

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

WRIT PETITION NO. 485 OF 2005

- 1 Dagadabai Namdeo Hiwale.
Deceased through her L.Rs.
1-A) Ramchandra Namdeo Hiwale,
Age : 46 years, Occupation : Nil,
R/o Nursery, Yewala Road, Kopargaon,
Taluka Kopargaon, District Ahmednagar.
- 2 Sau.Vimalabai Maruti Sarate,
Age : 45 years,
R/o As above.
- 3 Smt.Khatija Salim Shaikh,
Age : 38 years,
R/o As above.
- 4 Taslim Pasu Shaikh,
Age : 35 years,
R/o As above.
- 5 Bhagwat Namdeo Khokale,
deceased through his L.Rs.
 - i. Mandabai Bhagwat Khokale,
Age : 40 years, Occupation : Nil,
R/o Khirdi Ganesh (Khokale Wasti),
Tq.Kopargaon, Dist.Ahmednagar.
 - ii. Navnath s/o Bhagwat Khokale,
Aged : 18 years, Occupation : Student,
R/o As above.
 - iii. Sagar Bhagwat Khokale,
Aged : 16 years, u/g of mother
respondent No.5(i).
R/o As above.
 - iv. Ujjawala Walmik Ware,
Aged : 22 years, Occupation : Household,

R/o Saigaon, Tq.Yeola,
District Nasik.

- v. Vaishali Eknath Davange,
Aged : 20 years, Occupation : Household,
R/o Khanda, Tq.Kopargaon,
District Ahmednagar.

6. Gangadhar Sakharam Gaikwad,
Age : 34 years,
R/o Kopargaon, District Ahmednagar.

...PETITIONERS

-VERSUS-

- 1 The Director,
Agriculture Department,
Government of Maharashtra,
Central Building, Pune-1.
- 2 The District Seeds Officer,
Market Yard, Station Road,
Ahmednagar.
- 3 Seeds Nursery,
Kopargaon, Taluka Kopargaon,
District Ahmednagar.

...RESPONDENTS

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Advocate for the Petitioners : Shri K.M.Nagarkar.
AGP for Respondents 1 to 3 : Shri S.R.Yadav.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th June, 2018

Oral Judgment :

- 1 Six Petitioners are aggrieved by the judgment of the Industrial

Court dated 30.06.2004 by which, their Complaint (ULP) No.146/1997 seeking benefits of permanency, has been dismissed.

2 This petition was admitted on 05.03.2007 and interim relief was refused.

3 The learned Advocate for the Petitioners submits that Petitioner No.1 (Dagadabai) and Petitioner No.5 (Bhagwat) have passed away. Their details of appointment along with the other Petitioners are mentioned in paragraph 1 of the memo of the petition. It is further contended that all these Petitioners were in employment continuously till the filing of the ULP Complaint. There is no dispute that they have been in employment. The Industrial Court, by its judgment dated 19.01.1988 delivered in Complaint (ULP) No.274/1986 filed by the Union, had granted salary benefits with permanency to three workers, namely, M.P.Jadhav, B.S.Barde and M.B.Jadhav, from 30.12.1985.

4 The learned AGP appearing for the Respondents/ State submits that as the Respondent is the Department of Agriculture, State of Maharashtra, it cannot be treated as an “industry” under Section 2(s) of the Industrial Disputes Act, 1947. So also, the Industrial Employment (Standing Orders) Act, 1946 cannot be made applicable to this Department and as such, the concept of deemed permanency on completion of 240 days in continuous employment, would not be applicable.

5 He places reliance upon the following judgments of this Court:-

- (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 I find from the record available that these Petitioners had established before the Industrial Court that they were working on daily wages. They had continued on daily wages. Three other workers were granted benefits, according to these Petitioners, by the judgment of the Industrial Court dated 19.01.1988. However, it was not proved that these Petitioners had participated in any selection process keeping in view that the Respondent is a State Instrumentality and the recruitment of this nature in public employment has to be by following a particular procedure. It was also not proved that permanent posts were vacant and even considering the seniority of these Petitioners as daily wagers, they were not eligible to be absorbed on such posts.

7 By now it is settled that mere completion of 240 days in

continuous employment cannot be a basis for granting permanency, inasmuch as, retaining juniors on daily wages would not entitle the Complainants to regularization. In public employment, it is the State Government which provides for financial sanction and creates posts. The office of the District Seeds Officer at the local level is not empowered to create posts, much less, fill in such posts by regularizing daily wagers. In this backdrop and the crystallized position of law, the Industrial Court could not have declared ULP against the Respondents/ Department.

8 Insofar as the State Instrumentalities are concerned, it is also settled that the Model Standing Orders cannot be made applicable and the fiction of deemed permanency would not become applicable to daily wagers, temporaries or casuals. In the judgments delivered by this Court in the above cited matters, it is held that the Industrial Court or for that reason any court dealing with the grievances of such Petitioners, could, at the most, direct the Department to forward the proposals of such Petitioners to the appropriate Department of the State for considering their cases for regularization based on availability of posts and their inter-se seniority.

9 In the light of the above, though no relief can be granted to these Petitioners today, inasmuch as, it is not specifically informed that all the Petitioners continued in employment after the dismissal of their complaints, I find that this petition can be disposed of by directing the

District Seeds Officer to prepare individual proposals of Petitioner Nos.2, 3, 4 and 6, who are alive today along with the proposals of the deceased Petitioner Nos.2 and 5 and forward the same to the Department of Agriculture for considering their cases for regularization depending on availability of posts and their seniority amongst the daily rated employees.

10 As such, this Writ Petition is disposed of with the following directions :-

- (a) Respondent No.2, in consultation with Respondent No.3, shall prepare the proposals of all the Petitioners including the deceased Petitioners as on date of their demise, and shall forward the same to Respondent No.1 within a period of TWELVE WEEKS from today. These proposals would indicate the exact tenure of employment as daily wages of these Petitioners, the areas in which they have worked and their seniority amongst the daily rated workers.
- (b) Respondent No.1, after receiving the proposals from Respondent No.2, would consider the same in the event the said Department is competent to do so or if not, would forward the said proposals to the appropriate Department of the State Government, which is empowered to consider these proposals, within a period of FOUR WEEKS from the date of receipt of the proposals.

- (c) The appropriate Department of the State Government after receiving the proposals from Respondent No.2, would consider the said proposals as expeditiously as possible and preferably within a period of SIX MONTHS from the date of receipt of the proposals, keeping in view that the State Government would be required to take a policy decision with regard to such daily rated workers working in various nurseries under the Department of Agriculture.
- (d) If the deceased Petitioners are also entitled to any benefits inclusive of monetary benefits, such benefits would then be made available to the legal heirs who have been brought on record in this petition.
- (e) It is made clear that this Court has not recommended the cases of these Petitioners for regularization. The State shall consider whether, they are eligible to gain service benefits.

11 Rule is discharged.