contained in the operative part of the order passed by him and which have been referred to in the earlier part of this judgment.

6 Against the judgment and order dated 29-4-1997 of the Learned Member of the Industrial Court, the MSEDCL i.e. the Respondent No.1 filed the above Writ Petition in this court being Writ Petition No.5786 of 1997. The said Writ Petition came to be admitted and interim reliefs came to be granted whereby the order of the Industrial Court dated 29-4-1997 came to be stayed,

as a result of which the services of the complainants were discontinued. The Writ Petition came to be allowed by a Learned Single Judge of this Court by the impugned judgment and order dated 22-6-2010. The gist of the reasoning of the Learned Single Judge was that since the complainants were admittedly appointed on a contractual basis for a fixed period and on a consolidated salary with clear indication that they would have no claim or any right of claiming permanency and since the complainants having accepted the said condition unconditionally, their case based on the standing orders or the judgments could not be accepted. The Learned Single Judge was of the view that since the complainants had continued on the basis of the interim orders passed in the Complaints, their case falls within the ambit of “litigious employment”. The Learned Single Judge observed that in view of the interim orders passed by the Industrial Court that the Respondent No.1 was compelled to continue the complainants. The Learned Single Judge lastly observed that the complainants were never appointed by following the due procedure as is required to be followed by the Respondent No.1 which is a statutory body. The Learned Single Judge relied upon the judgment of the Apex Court in **MSRTC & Ors. Vs. Castetribbe Rajya P. Karmchari Sanghatana**¹ and especially the observation that the creation of posts is not within the domain of the judicial functions and which obviously pertains to the domain of the executive. The Learned Single Judge as indicated above accordingly set aside the judgment and order dated 29-4-1997 passed by the Industrial Court, Solapur.

¹ 2009 III CLR 262

7 Heard the Learned Counsel for the parties.

8 It was the submission of the Learned Counsel appearing for the Appellants Ms Buch that the complainants having put in more than 240 days of service in a calendar year between the period 1988 to 3-1-1990 were entitled to permanency in terms of the standing orders applicable. Reliance is placed on the Model Standing Orders and especially clause 4(c) thereof which provides for a “badli” or temporary workman who has put in 240 days of service in a calendar year to be made permanent. It was the submission of the Learned Counsel that the Learned Single Judge had erred in relying upon an extract from the judgment of the Apex Court in MSRTC's case (supra) which extract according to the Learned Counsel has been read out of context by the Learned Single Judge. It was the submission of the Learned Counsel that the evidence which has come on record through the witness of the Respondent No.1 proves the case of the complainants that the complainants were carrying out duties which were assigned to the permanent watchmen who were in the services of the Respondent No.1. It was the submission of the Learned Counsel that it has been clarified in the judgment in MSRTC's case (supra) that the rights of the workmen under the provisions of the MRTU and PULP Act have not been taken away by the judgment of the Apex Court in Umadevi's case. It was therefore the submission of the Learned Counsel that the impugned

judgment and order dated 22-6-2010 passed by the Learned Single Judge is required to be interfered with by this Court in its Letters Patent Appeal jurisdiction.

9 Per contra, the Learned Counsel for the Respondent No.1 Ms Baxi would submit that having regard to the terms of the contract of employment between the complainants and the Respondent No.1, the complainants are not entitled to claim permanency to the post of watchman. The Learned Counsel would seek to draw our attention to the terms of the contract as mentioned in the appointment letter. It was the submission of the Learned Counsel that the contract of employment had come to an end on 3-1-1990 by efflux of time and the continuance thereafter of the complainants under the interim orders of the Industrial Court cannot enure to the benefit of the complainants so as to contend that they had put in continuous service without being made permanent. It was the submission of the Learned Counsel that the continuance of the complainants can be termed as "litigious employment" as observed by the Apex Court in Umadevi's case. The Learned Counsel would contend that the complainants were employed to provide security for the District Vehicle Service Center which no more exists and therefore the complainants cannot be granted the reliefs they have sought vide the Complaints. The Learned Counsel sought to place reliance on the judgment of the Apex Court in the matter of **State of Maharashtra & Ors Vs. Anita &**

Anr.² to contend that the complainants are now estopped from challenging the nature of their appointment once having accepted the same. It was therefore the submission of the Learned Counsel that the Learned Single Judge of this Court has rightly set aside the judgment and order dated 29-4-1997 passed by the Industrial Court having regard to the facts which have come on record and therefore no interference is called for with the said judgment of the Learned Single Judge in the Letters Patent Appeal Jurisdiction.

10 Having heard the Learned Counsel for the parties we have considered the rival contentions. As indicated in the earlier part of this judgment, the Complaints filed by the Appellants herein being Complaint ULP Nos.210 of 1981, 211 of 1981 and 212 of 1981, were allowed by the Industrial Court by the impugned judgment and order dated 29-4-1997 and a declaration of unfair labour practice came to be issued against the Respondent No.1 for violating item 6 and 9 of Schedule IV of the MRTU and PULP Act 1971. The said declaration is founded on the finding reached by the Industrial Court that the complainants having put in 240 days of service were entitled to the benefit of permanency and since they were not made permanent, the Respondent No.1 had indulged in an unfair labour practice. The said judgment and order passed by the Industrial Court as indicated above was interfered with by the Learned Single Judge of this Court, resultantly the said judgment and order dated 29-4-1997 of the Industrial Court has been set aside.

2 (2016)8 SCC 293

11 In the context of the challenge raised in the above Letters Patent Appeal, it would be necessary to refer to the terms of appointment of the complainants when they were appointed as watchmen on 9-2-1988. The said terms are reproduced hereinunder:

1 You will be paid a monthly lump-sum remuneration of Rs.400/- (Rs. Four hundred only)

2 You will have to work on either of there two shifts from 16800 to 2400 hours or 0000 hours to 0500 hours.

3 You are entitled for one weekly off and all other leave is without pay.

4 This order shall be terminated if found necessary without assigning any reason by giving one week's notice

5 You are responsible for the Security of the Board's property during your duty hours at the District Vehicle Services Center, Solapur.

6 This order will neither entitle you for any kind of permanent job in MSEB nor preference in recruitment.

7 No uniform will be provided to you but tools and tacklers as lathis, torch and whistle will be provided by us.

8 The payment will be made on or before 5th of every month, subject to the attendance certificate given by the Dy. Executive Engineer.

9 The Board will not compensate for any kind of injury/mishap during the course of duty. Personal safety is at your risk.

10 If you are agree for the above terms and conditions, you should report to Dy. Executive Engineer, District Vehicle Service Center on or before 15.2.88.

A reading of the aforesaid terms and conditions therefore discloses that the complainants were to be paid a consolidated salary of Rs.400/- per month, they were entitled to one weekly off and all other leave was without pay, they were informed that they would neither be entitled for any kind of permanent job in MSEB nor preference in recruitment and lastly in clause (10) it was stated that if they agreed to the aforesaid terms and conditions, they should report to the Deputy Executive Engineer, District Vehicle Service Center on or before 15-2-1988. The preface to the said terms and conditions stipulated, the period for which the complainants were appointed namely that they were appointed for a period of 6 months from the date of the order, the said terms and conditions assume importance in the context of the challenge raised in the above Letters Patent Appeal.

12 Before we deal with the said challenge, it would be necessary to refer to the judgment of the Apex Court in MSRTC & Anr. Vs. Castetribes Rajya Karmachari Sanghatna (supra). In the said case the issue which had arisen before the Apex Court was whether the provisions of the MRTU & PULP Act 1971 have been denuded of the statutory status on account of the Constitution Bench Judgment of the Apex Court in Umadevi's case. The Apex Court

answered the said issue in the negative. The Apex Court held that in the context of the purpose and object of the MRTU & PULP Act which was to provide for prevention of certain unfair labour practice listed in Schedule II, III and IV of the said Act. The Industrial and Labour Courts were empowered to decide whether the person named in the Complaint has engaged in or is engaging in unfair labour practice and if the unfair labour practice is proved, then to declare that such unfair labour practice has been committed by the said person and directing him to cease and desist from such unfair labour practice and take affirmative action. The Apex Court held that power given to the Industrial and the Labour Courts under Section 30 of the said Act is wide and the affirmative action mentioned therein is inclusive and not exhaustive. The Apex Court held that employing badlis, casuals or temporaries and to continue them as such for years together with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under item (6) of the Schedule (IV). Once such unfair labour practice is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer. The Apex Court held that the provisions of the MRTU and PULP Act and the powers of Industrial and Labour Courts provided therein were not at all under consideration before the Apex Court in Umadevi's case and what was for consideration before the Apex Court was the exercise of the powers by High Courts under Article 226 and the Apex Court under Article 32 in the matter of

public employment. The Apex Court held that Umadevi's case is an authoritative pronouncement for the proposition that the Apex Court under Article 32 and the High Courts under Article 226 shall not issue directions for absorption, regularisation or permanent continuance of temporary contractual, casual, daily wage or ad-hoc employees. Paragraph which is material of the said judgment is paragraph 26 which for the sake of ready reference is reproduced hereinunder:

26. The question that arises for consideration is - have the provisions of MRTU & PULP Act denuded of the statutory status by the Constitution Bench decision in Umadevi (supra). In our judgment, it is not. The purpose and object of MRTU & PULP Act, inter alia, is to define and provide for prevention of certain unfair labour practices as listed in Schedule II, III and IV MRTU & PULP Act empowers the Industrial and Labour Courts to decide that the person named in the complaint has engaged in or is engaged in unfair labour practice and if the unfair labour practice is proved, to declare that an unfair labour practice has been engaged in or is being engaged in by that person and direct such person to cease and desist from such unfair labour practice and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate policy of the Act. The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent

employees is an unfair labour practice on the part of the employer under item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer. The provisions of MRTU & PULP Act and the powers of Industrial and Labour Courts provided therein were not at all under consideration in the case of Umadevi. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in item 6 of Schedule IV and the power of Industrial and Labour Courts under Section 30 of the Act did not fall for adjudication or consideration before the Constitution Bench. It is true that the case of Dharwad District PWD Literate Daily Wage Employees Assn. 1990 I CLR 534 SC 396 arising out of industrial adjudication has been considered in Umadevi and that decision has been held to be not laying down the correct law but a careful and complete reading of decision in Umadevi leaves no manner of doubt that what this Court was concerned in Umadevi was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognized by the rules or procedure and yet orders of their regularization and conferring them status of permanency have been passed. Umadevi is an authoritative pronouncement for the proposition that Supreme Court (Article 32) and High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad-

hoc employees unless the recruitment itself was made regularly in terms of constitutional scheme. Umadevi does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of MRTU & PULP Act to order permanency of the workers who have been victim of unfair labour practice on the part of the employer under item 6 of Schedule IV where the posts on which they have been working exists. Umadevi cannot be held to have overridden the powers of Industrial and Labour Courts in passing appropriate order under Section 30 of MRTU & PULP Act, once unfair labour practice on the part of the employer under item 6 of Schedule IV is established.

13 Hence in the light of the judgment of the Apex Court in MSRTC & Anr. Vs. Castetribes Rajya Karmachari Sanghatna (supra) the Industrial Court in the instant case was entitled to consider whether the Respondent No.1 has committed an unfair labour practice by not making the complainants permanent after they had rendered 240 days of continuous service in a calendar year. It is in the aforesaid background that the facts of the instant case would have to be considered.

14 As indicated above, the complainants were appointed by identical appointment letters on 9-2-1988. The said appointment letters as we have already seen make it clear that the complainants were appointed on rate contract basis for a period of 6 months from the date of the order. They were appointed on a consolidated salary of Rs.400/- per month. It was made clear to them that they would not be entitled to claim any kind of permanent job in

MSEB nor preference in recruitment. They were asked to report to the Deputy Executive Engineer, District Vehicle Service Center if they were agreeable to the aforesaid terms and conditions. Implicit in the complainants reporting to the Deputy Executive Engineer is the fact that the complainants had accepted the aforesaid terms and conditions. Whether the complainants would be entitled to question their terms of appointment after accepting the same is questionable (see State of Maharashtra & Ors Vs. Anita & Anr (Supra)). It would have to be borne in mind that the MSEDCL is a statutory authority established under the Electricity Act. The MSEDCL has to follow a procedure whilst carrying out the recruitment to any permanent post. However, there can be no dispute about the fact that there is a power vested in the MSEDCL to make an appointments on temporary basis which is need based. In the instant case as indicated above the complainants were appointed on a rate contract basis on a consolidated salary as at the relevant time there was a need for watchmen in the District Vehicle Service Center, Solapur. The Learned Member of the Industrial Court as can be seen from a reading of the order passed by him has laid emphasis on the fact that the complainants had filled the application forms for employment and not engaging them on contract basis. The Learned Member of the Industrial Court has further held that the complainants were employed for years with an object to deprive them the status and privileges of permanent employees. The Industrial Court observed in its order that watchman was not covered by the regulations provided for

regular employment of technical staff. The Industrial Court has held adversely against the Respondent No.1 on the ground that neither the prescribed Standing Orders nor the Service Rule was placed on record nor the Respondent No.1 has persuaded the Industrial Court as regards the non applicability of the Model Standing Orders. The Industrial Court therefore held that the complainants having put in 240 days uninterrupted service were entitled to be made permanent in terms of Section 4(c) of the Industrial Employment Standing Orders Act.

15 In so far as the judgment of the Learned Single Judge of this Court is concerned, the Learned Single Judge in the light of the clear terms of appointment as referred above held that the complainants were not entitled for the reliefs granted by the impugned order passed by the Industrial Court. The Learned Single Judge observed that merely because ad-interim reliefs were granted to the complainants on 4-8-1989 by the Industrial Court before the expiry of the contractual period, the said fact would not be a sufficient reason for continuance of the complainants in the services of the Respondent No.1 as the case of the complainants falls within the ambit of the term “litigious employment”. The Learned Single Judge observed that the complainants were continued on the post because of interim orders passed by the Industrial Court and not in terms of the appointment letters / orders passed by the Respondent No.1. The Learned Single Judge placed reliance on

the Judgment of the Apex Court which is referred to in paragraph 5 of the impugned order as also the judgment of this court in the matter of State of Maharashtra Vs. Pandurang Sitaram Jadhav. However, the over arching fact according to the Learned Single Judge was that in view of the clear terms of appointment, no right was created in favour of the complainants to claim permanency or to continue on the post of watchman after the expiry of the contractual period.

16 The facts as unfolded therefore disclose that the complainants were appointed on contract basis on a fixed salary with a condition that they would not be entitled to claim permanency. The complainants accepted the terms and conditions of the appointment and have worked with the Respondent No.1 from 9-2-1988 till 3-1-1990 and that their appointment has come to an end by efflux of time. The complainants therefore could not have called in question their appointment and claim permanency on the basis of the standing orders on the ground that they have completed 240 days service in a calendar year. In our view, the Industrial Court has totally misdirected itself by relying upon the standing orders to confer the benefit of permanency on the complainants by setting aside their termination orders and granting the complainants the relief of permanency. In the said process the Industrial Court had unnecessarily placed reliance on the applications of the complainants

when what was required to be seen was the terms and conditions of their appointment. The Industrial Court had also erred in observing that the complainants had continued for years together when in fact the continuance of the complainants was on account of the interim orders passed by the Industrial Court. The instant case is not a case where the complainants had worked for years together without being given the benefits to which permanent employees are entitled to. The instant case is a case where the period for which the complainants were appointed had come to an end on 3-1-1990 and their services stood terminated on the said day. In our view, the Learned Member of the Industrial Court has misdirected himself by placing reliance on the applications made by the complainants when the determinative factor had to be the terms of appointment of the complainants and their acceptance by the complainants. The case put up by the Respondent No.1 that it had provided the complainants employment as watchman so as to enable them to get over their financial stringency as they were ex-servicemen appears to be a plausible defence which the Respondent No.1 is taken. There can be no dispute about the fact that the complainants have not been appointed by following any procedure which the Respondent No.1 is required to follow. It is also the case of the Respondent No.1 that the complainants were engaged for the District Vehicle Service Center, Solapur and when the need came to an end, the services of the complainants came to an end by efflux of time. It is also the case of the Respondent No.1 that at present there are no District Vehicle

Service Centers. In our view, the facts of the instant case are such that they militate against the case of the complainants seeking reliefs in the Complaints filed by them. The continuance of the complainants was only on account of the interim orders passed by the Industrial Court. The Learned Single Judge was therefore right in holding that the continuance of the complainants was on account of “litigious employment”. If the course of action as directed by the Industrial Court is to be followed, then the same would amount to foisting employees on the Respondent No.1 when it does not require them and would also result in giving a go by to the regular recruitment procedure which the Respondent No.1 as a statutory body is otherwise required to follow.

17 In our view therefore, the Learned Single Judge was right in allowing the above Writ Petition for the reasons mentioned in the impugned Judgment and Order dated 22-6-2010. We are informed that two of the complainants have expired and therefore their heirs are brought on record and it is only one complainant who is alive. However, for the reasons aforesaid no relief can be granted to them in the above Letters Patent Appeal. Hence no interference is called for with the impugned judgment and order passed by the Learned Single Judge. In that view of the matter, the Appeal would have to be dismissed and is accordingly dismissed with parties to bear their respective costs.

18 In view of the dismissal of the above Letters Patent Appeal, the Civil Application No.152 of 2011 does not survive and to accordingly stand disposed of as such.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]