

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2175 OF 1999

1) The State of Maharashtra.

2) The Dy. Director of Social Forestry
Division, Osmanabad Central Building
Osmanabad.

... **PETITIONERS**
(Petitioner No.2 Ori.Resp.)

VERSUS

Vankamgar Saghtna,
Rati1828, 54, Budhwar Peth,
Kakakuwa, Mension, Pune.

... **RESPONDENT**
(Ori. Complainant)

...
AGP for the Petitioners/State : Shri N. T. Bhagat
...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 20th JUNE, 2019.

...

ORAL JUDGMENT :

1. When this matter was taken up for final hearing in the special drive in vacation, none appeared for the respondent. The matter was adjourned for passing orders. None appears for the respondent even today.

2. I have heard the learned AGP on behalf of the petitioners

and have gone through the record with his assistance.

3. The learned Division Bench of this Court (Coram : A. S. Oka as he then was and M.S. Sonak, JJ)) has held in the matter of *Chief Conservator of Forests, Pune (T) and another Vs. Janabai Sonaba Sarpale, 2019 II CLR 28*, that the Forest Department in the State of Maharashtra is an industry.

4. The learned AGP points out a judgment delivered by this Court on 06/05/2019 in identical set of facts. He, therefore, submits that as the impugned judgment is unsustainable, this Court has modified a similar impugned judgment in terms of the directions set out in paragraphs 10, 11 and 12.

5. In view of the above, I find it appropriate to pass the same order in this matter. As such, the reasons recorded in the judgment dated 06/05/2019 delivered by this Court in Writ Petition Nos. 2182/1999 and 2183/1999 in the matters of the State of Maharashtra and another Vs. Dhanu Rama Rathod and Sitaram Lakaji Kamble, are made applicable.

6. The issue as to whether the deeming fiction of permanency under Standing Order 4C and 4D would be applicable to the state or the instrumentalities of the State, is no longer *Res-integra*. It has been held in the matters of *Municipal Council, Tuljapur Vs. Baban Hussain Dhale in WP No. 1843/2015 and connected matters, decided on 26/02/2015, Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others, 2015 (5) Mh.L.J. 75*, that the deeming fiction of permanency, on completion of 240 days in continuous employment, is not applicable to state instrumentalities. The power to create posts and grant financial sanction is with the State. Merely because an employee completes 240 days in continuous employment, would not entitle him to regularization in the absence of permanent posts. This deeming fiction flowing from the Industrial Employment (Standing Orders) Act, 1946 is applicable only to private sector industries and some of the public sector industries who have adopted these standing orders.

7. Considering the conflict of views amongst two learned

Single Judges of this Court at the Nagpur Bench, the matter was referred to the learned Division Bench at Nagpur in the *Municipal Council Tirora and anr. Vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J. 867*. The learned Division Bench concluded that in the case of state instrumentalities, when the role of the Government is decisive in creating posts and adopting a procedure for regularization, Standing Orders 4C and 4D would not be applicable.

8. In so far as the issue as to whether Social Forestry Department is an industry or not, for the present, is a settled position, in so far as this Court is concerned. There is no dispute that the matter is referred to a larger bench in the case of *State of U.P. Vs. Jai Bir Singh (2005) 5 SCC 1* for consideration as to whether Social Forestry Department could be termed as being an 'industry' under section 2(s) of the Industrial Disputes Act, 1947. As the legal position stands today, I am not required to consider the contention of the learned AGP that because the issue is pending before the Hon'ble Apex Court for the last 14 years and as a larger bench is still not constituted, this petition, alongwith many similar

petitions, which are pending for final hearing for 13 years and the litigation dates back to 1988, should be kept pending. Nevertheless, the learned Division Bench of this Court (Coram : A. S. Oka and M.S. Sonak, JJ) have held that the Forest department is an industry, in *Chief Conservator of Forests, Pune (T) and another Vs. Janabai Sonaba Sarpale, 2019 II CLR 28*.

9. Notwithstanding the above, the State of Maharashtra has introduced two resolutions, dated 19.10.1996 and 16.8.2012. By the first G.R., all those daily wagers who have been working for 5 consecutive years with the Social Forestry Department, under any of its schemes, have been held eligible to be brought on regular establishment. Those workmen, in the instant case, who have succeeded before the Industrial Court vide the impugned judgment, are held to have worked for 240 days in continuous employment, are in service and would be eligible for the benefits of the first G.R. Similarly, the second G.R. indicates that those workers, who have been working on daily wages from 1.12.1994 and who have worked for five consecutive years and have completed 240 days in continuous

employment in each year in between 1.11.1989 to 31.10.1994, have been held to be eligible for regularization since the State has created 5089 posts for absorbing such daily wagers working in the Social Forestry Department. Another G.R. has now been issued on 10/05/2018.

10. In view of the above, since the issue of creation of posts was the core issue before the Industrial Court, these petitions will have to be partly allowed in so far as the declaration of unfair labour practices against the department is concerned. It is settled position that when the power to create posts vests with the State Government and until such posts are created, the Social Forestry Department cannot grant regularization, there cannot be a declaration of ULP against the department, in the absence of posts.

11. In view of the above, these petitions are partly allowed to the extent of quashing the declaration of ULP under items 6 and 9 of Schedule IV. So also, all those workman who have succeeded before the Industrial Court, vide the impugned judgment, shall be considered for service benefits, inclusive of

monetary benefits and regularization, as per the G.Rs. dated 19.10.1996, 16.10.2012 and 10.05.2018. The petitioners shall consider their cases in the light of the said three Government Resolutions and shall take a decision with regard to grant of the benefits under the said three Government Resolutions, inclusive of monetary benefits and regularization.

12. The proposals shall be prepared by the petitioners / competent authority and shall be submitted to the appropriate department of the State of Maharashtra on / or before 31.7.2019. Thereafter, the department would consider the cases of each of the daily wagers, who have succeeded before the Industrial Court, vide the impugned judgment and the decision shall be announced on / or before the 30th day of September, 2019.

13. Since there is a possibility that most of these successful workmen before the Industrial Court would have completed 58 years of age and may have crossed the age of superannuation, the petitioners shall not pray for extension of time and shall consider their cases in view of the order of this Court,

expeditiously and by giving highest priority. Their age would not be an impediment.

14. The impugned judgment of the Industrial Court, therefore, stands merged in the directions of this Court. Needless to state, all the successful daily wagers before the Industrial Court and under the three Government Resolutions, will be eligible for continuity of service, monetary benefits and all benefits incidental and consequential thereto.

15. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

shp/-