

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

WRIT PETITION NO. 1391 OF 2004

Forest Development Corporation of  
Maharashtra, Nasik Region, Nasik,  
Wanvikas Bhawan, Old Agra Road,  
Nasik. Through its Divisional Manager,  
Rangrao s/o Manikrao Thakur,  
Age : 50 years, Occupation : Service  
as Assistant Manager, West Nasik  
Project Division, Nasik.

...PETITIONER

-VERSUS-

Ahmednagar Zilla Van Kamgar Union.  
(Reg.No.NSK/A/35),  
Head Office : Shramik, Tilak Road,  
Ahmednagar.  
Through its President.

...RESPONDENT

...  
Advocate for the Petitioner : Shri Pradeep L. Shahane.  
...

**CORAM: RAVINDRA V. GHUGE, J.**

**DATE :- 07<sup>th</sup> May, 2018**

**Oral Judgment :**

1           The Petitioner Corporation is aggrieved by the judgment and  
order dated 22.08.2003, by which, the Industrial Court, Ahmednagar has

allowed Complaint (ULP) No.138/1995 and has granted permanency and benefits incidental thereto to six employees mentioned in Annexure-A to the said complaint.

2 While admitting this petition on 01.03.2004, this Court has granted interim relief in terms of prayer clause "D" to the Petitioner Corporation and consequentially, the impugned judgment and order has been stayed.

3 No appearance has been entered on behalf of the Respondent Union. I have, therefore, considered the submissions of the learned Advocate for the Petitioner at length.

4 It is pointed out by the learned Advocate for the Petitioner that the Honourable Supreme Court in the matter of Uttaranchal Forest Development Corporation and another vs. Jabar Singh and others, 2007 (3) Mh.L.J. 354, has settled the issue that the Forest Development Corporation is an industry.

5 Keeping in view the law laid down in the matters of Mukhyadhipati, Nagar Parishad, Tuljapur vs. Vishal Vijay Amrutrao, 2015(5) Mh.L.J. 75. (S.J.), Municipal Council, Tuljapur v/s Baban Hussain, Dhule, judgment 26.02.2015 in Writ Petition No.1843/2015. (S.J.) and Municipal Council, Tirora and another vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J. 867. (D.B.), the State Instrumentality cannot create posts. The

deeming provisions with regard to permanency under Standing Orders 4-C and 4-D of the Industrial Employment (Standing Orders) Act, 1946, are not applicable to such State Instrumentalities. Even if daily wagers are working over a period of time, they cannot be granted permanency on the basis of the deeming provision. As such, the directions of the Industrial Court granting permanency to six employees from the date of the impugned judgment, cannot be sustained.

6           Even otherwise, without considering the availability of permanent sanctioned posts, the Industrial Court could not have granted permanency from the date of the impugned judgment only on the ground that they have worked continuously for a period of 240 days in each calender year.

7           The learned Advocate for the Petitioner submits that these six employees have not been in employment from 01.04.1995 i.e. for the past 23 years. So also, the Petitioner Division has been closed down on 30.04.1998. These workers were given an option to be accommodated in the Nashik Region, which they have not accepted and are out of employment ever since.

8           I also find that these employees or the Union, which represented them, have not responded to the notice of this Court and have not caused an appearance in this matter.

9           For the reasons recorded herein above, the impugned

judgment dated 22.08.2003 stands quashed and set aside. Complaint (ULP) No.138/1995 preferred by the Respondent Union stands rejected.

10 Rule is made absolute in the above terms.

*kps*

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