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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO.12701 OF 2016**

The State of Maharashtra & Ors.

... Petitioners

vs.

Shri Rau Mohan Naik

... Respondent

.....

Mr. Sachin Kankal, A.G.P. for the Petitioner.

Mr. Vikram Vyankatesh Pai for Respondent no. 1.

.....

**CORAM : A.K. MENON, J.**

**RESERVED ON : 20<sup>th</sup> DECEMBER, 2017**

**PRONOUNCED ON : 9<sup>th</sup> JANUARY, 2018**

**P. C.**

1. By this Writ Petition the petitioner, State of Maharashtra seeks to challenge the judgment and order dated 28<sup>th</sup> September, 2015 of the Industrial Court, Kolhapur by which the Court directed the respondent to cease and desist from engaging in unfair labour practices and in the meanwhile directed the complainant- original respondent to be granted status and privileges of permanent employee along with other consequential benefits.

2. A few facts may be narrated before dealing with the substance. The respondent was at all material times employed as a Field Worker vide order dated 27<sup>th</sup> December, 1999. The appointment was on temporary basis. It is the petitioners contention that the appointment was a seasonal one requiring the

respondent to undertake spraying work in the field areas. Essentially the task was to engage in prevention of Malaria and Filariasis in the Office of the Health Service department.

3. According to the respondent he is working with the petitioner since 27<sup>th</sup> December, 1999 continuously for a period of about 16 years. He had a clean and unblemished record. There were no allegations of misconduct during the period of his continuous employment. Often he was given the job of Laboratory Technician since he had the necessary qualification. According to the respondent there was 15 sanctioned posts of Laboratory Technicians out of which 9 posts were vacant and the petitioner was not taken over to fill up these posts.

4. The respondent contended that he had worked for more than 240 days every year during his tenure, but had not been appointed as a permanent employee. He had been given notional breaks and contended that the petitioner was engaged in unfair labour practices under the MRTP & PULP Act, 1971. It is the case of the respondent that the petitioner extracted work of Laboratory Technician on lower wages by keeping respondent engaged as field worker. According to him there was no recognised union working. He was not being paid wages as a permanent employee. The petitioner had maintained seniority list and in the said list of Field Workers, the name of the complainant/respondent appeared at Sr. No. 18.

5. The petitioner had apparently prepared a Seniority list of Laboratory Technicians as well in the year 2002 in which respondent's name appeared at Sr.

No. 3. Although the respondent should have been absorbed on vacant post of Laboratory Technician by seniority, this post has been kept vacant deliberately to retain respondent as temporary employee and to avoid granting appointment on permanent basis. The petitioner denied this allegation and contended that his appointment was purely for a temporary period i.e. 29 days. It was contended that the respondent was a graduate in Chemistry and they were not providing him with the post of Laboratory Technician. It was denied that the provisions of Industrial Disputes Act, 1947 and Industrial Employment (Standing Orders) Act and/ or orders of MRTU & PULP Act, 1971 were applicable to the respondent department or its office. On this basis the parties went to Court.

6. The Industrial Court initially found that the complaint was false despite opposition of the petitioner and the complainant was held to prove that petitioner had engaged in unfair labour practices. Accordingly, the petitioner was directed to absorb the respondent as Laboratory Technician on a regular and permanent basis. The State filed a Writ Petition No. 1853 / 2013 in this Court. During the Course of hearing of the Writ Petition it had dawned on the respondent that claiming the post of Laboratory Technician may have legal difficulties given the circumstances and therefore both parties agreed that the order of the Industrial Court dated 27<sup>th</sup> June, 2012 be set aside with consent and accordingly the Writ Petition was disposed of remanding the matter to the Industrial Court.

7. Upon remand the complaint came to be amended and written Statement came to be amended was filed. The matter was thereafter argued. Evidence was led.

Matter came to be heard once again and by judgment and order dated 28<sup>th</sup> September, 2015 the Industrial Court upheld the finding that respondent was entitled to be employed on permanent basis since he had been kept as a temporary employee for 16 years. That the nature of work as Field Worker is of permanent nature and 3 posts out of 7 Field workers were vacant. In the circumstances the petitioner was ordered to grant status of permanent employee by the petitioner with effect from 17<sup>th</sup> October, 2007 as a field worker.

8. The impugned order records that on behalf of the petitioner herein no documents were produced nor has any witness been deposed to demonstrate that the respondent had not worked for more than 240 days of continuous service as a field worker. Perusal of the record reveals that written statement filed on behalf of the petitioner in the Industrial Court, Kolhapur in paragraph 6 a specific statement is made to the following effect :

*“The Respondent have produced the chart along with written statement which clearly shows that, the complainant has never worked with Respondent Department continuously and also he never completed 240 days continuous service in a year, in such situation the complainant is not at all entitled to claim permanency as well as benefit of permanent employee”.*

Thus according to the petitioner it had produced a chart along with written statement which shows that the respondent did not ever complete 240 days in

continuous service. This is a principle plank on which the defence rested. Oral evidence is seen to have been led on behalf of the petitioner and respondent. In the first round the judgment dated 27<sup>th</sup> June, 2012 copy of which is annexed at Exhibit C to the petition the petitioners contention that the respondent claim permanency since he has never completed 240 days of continuous service, has found to be fallacious in as much as in paragraph 10 of his evidence the finding of fact is to the following effect :

*“From record it appears that complainant is working with the respondent since joining till this date and have worked for more than 240 days continuously in every year during his service tenure.”*

Thus in the Written Statement it is contended that the chart shows that the respondent had not completed 240 days but finding was to the contrary. No doubt the order of directing the petitioner to absorb the respondent as Laboratory Technician dated 27<sup>th</sup> June, 2012 has been set aside but this finding to the effect that he had completed more than 240 days is clearly upheld in the impugned judgment as well.

9. In paragraph 2 of the impugned judgment the Industrial Court upon remand has observed that in the earlier round the complainant had been found to have been continuously working for more than 240 days in every year and even after remand the contention of the petitioner that the respondent did not complete 240 days of continuous service because the post of field worker is seasonal in nature has not been established.

10. In paragraph 7 of the impugned order the Industrial Court finds that in the cross examination the respondent had refuted the petitioners contention that he had not put in 240 days of continuous service and although the respondent had admitted that the work of field worker is seasonal, the petitioner witnesses had clearly admitted that work is of permanent nature and 3 posts out of 7 were vacant and yet the petitioner did not give the status of permanent employee to the respondent for more than 16 years. It is on this basis that the complaint was allowed and respondent was directed to be appointed to work as Field Worker.

11. In the facts and circumstances of the case and in support of his submissions Mr. Kankal relied upon decision of the Division Bench of this Court in *Municipal Council, Tirora and Anr. vs. Tulsidas Baliram Bindhade (2016) 6 Mh.L.J. 867* in which it was held held that mere completion of of 240 days of service by itself would not be carte blanche to employee to claim permanency in service. The Division Bench quoted an earlier judgment in *Pune Municipal Corporation vs. Dhananjay Prabhakar Gokhale 2006 (4) Mh.L.J. 66* in paragraph 8 to the effect that merely because employee continues to render 240 days in a year by itself will not be sufficient to claim permanency in the post unless he is able to establish permanent posts duly approved by the Competent Authority is vacant and the claimant is duly liable for being appointed to such posts. Mr. Kankal also relied upon the decision in the case of *Secretary, State of Karnataka and Ors. vs. Umadevi AIR 2006 SC 1806*.

12. On the other hand Mr. Pai relied upon the observation of the Supreme Court in *Maharashtra State Road Transport Corporation and Anr. vs. Casteribe Rajya Parivahan Karmachari Sanghatana (2009) 8 SCC 556* in which he relied upon the observation in paragraph 36 to the effect and submitted that Supreme Court had frowned upon regularisation of the temporary workman in regular posts. *Umadevi (supra)* does not denude the Industrial and Labour Courts of their Statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer where the posts on which they have been working exist.

13. Having heard the learned counsel for the parties, I am of the view that no interference is called for in the present set of facts. The admitted facts are that the respondent no. 1 was appointed by the petitioner from 27<sup>th</sup> December, 1999 as field worker and that he was qualified having completed B.Sc (Chemistry). These are evident from the written statement. As against this the evidence reveals that original appointment of the respondent was as Field Worker on temporary basis and he was paid wages on man days. He had not been appointed in the post of Laboratory Technician but he has accepted that he had worked for more than 240 days. He had denied the suggestion that he had not worked as Laboratory Technician and that he had not claimed any facility that he must be appointed as Laboratory Technician.

14. The finding of the Courts below are to the effect that respondent had completed more than 240 days in a year from 1999-2006 thus destroying the main plank defence that he had not worked for 240 days continuously. In the contrary, the finding is to the fact that he had worked for 824 days continuously and the petitioner had provided work to the complainant as a Field Worker, thereafter as Superior Field worker. However, the finding was to the effect that complainant had worked from 27<sup>th</sup> December, 1999 till date of the first judgment 26<sup>th</sup> June, 2012. The Seniority list for the year 2001-02 for Field Workers shows that the complainant was at Sr. No. 18 as in the list of Senior Field Workers the complainant is placed at Sr. No. 3. The record further indicated that though he was appointed as Field Worker the petitioner has engaged him for the work of Laboratory technician.

15. The petitioner had not disputed that the complainant possessed the requisite qualification for the post of Laboratory Technician. Prior to the remand there were 39 post of Laboratory Technician. In fact paragraph 10 of the first order recalls that the petitioner had admitted that respondent no. 1 possesses the requisite qualification for Laboratory Technician. However this is not relevant today since that order has been set aside by consent. Thus in the overall scheme of things the respondent had worked for more than 240 days continuously is eligible for the posts.

16. The impugned order records that there were 3 posts out of 7 vacant for Field Worker and although the respondent had stated in his cross examination that the

work of Field Worker was seasonal the petitioner had admitted that the work of Field Worker was a post of permanent nature and 3 posts out of 7 were vacant. On these circumstances that the order came to be passed observed that respondent no. 1 was engaged for more than 16 years as temporary employee on the basis of lower wage and avoiding granting permanency to him. The conclusion of the impugned order cannot be faulted. Even otherwise *Casterbibe Rajya Parivahan Karmachari Sanghatana (supra)* holds that *Umadevi (supra)* does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act. That *Umadevi (supra)* cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice have been established.

17. In the present case unfair labour practice has been established. As fact finding Authority, the lower Courts have held so. I find no reason to interfere with this finding. It is also worthy of mention that although *Tulsidas Baliram Bindhade (supra)* in which the learned AGP had relied upon the observation of the Supreme Court in which it had quoted observation of the Supreme Court merely because an employee rendered service for 240 days will not entitle him to claim permanency in the posts. The said observation comes with an implied caveat that observation will not be valid in case there is permanent post duly approved and vacant and that the applicant was eligible for appointment to such posts. This is not a case where any such caveat has to be resorted to. On the other hand the respondent complies with

all these requirements of having completed 240 days, being qualified and also there being a vacancy which is an admitted position. Thus in my view no interference is called for in the Writ Jurisdiction of this Court. Accordingly, I pass the following order :

- (a) Writ Petition is dismissed.
- (b) Petitioner will pay costs of Rs.10,000/- to the respondents.

**(A.K. MENON, J.)**