

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

WRIT PETITION NO. 2280 OF 2004

The State of Maharashtra.

Through :-

- 1) The Director, Horticulture Department,
Central Building, Pune.
- 2) The Horticulture Officer,
Horticulture Nursery,
Pathardi, District Ahmednagar.

...PETITIONER

-VERSUS-

Dropadi Deorao Dudhal,
R/o Kasaba Peth, Pathardi,
Taluka Pathardi, District Ahmednagar.

...RESPONDENT

**WITH
WRIT PETITION NO.2286 OF 2004**

The State of Maharashtra.

Through :-

- 1) The Director, Horticulture Department,
Central Building, Pune.
- 2) The Horticulture Officer,
Horticulture Nursery,
Pathardi, District Ahmednagar.

...PETITIONER

-VERSUS-

Smt.Manjulabai Damodhar Sakhare,
R/o Kasaba Peth, Pathardi,
Taluka Pathardi, District Ahmednagar.

Since deceased through L.R. :-
Arjun Damodhar Sakhare,
Age : 45 years,
R/o As above.

...RESPONDENT

WITH
CIVIL APPLICATION NO.4182 OF 2018
IN
WRIT PETITION NO.2286 OF 2004

Smt.Manjulabai Damodhar Sakhare.
Died through legal heir.
Arjun s/o Damodhar Sakhare,
Age : 45 years, Occupation : Agriculture,
R/o Kasba Peth, Pathardi,
District Ahmednagar.

...APPLICANT

-VERSUS-

The State of Maharashtra.
Through :-

- 1) The Director, Horticulture Department,
Central Building, Pune.
- 2) The Horticulture Officer,
Horticulture Nursery,
Pathardi, District Ahmednagar.

...RESPONDENT

WITH
WRIT PETITION NO.2295 OF 2004

The State of Maharashtra.
Through :-

- 1) The Director, Horticulture Department,
Central Building, Pune.
- 2) The Horticulture Officer,
Horticulture Nursery,

Pathardi, District Ahmednagar.

...PETITIONER

-VERSUS-

Miss. Rajashri Vishwas Borude,
R/o Kasaba Peth, Pathardi,
Taluka Pathardi, District Ahmednagar.

...RESPONDENT

WITH
WRIT PETITION NO.2296 OF 2004

The State of Maharashtra.

Through :-

- 1) The Director, Horticulture Department,
Central Building, Pune.
- 2) The Horticulture Officer,
Horticulture Nursery,
Pathardi, District Ahmednagar.

...PETITIONER

-VERSUS-

Vachhalabai Shripati Sontakke,
R/o Kasaba Peth, Pathardi,
Taluka Pathardi, District Ahmednagar.

...RESPONDENT

...
AGP for the Petitioner/ State : Shri S.R.Yadav Lonikar.

Advocate for the Respondents : Shri Cedric C. Fernandez h/f Shri A N
Kakade.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd March, 2018

Oral Judgment :

1 In all these petitions, the State Government and its concerned Department is aggrieved by an identical judgment delivered by the Industrial Court dated 26.08.2003 in Complaint (ULP) Nos.164, 165, 166, and 162 of 1991, by which, the Industrial Court has applied the analogy of Standing Order 4-C of the Industrial Employment (Standing Orders) Act, 1946 and the concept of completion of 240 days and has granted permanency to these Respondents/ Workmen from the date of the filing of their complaints.

2 The learned Advocate appearing on behalf of all the Respondents/ Workmen/ original Complainants submits that insofar as Writ Petition No.2286/2004 is concerned, the Complainant (Manjulabai Sakhare) has passed away on 26.08.2014. Civil Application No.4182/2018 is tendered for bringing the sole legal heir on record. The learned AGP appearing on behalf of the Petitioners/ State does not oppose the application. Hence, Civil Application No.4182/2018 is allowed and the sole legal heir of the deceased Manjulabai is taken on record in Writ Petition No.2286/2004. Amendment be carried out forthwith.

3 I have considered the strenuous submissions of the learned Advocates for the respective sides.

4 The issue involved in this petition is as to whether, the

Industrial Court can grant permanency by applying the principle of completion of 240 days in continuous employment akin to Standing Orders 4-C and 4-D of the Industrial Employment (Standing Orders) Act, 1946, to the daily wagers working in a State Instrumentality.

5 The issue involved in this petition is no longer res-integra in the light of the judgments delivered by this Court in the following matters :-

- (a) Municipal Council, Tirora and another vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J. 867. (D.B.)
- (b) Mukhyadhikari, Nagar Parishad, Tuljapur vs. Vishal Vijay Amrutrao, 2015(5) Mh.L.J. 75. (S.J.)
- (c) Municipal Council, Tuljapur v/s Baban Hussain Dhule, judgment 26.02.2015 in Writ Petition No.1843/2015. (S.J.)

6 It is, thus, crystallized that when it comes to State Instrumentalities which do not have the powers to create posts or issue orders of regularization, no ULP can be declared against such instrumentalities by the Industrial Court. Consequentially, the declaration of ULP in clauses (2) and (3) of the operative part of the impugned judgment is unsustainable and stands quashed and set aside.

7 Moreover, considering the law laid down in the above

referred cases, Standing Orders 4-C and 4-D are not applicable to the State Instrumentalities and the Industrial Court cannot grant regularization under the deeming provision enunciated in Standing Order 4-C. It is well settled that in such matters the proposals of such candidates have to be forwarded to the appropriate authority of the State Government so as to enable the State Government to scrutinize the proposals and depending on the seniority of such candidates in relation to all similarly situated employees and depending upon the availability of permanent posts, the orders of regularization can be passed.

8 Considering the above, these Writ Petitions are partly allowed. The directions of the Industrial Court in clauses (2) and (3) of the operative paragraph are quashed and set aside. Since the direction in clause (4) runs counter to the direction in clause (5), I deem it appropriate to modify clauses (4) and (5) as under :-

- (a) The Petitioner (Horticulture Officer, Horticulture Nursery, Pathardi, District Ahmednagar) would prepare the proposal of these Respondents along with all similarly situated employees and forward the same within a period of TWELVE WEEKS FROM TODAY to the Director of Horticulture, Pune.
- (b) The Director of Horticulture, Pune, on receipt of such proposals, shall forward the same to the Principal Secretary, Agriculture Department, Maharashtra State, Mantralaya,

Mumbai-32 expeditiously and in any case within FOUR WEEKS from the date of receipt of the proposals.

- (c) The Principal Secretary, Agriculture Department, would consider the proposals within SIX MONTHS and after considering the length of service of such employees, the area in which they have worked and their seniority in comparison with similarly situated employees, would grant regularization depending upon the availability of permanent vacant posts.
- (d) If permanent vacant posts are not available and these Respondents are still continued on daily wages, the Petitioner would continue them as such until the posts are created so as to consider their claims against the newly created posts.
- (e) Subject to the above directions, these Respondents would not be terminated from service merely on the ground that they are working on daily wages. This protection would not be applicable if these Respondents are not in employment today and to cases of disciplinary action.

9 Insofar as the case of the deceased Manjulabai is concerned, the Petitioner would decide the deemed date of regularization for the deceased Manjulabai, subject to the above directions and all monetary benefits and retiral benefits as would have been available to the deceased

Manjulabai, had she been alive and till her demise, would be extended to the sole legal heir of the deceased Manjulabai.

10 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)