

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6554 OF 2008

City and Industrial Development Corporation
(Maharashtra) Ltd., CIDCO Bhavan

.. Petitioner

vs.

Shri Sharad Dharamraj Savant & Ors.

.. Respondents

**WITH
WRIT PETITION NO.6975 OF 2008
WITH
CIVIL APPLICATION NO.1128 OF 2016
WITH
WRIT PETITION NO.6978 OF 2008
WITH
WRIT PETITION NO.6979 OF 2008
WITH
CIVIL APPLICATION NO.1127 OF 2016
WITH
WRIT PETITION NO.6980 OF 2008
WITH
CIVIL APPLICATION NO.1126 OF 2016**

Mr.G.K.S.Hegade with Mr.C.M.Lokesh i/b M/s.G.S.Hegde and Associates for the petitioner/applicant

Ms.Vaishali Jagdale for the respondent

**CORAM : K. K. TATED, J.
DATE : APRIL 27, 2017**

PC.:

1 Heard the learned counsel for the parties.

2 All these Writ Petitions arise from a common judgment dated 3.3.2008 passed by Member, Industrial Court No.2, Kolhapur in complaint (ULP) No.201 to 205/2004 by which the Industrial Court directed the Petitioner to take the respondents' complainants on permanent post as and when vacancy arises and give all benefits of Circular dated 6.9.2002 from the date of Circular to each of the respondents Complainants and extend all benefits of permanency to all the complainants at par with the permanent class-IV employees from 1-1-2001 when they were taken on work charge.

3 All these Writ Petitions were admitted by this court on 18.11.2008. At that time, the direction of Industrial Court as regards the grant of permanency was stayed pending the hearing and final disposal of these petitions. This court also directed to the petitioner to grant all benefits to the respondent from 1.1.2008 in terms of Circular dated 6.9.2002. This court also passed order that during the pendency of this proceedings, petitioners were not precluded from considering the case of respondent-workmen for absorption in service as and when any vacancy arise. This court further directed the petitioner not to discontinue the service of respondents without the permission of this court except for disciplinary reasons. As per the interim order the respondents are working with the Petitioner, as on today.

4 In the present proceeding, as per the Government Resolution dated 5.12.1991 the petitioner permitted to create additional new post for their office at Oras, District Sindhudurg on contractual basis. Pursuant to the said G.R., the Petitioner after following procedure of interview appointed the respondents on the post of peon, attendants etc. The Petitioner issued appointment letters dated 17.11.1993

initially for one year and thereafter they were continued from time to time. As on today the respondents are working with the Petitioner.

5 The respondents filed complaint under section 28 read with items No. 5, 6, 9 and 10 of Schedule IV of MRTU and PULP Act, 1971 before the Industrial Court at Kolhapur for following reliefs:

“11. Therefore, the Complainant prays that, the enquiry may be made and be declared that the Respondents have engaged in Unfair Labour Practices. Further, the Respondents be directed to cease and desist to engage in alleged Unfair Labour Practices with following relief to the Complainant.

- (a) Ex-parte ad-interim relief asked for and if asked for in future be granted and be confirmed.
- (b) The Respondents be directed to treat the Complainant as permanent employee since his completion of 240 days with effect from his first joining.
- (c) The Respondents be directed to extend all the benefits of permanency to the Complainant since his initial completion of 240 days in services.
- (d) The Respondents be directed to pay arrears of all benefits like difference in salary, leave, medical facilities, holidays etc., with retrospective effect.
- (e) Any other relief for the interest of justice be granted.”

6 In those complaints, the Petitioners filed written statement and opposed the same on the ground that the respondents were appointed on contractual basis initially for a period of one year and same was continued from time to time for their project at Oras, Dist.Sindhudurg. Both the parties entered into the witness box in support of their case. Considering the evidence on record, the Industrial Court passed the impugned common judgment dated 3.3.2008 directing petitioners to take the respondents Complainants on permanent post as and when

vacancy arise and give all the benefits of Circular dated 6.9.2002. Hence, the petitioner filed the present Writ Petitions. Both the parties submit that the issue involved in all these petitions are identical. They submit that as the Industrial Court passed common order, all the petitions be heard and decided simultaneously. Hence, all these petitions are taken together and common order is passed.

7 The learned Counsel for the Petitioner submits that the Petitioner CIDCO filled some post purely on contractual basis for the completion of the work at Oras District Sindhudurg. He submits that CIDCO was appointed as a Special Planning Authority. He submits that the nature of the work was temporary and hence, the respondents were taken for a temporary period till the completion of the work at Oras.

8 The learned Counsel for the Petitioner submits that CIDCO is a company registered under the provisions of the Companies Act, 1956 and consequent upon its share capital subscribed and paid by the State of Maharashtra. It is the Government company within the meaning of section 617 of the Companies Act, 1956. He further submits that CIDCO is not only the Government Company, but the State Government, in exercise of the powers confirmed under section 113(1) of the Maharashtra Regional And Town Planning Act, 1966 as notified the site for the new town Navi Mumbai. The State Government further appointed CIDCO as a new town development authority for creation of new town of Navi Mumbai in exercise of the powers under section 113(3A) of the Maharashtra Regional And Town Planning Act, 1966. He submits that CIDCO is thus having a dual legal entity; one in the capacity of Government Company and another in the capacity of New Town Development Authority. The CIDCO being town development

authority for creation of new town in Navi Mumbai which is the statutory function of the State Government and therefore is working under the control of the State Government.

9 The learned Counsel for the Petitioner submits that the State Government has given the authority and power to the CIDCO to frame its rules and regulations under section 118 read with section 159 of the Maharashtra Regional And Town Planning Act, 1966 for governing the day to day function including its statutory function of the disposal of the land. The CIDCO is conducting its regular function through the Board of Directors and Vice-Chairman and Managing Director. The CIDCO has created permanent post in various cadre according to requirement with the prior approval of the State Government. With the approval of the Board of Directors, CIDCO has also framed its recruitment and promotional rules i.e. CIDCO has its recruitment sheet.

10 The learned Counsel appearing on behalf of the petitioner submits that the impugned common judgment dated 3.3.2008 passed by Industrial Court is against justice, equity and good conscience and same is liable to be set aside. He submits that the Industrial Court failed to consider the fact that they appointed the respondents purely on temporary basis as per the G.R. dated 5.12.1991. He submits that it was specifically stated in the said G.R. dated 5.12.1991, that for the petitioner's office project, Petitioners can recruit 32 posts and out of that 15 posts be on the contract basis only. He submits that even the appointment letter issued by the Petitioner specifically showed that they appointed the respondents purely on contract basis for particular period. He submits that in their appointment letter it was specifically stated that initially they will be taken on probation for a period of one

year and they have no right to claim the permanency in service. He submits that all these facts were brought on record. The Industrial Court erred in coming to the conclusion that the respondents are entitled permanency in service with the petitioner. He submits that even otherwise the common judgment passed by Industrial Court is required to be set aside on following grounds as stated in Writ Petition:

“(a) That the Learned Judge has erred in holding that the Petitioners are engaged in Unfair Labour Practice.

(b) That the Learned Judge has erred in directing the Petitioners to take the Respondent on permanent post as and when vacancy arise, without considering the fact that the Respondent is appointed for a specific period and the project is on the verge of completion and therefore they could not claim permanency.

(c) That the Learned Judge has erred in not considering the fact that the Petitioners are appointed as a Special Planning Authority and their duration of work is for limited period and the Government had sanctioned only appointment on a contract basis.

(d) That the Learned Judge failed to consider the facts that the recruitment rules and procedure were not observed in case the Respondent as they are appointed for a specific period hence cannot claim permanency.

(e) That the Learned Judge has failed to consider the ratio given by the Apex Court in Umadevi's case while granting the permanency as the Respondent appointment is a back door entry and is not as per the recruitment Rules and Procedure.

(f) That the Learned Judge has erred in granting all the benefits of circular dated 6.9.2002 without considering the fact that the same is not applicable to the Respondents as the appointment was for specific period and they are not working in regular and sanctioned post.

(g) That the Learned Judge has erred in granting all benefits of permanency to the Respondents as per the permanent Class-IV employees without considering the fact that the Respondent appointment is for a specific period and not working on regular and sanctioned post.

(h) That the said Judgment is against the principle of Justice, Equity and conscience.”

11 On the basis of these submissions and the grounds as raised in the Writ Petition, the learned Counsel for the petitioner submits that in the interest of Justice, this Hon'ble Court be pleased to set aside the common judgment dated 3.3.2008 passed by Industrial Court. He submits that if common judgment is not set aside, irreparable loss will be caused to them.

12 On the other hand, the learned Counsel for the respondents vehemently opposed the present Writ Petitions. She submits that all these petitions are filed by the petitioners under Article 227 of the Constitution of India. Considering the scope of Article 227 of the Constitution of India, the court should not interfere with the well reasoned order passed by Industrial Court unless and until same is contrary to law.

13 The learned Counsel for the respondent submits that in the present proceeding, the respondents were working with the Petitioners as Majdoor since 1990 on daily wages. Thereafter, as per the Government Resolution dated 5.12.1991 the respondents were appointed in service after holding interview and other procedure as per the rules and regulations. She submits that to avoid all benefits of permanency to the respondents, the petitioners with malafide intention

issued appointment letter for one year for contractual basis. She submits that though initially the letter was issued for one year on contractual basis, the same was continued from time to time. The learned Counsel for the respondents submits that the petitioner in their letter dated 5.2.1998 specifically recorded that respondents will be regularised in their employment. Paragraph 4 of the said letter reads thus:

“4. It would be pointed out that out of 8 peons/attendants, 7 are local people of Sindhadurg Dist. and are at present working in OROS Project. The last one is working in the office of the Chief Accounts Officer & Project Co-ordinator, DHQ Sindhadurg, for the last 7 years. Thus, all these 8 persons may have to be regularised. Thus, all these 8 persons may have to be regularised. The issue has already been discussed with Manager (Personnel) and JMD please.”

14 The learned Counsel for the respondents submits that the petitioner issued appointment order dated 24.12.2001 stating that the respondents would be brought in regular establishment as and when vacancy arises in the Corporation for suitable post after considering their age, education, qualification, punctuality and performance in the work. She submits that inspite of these recommendations and as the respondents are working with the petitioners since 1991 on regular basis, the petitioners failed and neglected to give them all benefits of permanency in service. Hence, they filed the complaint under section 28 read with item 5, 6, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971. She submits that the Industrial Court after considering the evidence on record and the evidence given by the petitioner's witness allowed the respondents' complaint with direction to the petitioner to

provide the status of permanency to the respondents.

15 The learned Counsel for the respondents submits that the petitioner provided permanency to some of the persons who were appointed along with all these respondents. Those persons name, post, present posting and date of regularisation is as under:

SER. NO.	NAME	POST	PRESENT POSTING AT	REGULARISED ON
1.	K.M.PARAB	DRIVER	ORAS-RETD.	1992
2.	S.M.MODI	CLERK	ORAS	21.06.1993
3.	SANDIP SALVI	CLERK (ACCOUNT)	ORAS-CBD	21.06.1993
4.	VAISHALI RANE	CLERK	ORAS-JT.REG.CBD	21.06.1993
5.	S.M.MAYEKAR	STENO	ORAS-CCUC	21.06.1993
6.	R.M.TAKLE	CLERK	ORAS-EE-KALAMBOLI	21.06.1993
7.	P.PHINDLEKAR	CLERK(ACCOUNT)	ORAS	12.08.1997

16 The learned Counsel for the respondents submits that thereafter from time to time, respondents requested the petitioner to provide them permanency in service, but they failed and neglected to do so. In support of this contention, the learned Counsel for the respondents relies on the judgment of the Apex Court in the matter of **Secretary, State of Karnataka & ors. vs. Umadevi & Ors. 2006 DGLS (Soft.) 212**. Paragraph 44 of the said judgment reads thus:

“44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and

the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

17 On the basis of these facts and the law declared by the Apex Court in the matter of *Secretary, State of Karnataka & ors. vs. Umadevi & Ors.* (Supra), the learned Counsel for the respondents submits that there is no substance in the present Writ Petition and same are required to be dismissed with costs.

18 I have heard both the sides at length. There is no dispute that the respondents were working with the petitioner since 1990. Initially they were on daily work basis. Thereafter pursuant to the G.R. dated 5.12.1991 after following due process of law, i.e. interview etc. respondents were appointed on contractual basis for a period of one year. Though respondents were appointed on contractual basis for one year, same was continued for years together. Till today the respondents are in service with the petitioner. Apart from that, to some

employees petitioners granted permanency in service. There is no explanation on the part of petitioner on what basis they discriminated the respondents from other employees who were appointed as per the G.R. dated 5.12.1991. This itself shows that the petitioner committed unfair labour practices by discriminating the respondents from other employees.

19 It is to be noted that as on today the respondents are working with the petitioner. Not only that during the pendency of the present Writ Petition, the respondents applied to the petitioner under Right to Information Act to find out whether any post is available with them. In reply to the application under Right to Information Act, the petitioners by their letter dated 24.8.2015 informed them that 27 permanent posts of peons are vacant.

20 Considering the above mentioned facts and the law declared by the Apex Court in the matter of **Secretary, State of Karnataka & ors. vs. Umadevi & Ors.**(Supra), the letter dated 24.8.2015 of petitioner and as the respondents are working with the petitioner since 1990, I am of the opinion that the respondents have made out a case for dismissal of all these petitions. Hence, following order is passed:

- a) All the Writ Petitions stand dismissed.
- b) In view thereof, all the Civil Applications do not survive, the same are disposed of as infructuous.
- c) At the request of learned Counsel for the

Petitioner, operation and implementation of this order is stayed for 8 weeks.

(K.K.TATED, J.)