

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

WRIT PETITION NO.3256 OF 2002

1. Dy.Conservator of Forests
Alibag Forest Division, Alibag-Raigad

2. Range Forest Officer (Protection)
Taluka Pen, District Raigad

.. Petitioners

vs

Pandurang Hari Patil

.. Respondent

Ms.Vaishali Nimbalkar Asst.Govt.Pleader
for Petitioners
Mr.S.M.Ketkar I.b Mr.S.S.Pakale
for Respondent no.1

Coram : S.C.GUPTE, J
Date : 15th JUNE, 2018

P.C

Heard learned Assistant Government Pleader for the petitioner and learned counsel for the respondent.

1. This petition challenges an order passed by the Industrial Court, at Thane, in a complaint of unfair labour practices under Item Nos.5,9 and 10 of schedule IV of the MRTU and PULP Act, 1971. The respondent was the original complainant. The complaint was filed by him on behalf of himself and seven others who were similarly placed. The complainant and others were appointed as labourers in the forest department. Their case was that they had worked for

more than 240 days in 12 months' period preceding the filing of the complaint. Written statement of the respondent indicates that all complainants worked for more than 240 days in 12 calendar months preceding the complaint. The Court noted that similarly placed workmen, who had completed continuous service, were made permanent and that the complainant, and others were in employment of the forest department since 1990 continuously and that they were entitled to permanency on the basis of Order 4 (c) of Model Standing Orders. The Court noted that the forest department had failed to produce any document concerning their appointment to show that they were appointed only on a temporary vacancy or for any fixed time. The Court noted that during the pendency of the complaint, three out of these eight complainants were made permanent; and that of the remaining complainants three, namely, Tukaram Patil, Padu Rogya Patil and Madhu Hasha Tandal, were entitled to be made permanent. (In case of two others, namely, Dilip Mhatre and Rama Hasha Pawar, no evidence was adduced by the complainant of their having completed 240 days preceding 12 calendar months before filing of the complaint and accordingly, their case was not considered for permanency.)

2. The record establishes that the two complainants named above had completed more than 240 days in 12 calendar months preceding the filing of the complaint and as in the case of other similarly placed employees, they were entitled to be made

permanent. No fault, in the premises, can be found in the impugned order of the Industrial Court. The learned Assistant Government Pleader for the State relies on the case of ***MUNICIPAL COUNCIL TIRORA AND another vs TULSIDAS BALIRAM BINDHADE*** and submits that mere completion of 240 days of service in a year cannot by itself be a ground for directing regularization and permanency. The learned Assistant Government Pleader submits that the appointment must be shown to have been in a sanctioned post and after following due procedure. Generally, it is true that a mere case of 240 days of continuous service in 12 calendar months cannot by itself be a ground for regularization or permanency, if the appointment is not made in a sanctioned post or after following regular appointment procedure. But then, here is a case of two labourers who were engaged in the forest department for planting saplings. It is hard to imagine what could be termed as a regular procedure for appointment of labourers to plant saplings. It is nobody's case that there were no sanctioned posts for appointment of these labourers. The State did not make out any such case before the Industrial Court. It is not proved before the Industrial Court, as held by that Court, that these appointments were made for any temporary or specific period. In the premises, no fault can be found with the impugned order of the Industrial Court.

3. Accordingly, Rule is discharged and the petition is dismissed. Since the concerned workmen have already

superannuated or are about to do so, the State shall treat them as permanent workmen with effect from 31.3.2000 and pay back wages as may be admissible for the post with all consequential benefits from 31.3.2000 till date or their superannuation, whichever is earlier, within a period of three months from today.

(S.C.GUPTE, J)

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