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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 2860 OF 2018

Chandrakant Mahadev Dhuri.

... Petitioner.

V/s.

The State of Maharashtra & Ors.

... Respondents.

Mr. Rakesh S. Patil for the Petitioner.

Ms. Vaishali Nimbalkar, AGP for the State.

CORAM : Ravindra V. Ghuge, J.

DATE : 15 March, 2018.

P.C. :-

1. The Petitioner is aggrieved by the judgment and order delivered by the Industrial Court, Kolhapur dated 3 January 2007 which has been challenged by this petition filed on 20 March 2017. Out of the entire group of original complainants, the Petitioner, who is the complainant in Complaint (ULP) No. 400 of 1996 is alone before this Court, after 10 years.

2. The learned Counsel for the Petitioner has strenuously canvassed that since the Labour Court had earlier set aside his

termination by judgment dated 19 December 2005, allowing his Complaint (ULP) No. 7 of 1996, the Industrial Court could not have partly dismissed his complaint and could not have rejected the claim for permanency. It is further submitted that the Petitioner has worked continuously and in the un-interrupted service of the Respondents for a period of 240 days in each calender year of service. He is therefore deemed to have become permanent in view of Standing Order 4C and 4D under the Industrial Employment (Standing Orders) Act 1946.

3. The learned AGP appearing on behalf of the State Authorities submits that in fact there are no posts created for accommodating Rain Gauge Readers. The job of a Rain Gauge Reader is temporary and is available only for a period of about three months during the rainy season. A stipend is paid to such employees. After the rainy season is over, they are not allotted any work as they are not appointed by following the required procedure of recruitment for filling in posts which are sanctioned and vacant.

4. Having considered the strenuous submissions of the learned Counsel, I have gone through the petition paper-book.

5. This Court, by its judgment delivered in the matter of *Mukhyadhikari, Nagar Parishad, Tulzapur v/s. Vishal Vijay Amrutrao* reported in 2015(5) MH.L.J. 75 and in the matter of

Municipal Council, Tulzapur v/s. Baban Hussain Dhale (Writ Petition No. 1843/2015) has taken a view that when it comes to State instrumentalities, the principles of deemed confirmation do not apply. Unlike private sector employment who are covered by the 1946 Act, the State instrumentalities cannot be directed to regularize services of daily wagers unless specific posts are created to accommodate such employees and the claims of such daily wagers are then considered on the basis of their seniority

6. It requires no debate that Rain Gauge Readers work only during the rainy season by using the gauge provided to them for measuring the rain fall. There was no evidence before the Industrial Court that beyond the rainy season, such employees were allotted such other duties as may be associated with the job of a Rain Gauge Reader.

7. In the matter of *Municipal Council, Tirora v/s. Tulsidas Baliram Bindhade* reported in 2016(6) MLJ 867, the learned Division Bench of this Court at Nagpur dealt with a case that was referred to the said larger bench by the Hon'ble the Chief Justice in the light of contrary views taken by the two learned Single Judges at Nagpur. The learned Division Bench, by considering catena of judgment, concluded that unless sanctioned vacant posts are available, daily wage workers who have been working continuously for a period of 240 days in the un-interrupted service of a Municipal

Council or State Instrumentalities, cannot invoke Standing Order 4C and claim deemed confirmation. Standing Order 4C would not apply to State instrumentalities.

8. In the instant case, though the fact remains that the Rain Gauge Reader had work available only for the rainy season for measuring the rain fall and the flow of the river, he was not allotted work all round the year. It therefore cannot be said that the Kalelkar Award would become applicable to them when they work for about three months and have no work to perform for the rest of the year. Despite the said position, the Industrial Court has directed the Respondents – State Authorities to send a proposal of such Rain Gauge Readers to the Government for considering their claims for regular employment in the light of the Government Resolution dated 24 April 2001 and 31 March 2003.

9. The State Authorities have not challenged the said judgment of the Industrial Court wherein ULP under Item 9 of Schedule IV of the MRTU & PULP Act, 1971 has been declared against the said authorities. Had the State challenged the said judgment, the issue as to whether such a declaration can be made with regard to Rain Gauge Readers could have been gone into. The said issue cannot be opened in a Writ Petition filed by the worker since there is no challenge by the original Respondents to such

declaration of ULP.

10. The Hon'ble Apex Court in the matter of *Executive Engineer, Zilla Parishad, Engineering Division, Karnataka v/s. Digambara Rao* reported in *2004(8) SCC 262*, as concluded that merely because the daily wagers engaged in a particular scheme have completed 240 days in continuous employment, would not be a ground for entertaining their claims for regularization.

11. As noted above, the Respondent – State Authorities have not challenged the Judgment of the Industrial Court dated 3 January 2007. In that view of the matter, no relief can be granted to the Respondent – State in a Writ Petition which is filed by a worker. The Industrial Court having considered the claims of such Rain Gauge Readers has directed the Respondents to consider their proposals.

12. In that view of the matter, I do not find that the judgment of the Industrial Court calls for an interference, keeping in view that the Respondent – State Authorities have not challenged the said judgment.

13. This Petition is therefore dismissed.

(Ravindra V. Ghuge, J.)