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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7973 OF 2016

Vice Chancellor Mahatma Phule Krishi Vidyapeeth and Anr. ... Petitioner

vs.

Sulochana Shivram Dudhal ... Respondent

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Ms. Neeta Karnik for the Petitioners.

Mr. Nitin A. Kulkarni a/w. Mr. Avinash Belge for the Respondent.

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CORAM : A.K. MENON, J.

DATE : 17th JANUARY, 2018

P. C.

1. By this Writ Petition, Mahatma Phule Krishi Vidyapeeth (Vidyapeeth) has challenged the judgment dated 11th September, 2015 by which the Industrial court allowed the complaint partly, declaring that the petitioners had indulged in unfair labour practices and directing them to desist from doing so. The impugned order effectively directed the petitioner to treat the respondent as a permanent employee with effect from 8th April, 2005 and grant benefits accordingly, within a period of three months from the date of judgment till her superannuation.

2. Ms. Karnik submitted that the petitioner had engaged respondent as daily wage casual worker from the year 1978 at the Krushi Tantra Vidhyalaya (Vidhyalaya). It is the case of the petitioner that the respondent had not applied for any particular post and had not participated in any prescribed procedure of

recruitment and has therefore sought back door entry into the work force of the petitioners. It is submitted that like the respondent there are several others, all of whom were engaged by the Vidhyalaya and were claiming permanency.

3. According to Ms. Karnik, the State of Maharashtra, Finance Department had issued a circular on 10th September, 2001 directing the petitioners not to fill up any further posts without seeking permission of the High Power Committee and accordingly the respondent in the present case was not entitled to be granted permanent employment.

4. Further reliance is placed on a circular dated 25th August, 2005 stated to be issued by the General Administration department, State of Maharashtra directing the petitioner not to regularise services of ad-hoc appointees in view of the order dated 18th February, 2003 passed in Supreme court in Civil Appeal No. 7744 of 1997 in *Dr. Chanchal Goyal v/s. State of Rajasthan. [(2003) 3 SCC 484]* In the meantime it appears that the Supreme Court had already passed an order in SLP(C) No. 4658/93 and 5717/93 directing services of all workmen existing on date of the order to be given work as and when available in the case of seasonal operations and to regularise such employees in order of their seniority. I will shortly advert to the circumstances in which this order of the Supreme Court dated 18th August, 1994 becomes relevant.

5. In the facts of the present case, the impugned order records that the original complainant- respondent herein is working as an Agricultural Labourer from 1974

to 1994 on daily wages of Rs.41/- per day. In 1994 she along with several others had filed a case against the petitioner for permanency and this litigation resulted in the Supreme Court passing the aforesaid orders directing them to provide work as and when available. The relevant portion of the Supreme Court Order dated 18th August, 1994 is extracted below :

“Accordingly, the appeal is allowed. The orders of the Tribunal and the High Court are set aside. However, it is made clear that the appellant shall take the services of all the workmen existing as on date as and when the work is available and during the period of seasonal operation. As and when the vacancies arise, regularisation of the employees should be made in the order of their seniority and till the employees are regularised, they are not to be retrenched. In the circumstances, there will be no order as to costs.”

6. In the meantime it appears that the State had issued the circulars referred to above, as a result of which the petitioners declined to treat the respondent as a permanent employee. It is the case of the respondent that she has been kept as a casual labourer on temporary basis for number of years, despite orders of the Supreme Court and the petitioners have thus engaged in unfair labour practices.

7. In reply, Mr. Kulkarni has pointed out that the petitioner along with several others had been appointed to specific posts which were vacant and the contention of the petitioner that there were only 36 sanctioned post as against 112 persons aspiring to be granted permanency was incorrect, since petitioner was appointed in vacant posts as is evident from the appointed order. Mr. Kulkarni has relied upon appointment order in the case of the present respondent dated 19th June, 2006

clearly indicating that she has been appointed on account of the vacancy and that it does not entitle the petitioner to contend that the respondent cannot be made permanent.

8. Having heard the learned Advocates, I find that the impugned order having considered all facts, observed that the petitioner was an institute working under directions of the State Government and had contended that they could not fill up posts on a regular basis on their own and accordingly in view of the direction issued by the State vide Exhibit C-16 all offices and departments were directed that appointment made on temporary basis shall not result in absorption of said employee unless it is so permitted. The Government circular came to be issued on the basis of the Supreme Court's order in the case of *Dr Chanchal Goyal (supra)* and therefore the allegation that petitioner had engaged in unfair labour practices was stayed.

9. After considering all aspects the Industrial Court, Pune allowed the complaint and directed the petitioner to treat the respondent as permanent with effect from 8th April, 2005 till her superannuation. In my view the order of the Supreme Court dated 18th August, 1994 in the case of the petitioner and others in SLP(C) 4658/93 and 5717/93 is clear and specific of the fact that the petitioners therein could not be retrenched and the only condition was that they would be made permanent as and when vacancy arises and regularisation of the employees should be on the basis of seniority. Thus their employment was protected including on seasonal basis till such date vacancies arose. In the instant case since the respondent was already

appointed against vacant posts it was evident that the petitioners have granted them work in successive sessions over the entire period of time from 1978 till the appointment orders were passed in 2006. However, from 2006 onwards they were granted successive tenures of 11 months. Apropos the contention of Ms. Karnik that the State Government had issued appropriate circular based on the decision in the case of *Dr. Chanchal Goyal (supra)*, the facts of that case reveal that the appointment of Medical Officers was specifically meant to be for one year and not beyond. It is in these circumstances that the Supreme Court observed that the employee concerned could not be granted permanency in the absence of vacant post and upon expiry of specific period of one year.

10. The facts in *Dr. Chanchal Goyal (Supra)* are quite different from the case at hand and in my view the circular issued by the Government and on which petitioners have acted cannot restrict right of the respondent pursuant to the order of the Supreme Court dated 18th February, 2003. In my view the decision in *Dr. Chanchal Goyal (supra)* will have no impact on the appointment of the respondent since in the instant case the appointments were to vacant posts and for that reason impugned order was justified and not perverse. Consequently, there is no case for interference with the impugned order. In the circumstances, I pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No order as to costs.

(A.K. MENON, J.)