

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1516 OF 2004

- 1) The State of Maharashtra,
Through :-
- 2) The Conservator of Forest
Jalgaon Forest Division
Jalgaon.
- 3) The Range Forest officer
Vadoda (Kurha)
office at Kurhakakoda,
Tq. Edlabad, Dist. Jalgaon

**...Petitioners
(Ori. Respondents)**

Vs.

Khandesh Van Shramik Sanghatana
Trade Union Center, Rani Laxmi
Chowk, Amalner, Dist. Jalgaon.

**Respondent
(Ori. Applicant)**

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AGP for the Petitioners : Shri S. R. Yadav-Lonikar
Advocate for the Respondent : Shri A. S. Shelke.

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 30th AUGUST, 2018.

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ORAL JUDGMENT :

1. The petitioner- State and the Department of Forest Conservation are aggrieved by the judgment and order dated 28/02/2003 delivered by the Industrial Court, Jalgaon in

complaint (ULP) No. 751/1999 (old No.796/1992).

2. I have heard the learned AGP on behalf of the petitioners and the learned Advocate on behalf of the respondent.

3. The Industrial Court has passed the following order in the impugned judgment :

"1. The complt.ULP No. 751/99 (original case No. 796/92) is hereby partly allowed.

2. It is hereby declared that the respondents have Committed unfair labour practices under Item Nos. 6 and 9 of Sche.IV of the MRTU & PULP Act 1971 and directed to desist from continuing the same.

3. The respondents are directed to pay all monetary benefits of permanent employees to the concerned employees at Sr.No. 4 Rajendra Ramchand Kasabekar, Sr.No. 9 Shantaram Hari Borse, Sr.No. 13 Barsu Vishwanath Sonawane, Sr.No.14 Ramesh Jagdeo Kandelkar, Sr.No. 19 Tukaram Parashram Patil and Sr.No. 16 Kashnath Shankar Koli (till the period he was in the employment).

From the date of filing of the present complaint i.e. 28.09.92 after deducting the payments already made to them.

4. Two months time is granted to the respondents for

compliance of the order.

5. In the circumstances parties to bear their own costs".

4. While admitting this petition, this Court passed an order on 06/04/2004, which reads as under :-

"This petition was heard at length by me, on last occasion and today also.

After hearing Mr. C. K. Shinde, learned AGP for the petitioners and Mr. Avishkar Shelke, for the respondent, I am of the view that the point raised in this petition requires consideration by this court at the time of final hearing of this petition as, in my Judgment, the view taken by the learned Member, Industrial Court, Jalgaon, while passing the impugned order dated 28.2.2003, is not proper.

The main contention that is advanced by the learned AGP is that the Forests Department is not an "industry" within the meaning of Sec. 2 (J) of the Industrial Disputes Act, 1947. This question has to be considered in the light of the Judgment of the Apex Court in the case of State of Gujarat V. Pratamsingh Parmar, reported in JT 2001 (3) SC 326.

Hence, Rule.

Hearing expedited.

Mr. Shelke, waives service for respondent.

By way of interim relief the implementation of para 3 of the operative part of the impugned order dated

28.2.2003 passed by the Industrial Court, Jalgaon, stands stayed.

However, it is made clear that on the basis of the interim relief granted by this Court, the petitioners shall not deny providing work to the respondent, if work is available, and shall not discontinue him.

In case, any adverse action, such as, discontinuation or termination is to be taken, the same may be taken only with prior permission of this Court.

Affidavit-in-reply be filed, as early as possible".

5. In view of the above, the petitioner was directed not to deny work to the respondents and if the work is available, shall not discontinue the said workers. If any adverse action as like discontinuation or termination is to be initiated against any of the workers, the petitioner was obliged to seek prior permission from this Court.

6. It is undisputed that this petition is with regard to those workers, whose names are mentioned in the re-produced Clause 3 of the order. The 6th worker Kashinath Shankar Koli has been granted the benefits only till the date he was in employment.

7. It is informed that the State of Maharashtra has introduced Government Resolution dated 31/01/1996 which is placed on record at page 45 and G.R. dated 16/12/2012. The first G.R. was considered by the Industrial Court while delivering the impugned judgment. It is further informed that by virtue of these two Government Resolutions, a Policy decision has been taken by the State as regards the daily wage workers working in various schemes operated by the Department of Forest Conservation. By the first G.R. Of 1996, those daily wage workers who were working from 1989 till 1994 for a period of 5 years, were to be considered for absorption on regular establishment depending on the availability of permanent vacancies. By the subsequent G.R. of 2012, those daily wage workers working from 1994 till 2004 were to be similarly considered.

8. The learned Advocate for the respondent-Union submits that these daily wage workers, five of them to be precise (excluding Kashinath Koli), can be considered under the 2012 G.R. and the State is obliged to consider their cases, if not

already considered.

9. The learned AGP submits that he would not make any submissions against the G.R. as the same is the policy of the State Government. The G.Rs. would be made applicable to these five workers strictly as per their eligibility in terms of the G.R.

10. Considering the above and the interim order passed by this Court on 06/04/2004, this petition is partly allowed and Clause 3 of the impugned order shall stand modified so as to render these five workers eligible under the G.R. dated 16/12/2012 for consideration for regularization, if not already considered. The petitioner State/Department shall consider these five cases, if not already considered, within a period of 12 weeks from today by following the due procedure as is laid down.

11. In so far as the 6th employee Kashinath Shankar Koli is concerned, the petitioners would consider his case provided he is eligible under any of the G.Rs., having been removed from

employment in 2002. Since he was engaged on 31/05/1991 as a daily wager, the petitioners would consider his case depending on his eligibility and monetary benefits, if any, shall be paid to him directly or can be deposited in this Court with intimation to the respondent -Union. This decision is expected to be taken within a period of 20 weeks from today. If he is not eligible, the petitioner shall place a communication/order on record by addressing it to the learned Registrar (Judicial) of this Court, with the copy to be served on the respondent -Union.

12. Consequent to the above, Clause 2 of the impugned order declaring ULP against petitioners, shall stand set aside.

13. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

shp/-