

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

WRIT PETITION NO. 10497 OF 2018

1. The State of Maharashtra
Through the Commissioner of Agriculture,
Central Building, Pune.
2. The Divisional Assistant Director
Agriculture, Latur.
Division Latur.
3. The District Agriculture Superintendent
Agriculture Division, Osmanabad.
4. The Sub-Divisional Agriculture Officer,
Sub-Division Office, Osmanabad.
5. The Agriculture Supervisor,
District Fruit Nursery, Dhoki,
Tq. & Dist. Osmanabad. ...PETITIONERS
(Original Respondents)

VERSUS

1. The Shetkari Shetmajoor Panchayat (Maharashtra)
Affiliation : Hind Majdoor Sabha,
Main Office, 54, Budwar Path,
Kakakuwa Manshan, Laxmi Road,
Pune : Through its Vice President,
Balwant S/o Kisanrao More,
Age : 70 years, Occu : Social Work,
R/o : Nanded, Tq. & Dist. Nanded.
2. Aminabee Papamiya Shaikh,
Age : 45 years, Occu : Service
R/o .C/o Balwant S/o Kisanrao More,
Lathkar Niwas, Vishnu Nagar,
Nanded, Tq. & Dist. Nanded.

3. Dropadabai Rama Dandwate,
Age : 48 years, Occu : Service,
R/o.C/o Balwant S/o Kisanrao More,
Lathkar Niwas, Vishnu Nagar,
Nanded, Tq. & Dist. Nanded.
 4. Laxmibai Manik Pandvale
Age : 45 years, Occu : Service,
R/o.C/o Balwant S/o Kisanrao More,
Lathkar Niwas, Vishnu Nagar,
Nanded, Tq. & Dist. Nanded.
 5. Kantabai Amrushhi Kasbe,
Age : 49 years, Occu : Service,
R/o.C/o Balwant S/o Kisanrao More,
Lathkar Niwas, Vishnu Nagar,
Nanded, Tq. & Dist. Nanded.
 6. Jankabai Hari Kasbe,
Age : 38 years, Occu : Service,
R/o.C/o Balwant S/o Kisanrao More,
Lathkar Niwas, Vishnu Nagar,
Nanded, Tq. & Dist. Nanded.
 7. Kamalbai Madhav Igawe,
Age : 42 years, Occu : Service,
R/o.C/o Balwant S/o Kisanrao More,
Lathkar Niwas, Vishnu Nagar,
Nanded, Tq. & Dist. Nanded.
- ...RESPONDENTS
(Original Complainants)

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AGP for the Petitioners/State : Shri K. S. Patil
Advocate for the Respondents : Shri A. N. Sabnis h/f.
Shri V. D. Gunale.

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 06th OCTOBER, 2018.

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. After hearing the learned AGP for the petitioners and the learned Advocate on behalf of the respondents, as this Court noticed that the petitioners were praying for a remand so as to call for a hearing afresh in complaint (ULP) No. 80/2015 before the Industrial Court at Latur, this Court passed the following order on 19/09/2018 :-

" After hearing this petition for sometime, the learned AGP appearing on behalf of the petitioners/State Authorities submits t hat he would take instructions as to whether, the Respondents before the Industrial Court are agreeable to pay costs to the Complainants from their own pockets on account of the laxity and negligence that appears in the trial before the Industrial Court. Least assistance is extended by these Authorities before the Industrial Court which led to the impugned judgment dated 29.09.2017.

2. Stand over to 06.10.2018 in the urgent admission category."

3. Today, the learned AGP submits, on instructions, in

response to the order dated 19/09/2018 reproduced above, that the petitioners are not praying for a remand and this Court may deal with these petitions in accordance with the law.

4. In the above backdrop, I have considered the submissions of the learned AGP and the learned Advocate. I have considered the reasons assigned by the Industrial Court while allowing the complaint partly. The Industrial Court has declared unfair labour practices against a state instrumentality under Item 5, 6 and 9 of Schedule-IV of MRTU and PULP Act, 1971 and has directed the petitioners to regularize the services of the original complainants with consequential benefits from the date of the filing of the complaint which is 08/07/2015.

5. This Court had an occasion to decide two cases involving similar set of facts in the matters of *Mukhyadhikari Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others, 2015(5) Mh.L.J. 75* and *Chief Officer, Municipal Council, Tuljapur Vs. Baban Hussain Dhale in W.P. 1843/2015 dated 26/02/2015*.

6. It was held by this Court that when it comes to the state authorities or the state instrumentalities which may appear to be covered by the definition of 'industry' under Section 2(j) of the Industrial Disputes Act, 1947, the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946, would not apply to the state instrumentalities or such state authorities for the reason that unlike the private sector, the concept of deemed permanency on completion of 240 days in continuous employment would not be applicable. The private employer is not required to seek any permission from the statutory authorities for creation of posts, whereas in public sector instrumentalities or state instrumentalities, the government has to create posts and a financial sanction has to be obtained from the Government. Thereafter, the due selection process has to be followed for recruiting the candidates and such posts are then to be filled in, in accordance with law.

7. As has been held in the matter of *Chief Conservator of Forest and another Vs. Jagannath Maruti Kondhare and*

others (1996) 2 SCC 293, in the absence of permanent vacant sanctioned posts , the Court cannot grant regularization.

8. The learned Division Bench of this Court at Nagpur in the matter of *Municipal Council, Tirora, Vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J. 867*, had an occasion to deal with a similar issue in view of the Honourable Chief Justice of the Bombay High Court having referred two conflicting views of the learned Single Judges at Nagpur. While answering the issue referred, the learned Division Bench concluded that standing orders 4 C granting deemed permanency would not apply and if there is an absence of permanent sanctioned vacant posts, a workman who has put in 240 days in continuous service cannot invoke Clause 4 C of the Model Standing Orders.

9. In the above backdrop, the learned AGP and the learned Advocate for the respondents/original complainants submit that they would not argue against the law and leave it to the Court to appropriately deal with the impugned judgment in view of the law laid down in *Chief Officer, Municipal Council,*

Tuljapur (supra) and Municipal Council, Tirora (supra).

10. Considering the above, this petition is partly allowed.

The declaration of ULP in Clauses 2 and 3 of the operative part of the impugned judgment which are reproduced as under :-

"2.It is declared that the respondents have engaged in unfair labour practices under Item Nos. 5, 6 and 9 of Schedule-IV of MRTU & PULP Act, 1971.

3.The respondents are directed to cease and desist from such unfair labour practices in future."

are quashed and set aside.

11. The directions in Clauses 4 and 5 are modified as under :-

(a) The petitioner shall prepare a proposal of the complainants alongwith such other similarly situated and comparable daily-wager employees.

(b) The proposals shall include the exact duration of service of such daily-wagers, the nature of work performed by them and the last drawn wages.

(c) Such proposal shall be forwarded to the

Department of Agriculture through its Secretary, Government of Maharashtra, Mantralaya, Mumbai within a period of 12 (twelve) weeks from today.

(d) The said authority would consider the said proposals in the light of available permanent sanctioned posts and shall grant regularization to these daily-wagers strictly as per their length of service and their seniority.

(e) If sufficient posts are not available to accommodate all such daily-wagers, the petitioner, while following the above principle would consider claims of such daily-wagers in a staggered manner and as and when such position becomes available, the daily-wagers would be regularized.

(f) These daily-wagers shall not be terminated for the reason that they are working on daily-wages or because their proposals are pending.

(g) They would be continued in employment until permanent sanctioned posts become available and their turn arrives for regularization. This protection would not include cases of disciplinary action.

14. It be noted that in the event any such daily-wager who may have approached the Court, has superannuated, his case would be considered in view of the above directions and if he is entitled to regularization with retrospective effect, he or his legal heirs as the case may be , would be granted notional benefits alongwith all monetary benefits within the same period as directed above.

15. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

shp/-