

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

WRIT PETITION NO. 2962 OF 2004

Ahmednagar Zilla Wan Kamgar Union,
having its Branch Office at Trade
Union Centre, Near Mamledar Kachery
Road, Sangamner, Tq. Sangamner,
District Ahmednagar through its
Joint Secretary Shri. Maruti Sheshrao
Kolhe, Age 41 years, Occ. Service,
Resident of Kolhewadi.

... **Petitioner.**

VERSUS

1. The Secretary,
Social Forestry Department
Government of Maharashtra,
Mantralaya, Mumbai-400 032.

2. The Deputy Director of Social
Forestry, Sudaka Mala,
Balikashram Road, Badoda
Bank Colony, Ahmednagar.

... **Respondents.**

...

Mr. S.S. Wagh, learned advocate, h/f for Mr. S.T. Shelke, learned
advocate for petitioner.

Mr. P.N. Kutti, A.G.P., for respondents No. 1 and 2.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 08th May, 2018

JUDGMENT :

1. The petitioner union is partly aggrieved by the impugned judgment of the Industrial Court dated 26.04.2002 by which the complaints filed by the petitioner union have been partly allowed and the respondent Social Forestry has been directed to apply the scale of permanent category employees to these workers and pay

arrears of wages.

2. While admitting this petition on 02.09.2004, this Court did not grant any interim relief to the petitioner.

3. The learned advocate for petitioner union strenuously submits that the Industrial Court should have granted permanency to the workers concerned immediately after completing 240 days in continuous employment. They were entitled to deemed permanency which has been deprived by the Industrial Court though the complaints were partly allowed.

4. Learned A.G.P. on behalf of the respondents submits that the complaints decided by the impugned judgment were filed in between 1988 to 1996. This Court, in the matter of Marathwada Sarva Shramik Sanghatana V/s Assistant Director of Department of Social Forestry Mumbai, **2002 (3) CLR 349** has concluded on 03.04.2002 that the Department of Social Forestry is not an industry under section 2(j) of the I. D. Act, 1947. The complaints were therefore untenable in law.

5. I find that, in so far as the jurisdiction of Industrial Court is concerned, while entertaining complaints against Social Forestry Department, it is apparent that the view taken by this Court on 03.04.2002 in the Marathwada Sarva Shramik Sanghatana case

(supra) was not brought to the notice of the Industrial Court when it delivered its judgment on 26.04.2002. Probably the parties were not aware about the judgment delivered by this Court on 03.04.2002.

6. Even otherwise, the department of Social Forestry is an instrumentality of the State Government. The issue whether standing order 4(C) and 4(D) of the Industrial Employment (Standing Orders) Act, 1946 could be made applicable to such state instrumentalities, is no longer res-integra. The learned Division Bench of this Court at Nagpur dealt with a case, on reference from a learned Single Judge of the Nagpur bench, in the matter of *Municipal Council, Tirora vs. Tulsidas Baliram Bindhade*, **2016 (6) Mh.L.J. 867**. It was concluded that State instrumentalities do not have the power to create posts. The matter has to be dealt with by the State Government and therefore, merely because an employee continued for 240 days in uninterrupted service, would not entitle him to permanency unless permanent vacant posts are available. Model standing orders would therefore not be applicable to such cases.

7. Considering the above, I do not find any merit in this petition. The same is therefore dismissed. Rule is discharged.

(**RAVINDRA V. GHUGE, J.**)

mkd