

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6059 OF 2009

1. The State of Maharashtra,
Through the Regional Dairy
Development Officer, Aurangabad
Region, Aurangabad.

2. The General Manager,
Government Milk Scheme,
Barshi Road, Beed.

..Petitioners

Versus

1. Shriram Patilbuwa Kadam
C/o Jagannath Rasal,
Opp. to Navgan College,
Shivaji Nagar, Beed.

2. Bibhishan Tukaram Shendge
R/o at Vanzarwadi, Post.
Navgan Rajuri, Tq. and
District Beed.

3. Bhagwat Dnyanoba Khande
R/o Mhalasjawala, Tq. and
District Beed.

4. Shaikh Jafar Sk. Farid
R/o Idgah Road, Near Water Tank,
Beed.

5. Barma Rama Gaikwad
R/o Ashok Nagar, Barshi Naka,
Beed.

6. Abu Ganpatrao Ranjwan,
R/o Aaher Wadgaon, Post. Pal
Tq. and District Beed.

7. Dadarao Dagdu Pradhan
C/o Sarpate Niwas,
Shahenshah Nagar, Barshi Road,
Beed.

8. Uddhav Lakshaman Aakhade
R/o Satwai Maidan, Malives,
Beed.

..Respondents

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AGP for Petitioners : Shri Shinde B.A.
Advocate for Respondents 1 to 6 & 8 : Shri Munde H.K.
Respondent No.7 : Abated.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 20, 2018

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ORAL JUDGMENT:-

1. The petitioners / State instrumentalities are aggrieved by the judgment of the Industrial Court dated 16.2.2009, by which, Complaint (ULP) No.54 of 2006 has been allowed by the Industrial Court, by ordering that the complaint of the complainants is made absolute in terms of prayer clauses (A), (B) and (C).

2. I have considered the extensive submissions of the learned AGP and the learned Advocate on behalf of respondents 1 to 6 and 8. The respondents have strenuously supported the impugned judgment.

3. Considering the grievance in the proceedings before the Industrial Court and in the light of the submissions of the learned Advocates, it is undisputed that the Kalelkar Award is applicable to these employees working in 'State Instrumentalities'. It is specifically

stated in paragraph No.6 of the Written Statement, filed by the petitioner / establishment before the Labour Court that each of these respondents have completed five years in employment as daily wagers and have already been inducted on Converted Regular Temporary Establishment (CRTE), in accordance with the Kalelkar Award. It is equally undisputed that after a daily wager is taken on CRTE, he attains permanency after completing further five years in continuous employment, as he is then taken on a regular establishment.

4. I find from the impugned judgments that though the Industrial Court has reproduced the contents of the complaint, written statement and the evidence of the litigating sides in the first eighteen pages, the conclusions of the Industrial Court are summarized in six lines on the nineteenth page and that too by concluding as under:-

“..... There cannot be any dis-agreement with the preposition of law laid down in the above cited judgment. Applying the said ratio to the facts before me in this complaint I have to say that the complainants case / complaint falls within the ambit of above mentioned sections and therefore the complainants are entitled for the reliefs as prayed....” (*Reproduced verbatim*).

5. I also find that the Industrial Court has not drawn any conclusion that the petitioner / establishment is guilty of unfair labour practices, though it has been cursorily recorded that the complainants have

proved issue No.2.

6. It cannot be ignored that the Industrial Employment (Standing Orders) Act, 1946 is not applicable to Government entities / State Instrumentalities. This Court has settled this position in the matters of Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others, [2015(5) Mh.L.J.75] and Municipal Council, Tuljapur Vs. Baban Hussain Dhale in WP No.1843/2015. The learned Division Bench of this Court at Nagpur dealt with a similar case, upon reference by a learned Single Judge in view of two contrary views expressed at Nagpur, in the matter of Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade [2016 (6) Mh.L.J.867].

7. In view of the above and more so when the Kalelkar Award is applicable to the petitioner / establishment, there is no issue of the applicability of the Model Standing Orders, in order to invoke the principle of 'deemed permanency'. Even if a daily wager completes 240 days in continuous employment in a State Instrumentality / Establishment and the Kalelkar Award is applicable, he would not be entitled for permanency merely on completing 240 days, as the Kalelkar Award mandates five consecutive years of employment for taking up a daily wager on CRTE.

8. In view of the above, this petition is allowed. The impugned judgment dated 16.2.2009 is quashed and set aside. Complaint (ULP) No. 54 of 2006 stands disposed off in view of the statement made by the petitioners in paragraph No.5, 6 and 8 of its Written Statement filed before the Industrial Court.

9. Learned Advocate for the respondent / workers submits that there is some dispute as regards the non-payment of all monetary benefits as per the Kalelkar Award. Needless to state, these respondent would be at liberty to make a joint representation to the petitioner / establishment pointing out specific shortfall in payment of their legal dues. Such representation shall be considered by the establishment within three months from the date of receipt of the same and in the event any payments are to be made to these workers, the department shall forthwith make the said payment without undue delay.

10. Respondent No.7 has passed away during the pendency of this petition and this petition has been abated to his extent. It goes without saying that if respondent No.7 was entitled to any monetary benefits, in view of this judgment, the petitioner shall calculate the same and ensure that the payment is made to the L.Rs. of respondent No.7, if not already paid. L.Rs. of respondent No.7 are at liberty to convey the list of the survivors to the petitioner and their present address for correspondence.

11. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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Ajay
Kishanrao
Losarwar

Digitally
signed by
Ajay
Kishanrao
Losarwar
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