

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5526 OF 1999

Ashok S/o Sonaji Karkhele,
Age 35 years, Occ. Service-Driver
R/o Station Road, Rahuri, Taluka
Rahuri, District Ahmednagar.

... Petitioner

Vs.

The Mahatma Phule Krushi
Vidyapeeth, Taluka Rahuri
District Ahmednagar [Summons
to be served to the Vice-Chancellor,
Mahatma Phule Krushi Vidyapeeth].

... Respondent

WITH

WRIT PETITION NO. 1852 OF 1999

Mahatma Phule Krishi
Vidyapeeth, Taluka Rahuri
District Ahmednagar.

... Petitioner

Vs.

1. Ashok Sonaji Karkhele,
Age major, Occ. Service
R/o Rahuri, Taluka Rahuri,
District Ahmednagar.

2. The Member,
Industrial Court, Ahmednagar.

... Respondent

WITH

WRIT PETITION NO. 1853 OF 1999

The Mahatma Phule Krushi
Vidyapeeth, Taluka Rahuri
District Ahmednagar.

... Petitioner

Vs.

1. Bhausahab Shankar Jare,
Age 42 years, Occ. Service,
r/o. At Rahuri, Tal. Rahuri,
District. Ahmednagar

2. The Member

Industrial Court, Ahmednagar

... Respondents

WITH

WRIT PETITION NO. 1854 OF 1999

Mahatma Phule Krishi
Vidyapeeth, Taluka Rahuri
District Ahmednagar.

... Petitioner

Vs.

1. Vilas Eknath Gaike,
Age 35 years, Occ. Service,
r/o. At Rahuri, Tal. Rahuri,
District Ahamednagar
2. The Member
Industrial Court, Ahmednagar

... Respondents

WITH

WRIT PETITION NO. 5191 OF 1999

Vilas S/o Eknath Gaike,
Age major years, Occ. Service - Driver,
r/o. Rahuri, Tal. Rahuri,
District Ahamednagar.

... Petitioner

Vs.

The Mahatma Phule Krushi
Vidyapeeth, Taluka Rahuri
District Ahmednagar [Summons
to be served to the Vice-Chancellor,
Mahatma Phule Krushi Vidyapeeth].

... Respondent

WITH

WRIT PETITION NO. 5383 OF 1999

Vilas S/o Bhagwat Takte,
Age 38 years, Occ. Service - Wireman,
r/o. Khadamba, Tal. Rahuri,
District Ahamednagar.

... Petitioner

Vs.

The Mahatma Phule Krushi
Vidyapeeth, Taluka Rahuri
District Ahmednagar [Summons
to be served to the Vice-Chancellor,
Mahatma Phule Krushi Vidyapeeth].

... Respondent

WITH
WRIT PETITION NO. 5395 OF 1999

Bhausahab S/o Shankar Jare,
Age 40 years, Occ. Service,
r/o. Kukkadwedhe, Tal. Rahuri,
District Ahamednagar.

... Petitioner

Vs.

The Mahatma Phule Krushi
Vidyapeeth, Taluka Rahuri
District Ahmednagar [Summons
to be served to the Vice-Chancellor,
Mahatma Phule Krushi Vidyapeeth].

... Respondent

Advocate for Petitioner : Shri U. V. Khonde i/b Shri V. P. Latange
Advocate for the Respondent : Shri P. L. Shahane

CORAM : RAVINDRA V. GHUGE, J.
DATED : MAY 9, 2019

ORAL JUDGMENT :-

1. When the first matter, Writ Petition No. 5526 of 1999, was being heard, it was fairly pointed out by the Learned Advocate for the respective sides that the other six petitions are also identical and all the petitioners are part of the identical litigations before the Industrial Court at Ahmednagar. By consent, these six matters were taken on board and the learned advocates were heard extensively in these matters.

2. In Writ Petition No. 5526 of 1999, Ashok Sonaji Karkhele, original complainant before the Industrial Court is the petitioner. A counter petition has been filed by the The Mahatma Phule Krushi

Vidyapeeth, Rahuri against Ashok Sonaji Karkhele bearing Writ Petition No. 1852 of 1999, challenging the same judgment and order of the Industrial Court.

3. Writ Petition No. 1853 of 1999 has been filed by the University against Bhausahab Shankar Jare. Bhausahab has also filed a counter petition bearing Writ Petition No. 5395 of 1999.

4. The University has filed Writ Petition No. 1854 of 1999 against Vilas Eknath Gaike. Vilas has also filed a counter petition bearing Writ Petition No. 5191 of 1999.

5. Vilas Bhagwat Takte has filed Writ Petition No. 5383 of 1999 against University.

6. All the workers in these petitions were the original complainants before the Industrial Court, Ahmednagar. Each of them had preferred ULPs under Section 28(1) of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 claiming regularisation in employment and benefits incidental and consequential thereto, by invoking Item Nos. 5, 6 and 9 of Schedule-IV under the said Act. In each of these complaints, which have been decided by identical judgment and orders by the Industrial Court, Ahmednagar, a

declaration of unfair labour practice was made against the University for having continued such workers as daily wagers or as temporaries for years together. Consequentially, each of them were granted benefits of permanency from the date of the judgment of the Industrial Court and they were held entitled for the benefits of continuity of service from the date they completed 240 days in continuous employment in one calender year.

7. The Learned Counsel for all these workers submits that as the University was held guilty of not granting regularisation in employment and by continuing these workers as temporaries or daily wagers for years together, the Industrial Court has rightly relied upon the crystallized law that completion of 240 days in continuous employment in one calender year of service, would entitle such workers to claim regularisation in employment. He relies upon the judgment delivered by the Hon'ble Apex Court in the matter of **Umrala Gram Panchayat Vs. Sectetary, Municipal Employees Union & Ors. [2015 AIR (SCW) 2240]**, wherein reliance was placed upon Sections 2(ra), 25T and 25U read with entry No. 10 of the Fifth Schedule under the Industrial Disputes Act, 1947, and it was concluded that after completion of five years of their initial appointment as daily wagers, these workers would be treated as permanent employees.

8. He also relies upon the view taken by this Court in the matter of **Municipal Council (Nagar Parishad) Osmanabad Vs. Shri Vikas Machindra Mane and Ors. [2016(1) LLJ 493]**, wherein this Court has concluded that the Municipal Council does not have the powers to create posts and such powers vest with the Director of Municipal Administration. This Court, further held that, as the Kalelkar Settlement is applicable to the Municipal Council, they would be entitled for the benefits flowing under such settlement.

9. Learned advocate for the University, on the one hand, opposes the petition, but on the other hand, points out that the prayers set out by the workers in their petitions would not actually be in their interest, since they seek quashing of the impugned judgment and granting of benefits of permanency, including monetary benefits from the date on which the petitioner has acquired the status of permanent employee. He then points out that all these matters pertain to the year 1992 which were finally adjudicated upon by the Industrial Court in 1999. The error committed by the Industrial Court is that, Standing Order 4(C) of the Industrial Employment (Standing Orders) Act, 1946 has been made applicable. He further submits that all these workers have been granted permanency on various dates by giving them deemed dates when the posts were vacant and available and these workers were accommodated against such vacant permanent posts. He hastens to add

that considering the posts available, all these workers have been made permanent as Majdoors by the University and they are now treated as being permanent employees for the past about 18 to 20 years.

10. The issue as regards permanency in the The Mahatma Phule Krushi Vidyapeeth, Taluka Rahuri is no longer res integra in my view. The Nashik Zilla Sheth Kamgar Union and Ors (supra) had initiated a litigation against the same Mahatma Phule Agricultural University. Four thousand daily wage labourers were said to be represented by the said union along with another union. The matter finally reached the Hon'ble Apex Court, which delivered the judgment in the matter of **Mahatma Phule Agricultural University & Ors. Vs. Nashik Zilla Sheth Kamgar and Ors. [(2001) 7 SCC 346]**. The Hon'ble Apex Court has concluded as under :

“ The complaint was against the Universities. The High Court notes that as there were no posts the employees could not be made permanent. Once it comes to the conclusion that for lack of posts the employees could not be made permanent how could it then go on to hold that they were continued as "badlis", casuals or temporaries with the object of depriving them of the status and privileges of permanent employees. To be noted that the complaint was not against the State Government. The complaint was against the Universities. The inaction on the part of the State Government to create posts would not mean that an unfair labour practice had

been committed by the Universities. The reasoning given by the High Court to conclude that the case was squarely covered by Item 6 of Schedule IV of the MRTU & PULP Act cannot be sustained at all and the impugned Judgment has to be and is set aside. It is, however, clarified that the High Court was right in concluding that, as per the law laid down by this Court, status of permanency could not be granted. Thus all orders wherein permanency has been granted (except Award dt. 1st April 1985, in (IT) No. 27 of 1984) also stand set aside.

7, There is thus no guarantee that there would be any appreciable increase in the near future in the Party No. 1's income from various sources available to it. Consequently, it would have to be concluded that Party No.1, would not be able to bear any burden, which would go on increasing every year. If the 2,000 or so workmen who according to Party No. 2, in view of their length of service deserve to be made permanent, are accordingly made permanent and if consequently wage-scales providing for annual increments are required to be made applicable to all of them, the annual wage-bill is bound to go up on progression, due to the requirement of granting the annual increments and the resultant increase in other amounts in many cases. It is not shown that any section of the Party No. I could be treated as a Factory and an Establishment, so as to enable the application of Industrial Employment Standing Orders Act to the workmen working at least in those sections, if some of the workers for whom present Reference is made are working in those sections. Even in that event, distinction between

casual and temporary workmen may make some difference. Similarly, the Party No. 1, which is essentially on Educational institute, cannot be treated on par with the Maharashtra Farming Corporation or Government Department, Even under the Kalelkar Award, even status of being on regular temporary establishment can be claimed only after five years. The Universities Cannot, moreover be treated on par with Government in respect of the availability of funds and of the sources and avenues open for raising the same. Thus, it does not appear that any status of permanence which would entail and involve the granting of annual increments envisaged by wage-scale, can be accorded to the workmen, as demanded." He submitted that this makes it clear that the Court was taking into consideration the fact that the Universities would not be able to bear increasing burden as they would not have funds, sources and avenues open for raising the same. He submitted that this Award does not provide for paying daily wages on the basis of 1/30 of the increased basic starting wage.

We are unimpressed with this submission, para 7 relied upon, was in respect of a demand for wage scale on the basis of permanent status. That demand had been turned down in para 7. Apart from the demand for wage scale on permanent there was also a separate demand to increase the rate of daily wages. While the demand for wage scale on permanent status had been refused the rates of wages have been increased as set out hereinabove; This increase is not a one time increase based on the pay at that time. It is a permanent increase which would go on varying as the basic

starting wages and the dearness allowance kept on changing. This amount equal to 1/30 is based on the basic starting wage and dearness allowance whatever it may be at any given point of time. It is clear that the Universities have not made payment till date on this basis. We thus find no infirmity in the Order Dt. 23rd July, 1984. The Universities have to pay on the basis calculated therein. In order to leave no room for ambiguity we clarify that the amount of Rs. 4,16,97,937.98 was the amount payable as on 23rd July 1984. As the Universities have not paid the amounts now due would be much larger. This action of Universities in not making payment on this basis definitely amounts to unfair labour practice in Item 9 of Schedule IV. As set out hereinabove most of the Complaints were also in respect of unfair labour practice under Item 9 of Schedule IV. It must be held that to that extent there had been an unfair labour practice. The Universities are now directed to forthwith work out the wages due to the workmen as per the Award dated 20th February, 1985 and to make the payments of those amounts.

As set out hereinabove, the Award was in respect of approximately 2,000 workmen. As regards the other remaining workmen (except for 127 workmen covered by the Award dated 1st April, 1985) who are not covered by the Award the principles of equal pay for equal work would apply. Neither Mr. Bobde nor Mr. Ashwini Kumar could dispute that as between daily wagers the principles of equal pay for equal work would apply. Therefore, the rest of the workers would also become entitled to payments and benefits

as given under the Award dated 20th February, 1985 in (IT) No. 48 of 1981. There is no justification in the Universities in not making payments and giving those benefits to the remaining workers on the same basis. We, therefore, direct that the benefits of the Award dated 20th February , 1985 in (IT) No. 48 of 1981 be given even to the workmen who were not covered by the said Award (except the: 127 workmen covered by Award dt. 1st April 1985 in (IT) No. 27 of 1984). Even in respect of these workmen Universities shall forthwith work out the amounts payable and pay the same.

As we have been told that most of the workers have been retrenched we clarify that the Universities, may also have to now re-calculate and pay retrenchment compensation on the basis of the Order.

It was submitted by Mr. Bobde that the Universities have no funds to make payments. He submitted that it is the State Government who would have to make payment. The State Government is also present before this Court. There can be no justification in the State Government not making available the required funds. The argument that the financial burden would be too much is best met by the under-quoted observation of this Court in Chandigarh Administration v. Rajni Vali. reported in [2000] 2 SCC 42:

"The contention like the one raised by the appellants in this case that die Chandigarh Administration wilt find it difficult to bear the additional financial burden if the claim of Respondents 1 to 12 is accepted, raised in different cases of

similar nature, has been rejected by the Supreme Court. The State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources. It is for the Administration to find out ways and means of Securing funds for. the purpose." These Universities are imparting education, For the purpose of the education it is necessary for them to maintain the agricultural fields and to carry on experiments. To maintain agricultural fields they required daily wagers. As the daily wagers were required the State Government cannot say that they would not pay the daily wagers what is due to them."

11. It was, thus, held by the Hon'ble Apex Court that the standing orders applicable to the factories and private sector establishments as well as some public sector undertakings, would not be applicable to such educational institutions and they cannot be treated at par with establishments covered by the Standing Orders. It was, however, concluded that the University will have to calculate the difference of wages payable to the daily rated workmen at par with the permanent employees on the principle of "Equal wages for equal work". However, this issue was not addressed to the Industrial Court and is also not before this Court. As a consequence, I deem it appropriate to leave the issue as to whether the University will have to pay difference of wages to such daily rated employees on the principle of parity, in the light of the Nashik Zilla Case (supra), open. It is clarified that this Court

has not expressed any view on this issue and in the event this issue is raised by any of the litigants, it would have to be considered by the concerned court on its own merits and in the facts and circumstances set out by such litigant.

12. Considering the above, it is crystallized law that the deemed fiction of permanency enunciated under the Standing Order 4C cannot be made applicable to State instrumentalities or such Universities who do not have the power to create posts. This has been settled by this Court in the matter of **Municipal Council, Tuljapur, Osmanabad Vs. Baban Hussain Dhale in Writ Petition No. 1843 of 2015**. So also, this issue has been put to rest in **Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and Ors., [2015(5) Mh.L.J.75]**. In the judgment of this Court (Division Bench), in the matter of **The Municipal Council, Tirora & Anr. Vs. Tulsidas Baliram Bindhade [2016 (6) Mh.L.J. 867]**, it is declared the Standing Order 4C would have no applicability to State Instrumentalities.

13. In the light of the above and keeping in view that the University has granted regularisation from particular dates to these workers depending upon the availability of the permanent vacant posts and the inter-se seniority of these daily wagers, I do not find that the petitions filed by the workers need to be entertained.

14. The Agricultural University has also filed Writ Petitions as noted above, for challenging the impugned judgment of the Industrial Court. It is prayed that those judgments be quashed and set aside. However, as the University has already taken a policy decision and has granted regularisation to such daily wagers in between 1999 to 2001, I find that these petitions preferred by the University need not be entertained.

15. Considering the above, all these petitions stand disposed off. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

SVH