

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13481/2016

The Institute Management Committee
of the Industrial Training Institute,
Malegaon, Tq. Malegaon, Dist. Nashik

... Petitioner

V/s.

Smt. Nitubai Shankar Dhumadia
Ravivar Ward, Killa Zopadpatti,
Near Municipal Corporation of Malegaon,
Tq. Malegaon, Dist. Nasik.

... Respondent

Mr. P. N. Joshi for the petitioner
Mr. Sanjeev Sawant with Sandeep Barve with Ms. Sheetal Yanpure i/b.
B. K. Barve & Co. for the Respondent.

CORAM: K.K. TATED, J.
DATED : JANUARY 13, 2017

JUDGMENT :

1. Heard the learned counsel for the parties.
2. Leave to amend. Amendment to be carried out during the course of the day.
3. This court (Coram : R. M. Savant, J.) by order dated 03.10.2016 issued notice to the respondent stating that in view of narrow controversy involved, the Writ Petition may be heard and disposed of finally at the stage of admission.

4. The learned counsel for the parties submit that they are ready with the matter for final disposal at the stage of admission. Hence, by consent of the parties, matter is taken up for final hearing at the stage of admission.

5. By this petition under Article 226 and 227 of the Constitution of India, the petitioner is challenging the judgment dated 18.10.2013 passed by the IInd Labour Court, Nasik in Complaint (ULP) No.2/2013 and oral common judgment dated 24.06.2016 passed by the Industrial Court, Nasik in revision application (ULP) Nos.89/2013 and 49/2014.

6. In the present proceedings, the respondent original complainant had filed a complaint of unfair labour practices u/s. 28(1) read with Item 1 (a)(b)(d)(f)(g) of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (the said Act) for the relief of declaration that the petitioner had engaged in unfair labour practice by terminating her services by order dated 31.12.2012 and gave an advertisement dated 01.01.2013 for calling application for the same post and for her reinstatement with continuity of service with full back wages.

7. The respondent was working with the petitioner Institute as a sweeper from 01.12.2010 as per their order dated 24.12.2010. Thereafter the petitioner terminated the respondent's services by order No. 221/2012 dated 31.12.2012 with immediate effect. Hence, the respondent filed complaint (ULP) No.2/2013 before the Labour Court, Nasik for setting aside the termination order, for reinstatement, continuation of service and permanency in services, which was partly

allowed by 2nd Labour Court holding that the petitioner had engaged in unfair labour practices under Item 1 of schedule IV of the said Act in terminating the services of the respondent complainant. The Labour Court directed the petitioner to pay compensation amount of Rs.40,000/- to the respondent complainant within a month from the date of order instead of reinstatement, failing which the amount of compensation to carry interest @ 9% p.a. till actual payment of the entire amount of compensation. The Labour Court also directed the petitioner to pay cost of Rs.1000/- to the respondent complainant.

8. Being aggrieved by the judgment dated 18.10.2013 passed by the Labour Court, the petitioner as well as the respondent made a revision application before the Industrial Court. The petitioner filed revision application (ULP) No.89/2013 challenging the order of the Labour Court to the extent of granting compensation of Rs.40,000/- to the respondent complainant. Whereas the respondent complainant filed revision application No.(ULP) 49/2014 rejecting the respondent's prayer for setting aside the termination order, reinstatement, continuity in service and permanency in service. Both the revision applications were decided by the Industrial Court by common judgment dated 24.06.2016 by which the Industrial Court dismissed the petitioner's revision application (ULP) No.89/2013 and partly allowed the respondent's revision application No.(ULP) No.49/2013. The Industrial Court directed the petitioner instead of paying the lump sum compensation amount of Rs.40,000/- to the respondent complainant, directed the petitioner to reinstate the respondent with continuity of service but without back wages. Hence, the petitioner filed the present Writ Petition.

9. The learned counsel for the petitioner submits that the orders passed by both the courts below are against justice, equity and good conscience and same are liable to be set aside. He submits that initially, the respondent was appointed as per her application dated 26.11.2010 on the post of Sweeper by appointment order dated 24.12.2010 on following terms and conditions :

“1. Your appointment has been made on the post of Sweeper on daily wage basis.

2. From the date of this order, as per the decision of the Institute Management Committee or if negligence is found in your work, then your appointment shall automatically come to an end. You will not be reinstated or your appointment will not be extended, under any circumstances/excuse, thereafter.

3. For fresh appointment to the post of sweeper, on daily wages, fresh application shall have to be submitted. If the appointment is made through different process of recruitment, then only the fresh appointment will be made by the committee having power.

4. As your appointment has been made on a daily wages, any benefit, facilities and concession as admissible to the employee under regular post, will not be admissible to you.

5. Salary shall be payable for only such days, on which the Institute shall be working. Pay will not be admissible for folidays (for e.g. Second Saturday, Fourth Saturday, Sunday, Government Holidays) which may please be noted.”

10. The learned counsel for the petitioner submits that the petitioner issued office order dated 18.08.2011 appointing the petitioner for further six months only. Said appointment letter reads thus:

“Sau. Nitu Shankar Ghumadia, Sweeper under the Institute Management Committee in this institution, is hereby informed by this order that, as per this order, ex-post fact approval is granted to

her appointment subject to the rules, terms and conditions of the Institute Management Committee, till she completes six months on daily wages basis from the date 01.08.2011.

Further, as soon as she received the said order, she should immediately contact the office and should furnish necessary information by making an affidavit on the Executive Bond (Stamp Paper) of Rs.100/- to this office, within two days.”

11. The learned counsel for the petitioner submits that as per the said appointment letter, the respondent executed agreement on stamp paper of Rs.20/-. He submits that from February, 2012 till 01.08.2012, the respondent was not appointed by the petitioner. He submits that at the request of the respondent, the petitioner by their letter dated 01.08.2012 appointed the respondent up to 31.12.2012 on same terms and conditions i.e. her appointment shall be on temporary basis and she will not claim any right and/or any benefits. Those terms and conditions read thus:

“1. Her appointment is only for the above mentioned period and thereafter, she shall not have any claim or right to the said post. Further, if the Superior Officers find her work unsatisfactory or if any untoward incident happens then, she shall be removed from the post without notice.

2. It shall be necessary to do the clearing and weeping work of the Institute and the building of the Institute daily for 4 hours regularly and she shall be bound to do all the works of cleaning asked by the Superiors during the said period.

3. She shall not claim any right in any manner to the said post in future.

4. She shall be responsible for all the materials handed over to her.

5. She shall not tender resignation from the said post without

permission or shall not leave the said post under any circumstances. If she want to leave the same, she shall be bound to give 1 month prior notice or to give one month's salary as compensation.”

12. The learned counsel for the petitioner submits that the respondent also executed agreement on a stamp paper of Rs.20/- admitting the fact that her appointment was only for a period from 01.08.2012 to 31.12.2012 purely on temporary basis. The learned counsel for the petitioner submits that as the contract period was over, the petitioner issued office order dated 31.12.2012 relieving the respondent from services. He submits that immediately thereafter the respondent filed complaint on 08.01.2013 before the Labour Court, Nasik on the ground that the termination letter dated 31.12.2012 issued by the petitioner was null and void. The respondent also claimed continuation in service and other benefits.

13. The learned counsel for the petitioner submits that both the courts below failed to consider the fact that the respondent was appointed on temporary basis for a short period and on fixed remuneration. Therefore, there is no question of granting her permanency in service though she had completed 240 days in the preceding year of filing the compliant. He submits that the Government of Maharashtra, Department of Higher and Technical Education issued a Government Resolution dated 31.03.2008 regarding setting up of an independent Managing committee and State Screening Committee for up-gradation of Government IT Institutes in the State with public private partnership under the Central Government Sponsored Scheme. He submits that thereafter the Government of Maharashtra issued Government Resolution dated 09.02.2011 granting

approval to the vocational batches commenced in August 2008, August 2009 and August 2010 in the Government IT institutes in the State with public private partnership in which it was specifically stated that the petitioner can appoint staff on purely temporary basis for not more than three years on contract basis on lump sum monthly remuneration. He submits that as per said Government Resolution, it was necessary to terminate those services which were on contract basis. He submits that these two Government Resolutions specifically state that the State of Maharashtra prevented the petitioner from appointing staff on permanent basis because the Central Government scheme was for a limited period. He submits that on the basis of these two Government Resolutions, the petitioner appointed the respondent on temporary basis for a specified period only. He submits that though both the Government Resolutions were placed before the courts below, they failed and neglected to consider the same at the time of passing the impugned orders. He submits that pursuant to those two Government Resolutions, the petitioner has no authority to appoint the respondent on permanent basis. Therefore, the orders passed by both the courts below are required to be set aside.

14. The learned counsel for the petitioner submits that the Labour Court failed to consider the written submission/ notes of arguments dated 24.09.2013 filed by the petitioner, more particularly, paragraph Nos.2 to 6, 8, 9 and 14, which show the complaint as it was filed by the respondent, not maintainable at all. Those paragraphs read thus:

2. It is important to note that complainant was appointed by the respondent from time to time on purely temporary basis for specific/fixed period and as per the terms and conditions of the appointment order and it came to an end automatically on expiry

of the said period. It is pertinent to note that, if your honour perused cross examination of the respondent it is crystal clear to show that and it is admitted by the respondent that **“it is true that, I was agreed with the terms and conditions mentioned in the order and therefore I was appointed. It is also true that the order dated 24.12.2010 was set aside.”** (sentence in bold letters is translated from Marathi language).

3. It is pertinent to note that respondent has not at all engaged in unfair labour practice as defined in Item 1 (a),(b),(d),(f) and (g) of Schedule-IV of the M.R.T.U. & P.U.L.P. Act.

4. It is important to note that complainant was not a workman as defined in clauses (S) of Section 2 of the Industrial Disputes Act. That the complainant was appointed by the respondent from time to time on purely temporary basis for specific/fixed period and as per terms and conditions of the appointment order the appointment of the complainant came to an end on expiry of the said period.

Hence as per sub clause (bb) of clause (oo) of Section 2 of the Industrial Disputes Act, the termination of the service of the complainant as a result of the non renewal of the contract of the employment between respondent and complainant concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein is not included in the definition of “retrenchment” as defined in Section 2(oo)(bb) of the Industrial Disputes Act. And hence provisions of Section 25-F and 25-H are not applicable and thus the claim of the complainant of reinstatement with full back wages is not tenable on the grounds stated in the complaint.

5. That the present complaint is not maintainable as the issues in the present complaint do not constitute as dispute under provisions of Section 2(k) of the Act. That the appointment given to the complainant was for fixed period and said is not disputed, nor the fact that complainant has accepted the temporary nature of the employment is disputed and thus the said issue are not within the parameters of the dispute.

6. That the complainant was appointed by respondent every

time on purely temporary basis for specific/fixed period and as per one of the terms and conditions of the appointment order the services of the complainant came to an end automatically on expiry of the said period. As no relationship of the employer and employee or master and servant exists between the respondent and the complainant, the complaint in such circumstances does not survive and hence complainant has no legal right to file the complaint before the Hon'ble Court. The complaint thus is not tenable on the grounds mentioned therein.

7.

8. *The respondent is committee instituted to run industrial training institute which is quasi-governmental organization. The employees employed therein are engaged as per recruitment rules and procedure. That any departure there from would mean allowing a back door entry in the establishment and would be violative of Article 14 and 16 of the Constitution of India. That the respondent committee has no powers to appoint the permanent employees. Also the complainant was engaged on fixed term and was issued appointment order from time to time clearly stipulating that the appointment is purely temporary for the fixed/specific period mentioned in the appointment order. That the complainant understood and agreed the terms and conditions of temporary and fixed period and accepted the termination of his fixed period of employment without any complaint.*

9. *That the complainant is not dismissed from the employment but the term of employment, the period for which the complainant was appointed came to end.*

10.

11.

12.

13.

14. *That the complainant is not a "workman" as defined in*

clause (s) of Section 2 of the Industrial Disputes Act. That the complainant was appointed by the respondent from time to time on purely temporary basis for specific/ fixed period and as per the terms and conditions of the appointment order, the appointment of the complainant came to end automatically on expiry of the said period.”

15. The learned counsel for the petitioner relied on the judgment in the matter of ***Punjab State Electricity Board. Vs. Darbara Singh 2006 LLR 68***. He submits that the Apex Court, in this matter held that where engagement of workman was for specific period, as such his termination will be excluded as per the provisions of section 2(oo)(bb) of Industrial Disputes Act and hence no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding twelve calendar months. He relies on paragraph 10 and 11 of the judgment which read thus:

“10. The materials on record clearly establish that the engagement of the workman was for specific period and conditional. It was clearly indicated that on appointment of a regular employee, his engagement was to come to an end.

11. In view of the position as highlighted in Morinda Coop. Sugar Mills, Anil Bapurao and Batala Cooperatives Cases (supra), the relief granted to the workman by the Labour Court and the High Court cannot be maintained.”

16. The learned counsel for the petitioner also relies on the judgment of the Apex Court in ***Escorts Ltd. Vs. Presiding Officer and Anr. 1997(3) LLN 65***. He submits that in this authority, the Apex Court held that the termination of services of a daily wage workman in accordance with the terms of appointment is not a retrenchment. He submits that the Apex Court, further held that termination of services of

workman as a result of non renewal of contract of employment between the employer and workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein is not retrenched u/s.2(oo) of the Industrial Disputes Act, 1947.

He relies on para 3 and 4 of the Authority which reads thus:

“3. We do not consider it necessary to go into the question whether the workman had worked for 240 days in a year and whether Sundays and other holidays should be counted as has been done by the Labour Court, because, in our opinion, Shri Shetye is entitled to succeed on other grounds urged by him that the termination of services of the workman does not constitute retrenchment in view of Cl (bb) in S.2(oo) of the Act. Clause (bb) excludes from the ambit of the expression “retrenchment” as defined in the main part of S.2(oo) “termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein.” The said provisions has been considered by this Court in M. Venugopal V. Divisional Manager, Life Insurance Corporation of India and another 1994(1) LNN 545. The appellant in that case had been appointed on probation for a period of one year from May 23, 1984 to May 22, 1985 and the said period of probation was extended for further period of one year from May 23, 1985 to May 22, 1986. Before the expiry of said period of probation, his services were terminated on May 9, 1986. It was held that since the termination was in accordance with the terms of the contract though before the expiry of the period of probation it fell within the ambit of S.2(oo)(bb) of the Act and did not constitute retrenchment. Here also the services of the workman were terminated on February 13, 1987 as per the terms of the contract of employment contained in the appointment letter, dated January 9, 1987, which enabled the appellant to terminate the services of the workman at any stage without assigning any reasons. Since the services of the workman were terminated as per the terms of the contract of employment, it does not amount retrenchment, under S.2(oo) of the Act and the Labour Court was in error in holding that it constituted retrenchment and was protected by She submits that.25F and 25G of the Act.

4. *The appeals are, therefore, allowed and the impugned orders of the High Court as well as the award of the labour Court are set aside. Any amount that has been paid to the workman on the basis of the impugned order passed by this court will not be recovered from him on the ground of setting aside of the award of the Labour Court by this order. No order as to costs."*

17. The learned counsel for the petitioner submits that both the courts below erred in coming to the conclusion that the petitioner failed to follow due process of law at the time of terminating the respondent's services. He submits that both the courts below erred in coming to the conclusion that the petitioner engaged in unfair labour practice and also the employment of the respondent complainant was not purely on daily wages and it was on temporary basis for a specific/fixed period. He submits that considering the above mentioned facts and the law declared by the Apex Court, the order passed by the Labour Court as well as the Industrial Court is liable to be set aside.

18. On the other hand, the learned counsel for the respondent original complainant vehemently opposed the Writ Petition. He submits that both the courts below considered the evidence on record and correctly held that the petitioner failed to comply with the provisions of the Industrial Disputes Act at the time of issuing termination notice dated 31.12.2012. He submits that initially, the petitioner issued appointment letter dated 23.12.2010 and since then the respondent was working with the petitioner continuously with some brakes in service. He submits that those brakes were given by the petitioner with *mala fide* intention to prevent the respondent from

claiming any permanency in the services. He submits that the respondent worked with the petitioner for more than 240 days in the preceding year of the filing of complaint. He submits that if the worker proved that he worked with the employer for more than 240 days in the preceding year of filing the complaint, then the worker is entitled to declaration in his favour for continuation of service, permanency and other benefits.

19. The learned counsel for the respondent submits that both the courts below categorically held that the respondent was appointed on a post for which continuous work was available with the petitioner. He submits that both the courts categorically held that the petitioner, by termination letter dated 31.12.2012, terminated the respondent's services and on next day they issued an advertisement in news paper calling upon applications from public at large for the same post on which the respondent was working. He submits that both the courts categorically held that to deprive all benefits of permanency, the petitioner intentionally gave brakes in appointment letters. He submits that in Writ Petition No.2019/2011 – The State of Maharashtra & Ors. Vs. Maroti Shriram Sathe along with connected matters, the Labour Court as well as the High Court had passed order against the State for reinstatement of the employee after giving permanency and that was upheld by the Apex Court in SLP No.13909-13915 of 2012. In that case, the State of Maharashtra had issued Government Resolution dated 04.03.2014 and granted all benefits to all the workers in that matter. He submits that similar situation arises in the present matter also. Hence, there is no substance in the Writ Petition. Same be dismissed with costs.

20. The learned counsel for the respondent submits that the Apex Court, in ***Bhunvesh Kumar Dwivedi Vs. Hindalco Industries Ltd. AIR 2014 SC 2258*** held that if a worker proved that he worked for more than 240 days in the preceding year, then he is entitled to all benefits of permanency. In support of this contention, he relies on paragraphs 21, 27 and 29 of the said judgment which read thus:

“26. Therefore, we answer the point No. 2 in favour of the appellant holding that the Labour Court was correct in holding that the action of the respondent/employer is a clear case of retrenchment of the appellant, which action requires to comply with the mandatory requirement of the provision of Section 6-N of the U.P I.D. Act. Undisputedly, the same has not been complied with and therefore, the order of retrenchment has rendered void ab initio in law.

27. Having answered point No. 2 in favour of the appellant, we also answer the point No. 3 in his favour since we construe that the appellant is a worker of the respondent Company providing continuous service for 6 years except for the artificial breaks imposed upon him with an oblique motive by the respondent Company. We hold that the termination of service of the appellant amounts to “retrenchment” in the light of the principle laid down by three judge bench decision of this Court in State Bank of India Vs. Shri N. Sundara Money AIR 1976 SC 1111 and attracts the provision of S. 6-N of the U.P I.D. Act. The case mentioned above illustrates the elements which constitute retrenchment. The relevant paragraphs read as under:

“9. A break-down of Section 2(oo) unmistakably expands the semantics of retrenchment. 'Termination...for any reason whatsoever' are the keywords. Whatever the reason, every termination spells retrenchment. So the sole question is has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has

been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and Section 2(00). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expansive definition. It means 'to end, conclude, cease'. In the present case the employment ceased, concluded, ended on the expiration of nine days automatically maybe, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25F(b) is inferable from the proviso to Section 25F(1). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service by effluxion of time cannot be sufficient. An English case *R.V. Secretary of State* (1973) 2 ALL E.R. 103; was relied on, where Lord Denning, MR observed:

I think the word 'terminate' or 'termination' is by itself ambiguous. It can refer to either of two things-either to termination by notice or termination by effluxion of time It is often used in that dual sense in landlord and tenant and in master and servant cases. But there are several indications in this paragraph to show that it refers here only to termination by notice.

Buckley L. J, concurred and said:

In my judgment the words are not capable of bearing that meaning. As counsel for the Secretary of State has pointed out, the verb 'terminate' can be used either transitively or intransitively. A contract may be said to terminate when it comes to an end by effluxion of time, or it may be said to be terminated when it is determined at notice or otherwise by some act of one of the parties. Here in my judgment the word 'terminated' is used in this passage in para 190 in the transitive sense, and it postulates some act by somebody

which is to bring the appointment to an end, and is not applicable to a case in which the appointment comes to an end merely by effluxion of time Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened, we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order one giving employment and the other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A preemptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision.”

29. *Therefore, the Labour Court was correct on factual evidence on record and legal principles laid down by this Court in catena of cases in holding that the appellant is entitled to reinstatement with all consequential benefits. Therefore, we set aside the Order of the High Court and uphold the order of the Labour Court by holding that the appellant is entitled to reinstatement in the respondent-Company.”*

21. The learned counsel for the respondent also relies on the judgment in ***Reliance Energy Ltd. Vs. Yadayya Giri and Ors. 2011 (1) ALLMR 636***. He submits that in this authority also this court held that if a worker proves that he worked for more than 240 days in the preceding year of filing the complaint, then he is entitled to all the benefits. He relies on paragraphs 19 and 34 of the said judgment which read thus;

“19. On a perusal of the evidence led before it, the Industrial Court has concluded that the workmen have been working continuously for several years with the petitioner. Some of the documents filed before the Industrial Court were produced by the parties before me. These documents which were filed by the workmen at Exhibit "U-7" have been filed again by the employer at Exhibit "C-9". A perusal of these documents indicates that the

workmen have in fact been working for years together with the petitioner. There is no perversity as sought to be made out by Mr. Cama in this conclusion drawn by the Industrial Court that the workers were engaged by the petitioner for years together as temporary workmen. In the case of *Punjabrao Krishi Vidyapeeth, Akola* (supra), a learned Single Judge of this Court, (Sirpurkar J., as he then was), has observed that there must be tangible evidence to show that the workmen had been employed as casuals, temporaries and badlis for years together, deliberately. It must be shown that there was an intention or mens rea on the part of the employer or a certain design to achieve the object of depriving them of their permanent status. The learned Judge has opined that the language of Item 6 speaks of a specific object and not merely the result of the action of the employer. It has been held that if the result of the action of the employer deprives the employees of the status and privileges of permanent employees, that by itself would not bring the act within the ambit of entry 6 as there has to be a definite object which must be proved by evidence.

34. The next issue is whether the workmen can be made permanent without there being any vacancies. Mr. Cama has submitted that there are no vacancies in the Contract Division and, therefore, in view of various judgements of the Supreme Court, the workmen would not be entitled to permanency. In the case of *Maharashtra State Road Transport Corporation & Anr.* (supra), the Supreme Court has observed that permanency can be granted when the posts exist. The Supreme Court was, however, considering a case of a Public Corporation and held that, "there is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive, it is also true that the status of permanency cannot be granted by the Court when no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the Courts." These observations, in my opinion, would indicate that it is only in the case of Government or Public Corporation that the question of sanctioned and vacant posts would arise. The present petitioner is a Public Limited Company and not bound by any executive fiat regarding the number of posts which can be created in any Department. Once the Court concludes that the petitioner has committed unfair labour practices under Items 6 and 9 of Schedule

IV of the MRTU & PULP Act, the Court can always grant appropriate reliefs in terms of Section 30(1) of the MRTU & PULP Act. The Court is empowered to take such affirmative action as is necessary to effectuate the policy of the Act. The policy of the Act is to prevent unfair labour practices. By declaring that the petitioner has committed unfair labour practices, as aforesaid, the Industrial Court has rightly granted the further consequential relief of directing the petitioner to confer the status of permanency on the employees from the date each of them completed 240 days of uninterrupted service.”

22. On the basis of this submission and the judgments of the Apex Court and this court, the learned counsel for the respondent submits that there is no substance in the writ petition and same is liable to be dismissed with costs.

23. I heard both sides at length. The petitioner appointed the respondent initially by office order dated 24.12.2010 on daily wages on some terms and conditions. It was specifically stated in those terms and conditions that her appointment will remain in force till decision of the Institute Management Committee or if any negligence is found in her work in that case, her appointment shall automatically come to an end. It was also stated that the respondent will not be entitled to any benefit, facility or concession as admissible to the employee on regular basis. Thereafter the petitioner issued the appointment letter dated 18.08.2011 for six months only. Thereafter the respondent was not in employment for more than six months with the petitioner. The petitioner again issued appointment letter dated 01.08.2012 in favour of the respondent and that was also only upto 31.12.2012 on same terms and conditions as stated hereinabove. Thereafter the petitioner issued termination order dated 31.12.2012 on the ground that the

contractual period was over. Nowhere it was stated in the termination order dated 31.12.2012 that the petitioner removed the respondent for any other reason except on expiry of contractual period. This itself shows that as soon as the contract was over, the petitioner relieved the respondent from their services.

24. Moreover, the Government, by their resolution dated 09.02.2012 specifically restricted the petitioner's power to appoint employees on permanent basis. The said Government Resolution specifically states that at the most, the petitioner can appoint workers not for more than three years on temporary basis on condition that they will not claim any benefits available to the permanent employees. Moreover, the worker has to give in writing or an agreement on a stamp paper. In the present proceedings, the respondent having knowledge of all these conditions that she was appointed on temporary basis without any benefit which were available to the permanent employees, accepted the same and worked for some period. Therefore, there is no question of considering the respondent's complaint for setting aside the termination order directing the petitioner to reinstate her on permanent post with full back wages.

25. Both the courts below observed that the petitioner immediately on 01.01.2013 issued an advertisement in a news paper calling applications for the same post and therefore, though the post was available with the petitioner, they discontinued the respondent's services. It is to be noted that, on the date of first appointment, it was made clear to the respondent that the petitioner is appointing her on temporary post only. Even in an advertisement dated 01.01.2013 it

was specifically stated by the petitioner that they want to appoint workers on temporary post with a fixed remuneration without any claim of permanency. These facts were not considered by both the courts below. It is well settled principle that the courts cannot direct the Government or Institutes to create a post for appointment of an affected person. Hence, the order passed by the Industrial Court directing the petitioner to reinstate the respondent with continuity of service cannot sustain in law. The Apex Court in the matter of Punjab State Electricity Board (supra) specifically held that if an initial appointment is only on a temporary post and that too in a Government Organization or Institute, then the employee has no right to claim permanency even though he works for more than 240 days. Same view is taken by the Apex Court in Escort Ltd. (Supra).

26. Considering these two authorities and the above mentioned facts, I am of the opinion that both the courts below erred in coming to the conclusion that the respondent had made out a case for reappointment on permanent basis. The authorities cited by the respondent in Bhuvnesh Kumar Dwivedi (supra) and Yadayya Giri (supra) are not applicable in the facts and circumstances of the present case. In Bhuvnesh Kumar (supra) the employee was not appointed for a particular period and hence, the Apex Court held that the employee was entitled to benefit of permanent post. Whereas in the case in hand, it was specifically stated in appointment letter that her appointment will be on temporary basis and without any benefit of permanent post. In similar way, the Apex Court, in Yadayya Giri (supra) held that if a vacant permanent post is available at the time of dismissal of an employee, then only court can direct an employer to

employ an employee on that post, otherwise not. In the case in hand, the advertisement given by the petitioner on 01.01.2013 shows that they invited the applications for temporary posts including the post on which the respondent was working.

27. Considering these facts and the order passed by both the courts below, I am of the opinion that the petitioner has made out a case for allowing the Writ Petition.

28. Hence, following order is passed:

- a. The judgment and order dated 18.10.2013 passed by the IInd Labour Court, Nasik in Complaint (ULP) No.2/2013 and oral common judgment dated 24.06.2016 passed by the Industrial Court, Nasik in revision application (ULP) No.89/2013 and 49/2014 is set aside.
- b. The writ petition stands disposed of accordingly.
- c. No order as to costs.

(K.K. TATED, J.)