

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

917. WRIT PETITION NO. 4341 OF 2001

Mahatma Phule Krishi Vidyapeeth,
Rahuri District Ahmednagar
through its Registrar Shri Purushottam
S/o Nivrutti Bhapkar, age 42 years
occupation service R/o Rahuri District Ahmednagar.

...Petitioner

VERSUS

Radhakisan S/o Savitra Sale,
age 37 years occupation service
R/o Khadamba (Kd.) Tal. Rahuri Dist. Ahmednagar

...Respondent

**WITH
WRIT PETITION No. 4342 of 2001**

Mahatma Phule Krishi Vidyapeeth,
Rahuri District Ahmednagar
through its Registrar Shri Purushottam
S/o Nivrutti Bhapkar, age 42 years
occupation service R/o Rahuri District Ahmednagar.

...Petitioner

VERSUS

Vitthal S/o Baburao Harischandre
age 45 years occupation service
R/o Khadamba (Kd.) Tal. Rahuri
Dist. Ahmednagar (Died)
through legal representatives :

- a) Smt. Tarabai Wd/o. Vitthal Harischandre,
age 50 years occupation household
R/o at post Khadamba (Bk.) Tal. Rahuri Dist. Ahmednagar.
- b) Balasaheb S/o Vitthal Harischandre,
age 28 years occup. service R/o as above.
- c) Ganesh S/o Vitthal Harischandre,
age 26 years occup. nil R/o as above. ...Respondents

WITH
WRIT PETITION No. 4352 of 2001

Mahatma Phule Krishi Vidyapeeth,
Rahuri District Ahmednagar
through its Registrar Shri Purushottam
S/o Nivrutti Bhapkar, age 42 years
occupation service R/o Rahuri District Ahmednagar.
...Petitioner

VERSUS

Sopan S/o Babu Vairal,
age 47 years occup. service
R/o Digras Taluka Rahuri Dist. Ahmednagar

*Mr. Parag Shahane, Advocate, h/f. Mr. P.L. Shahane,
Advocate for petitioner.
Mr. V.N. Upadhye, Advocate for respondents*

CORAM : RAVINDRA V. GHUGE, J.

DATE : 27th June, 2019

ORAL JUDGMENT:

1. In all these three matters, the petitioner - Agricultural University is aggrieved by the identical judgments delivered by the Industrial Court, Ahmednagar, by which, the ULP Complaints filed by the respective respondents have been allowed, a declaration of unfair labour practice has been made under Item No. 6 & 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 against the University and the respondents are granted permanency in the class IV category from the date of their

completion of 240 days in continuous employment. Respondent deceased Vitthal Baburao Harischandre in Writ Petition No. 4342 of 2001 was working as a Driver and the respondents in the other two writ petitions were working as Peons.

2. The learned Advocate for the petitioner-Agricultural University, on instructions, submits that said two employees are not in employment.

3. I have considered the strenuous submissions of the learned Advocates for the University and the respondents. I have perused the judgment delivered by the Hon'ble Apex Court in the matter of *Mahatma Phule Agricultural University and others Vs. Nashik Zilla Sheti Kamgar Union & others, 2001 III CLR 4*.

4. It is obvious from the impugned judgments that the Industrial Tribunal has considered the evidence recorded before it and has come to a conclusion that as the workmen had completed 240 days in calender year and have completed more than 3000 days in service with the Agricultural University, they would be entitled to the benefits of the permanency in view of the judgment delivered by the Industrial Court, Pune, in Complaint No. (ULP) 36/1977.

5. It cannot be ignored that this Court admitted these

petitions on 12th December, 2001, 30th October, 2001 and 13th June 2002, respectively. All the petitions were clubbed for a common hearing.

6. The respondent in Writ Petition No. 4342/2001, namely, Vitthal Baburao Harischandre has passed away and his legal representatives have been brought on record.

7. It is settled law, keeping in view the judgment of the Hon'ble Apex Court cited by the learned Advocate for the Agricultural University, that the University does not have the power to grant the financial sanction for creating posts. It also does not have the power to create posts. This vests with the State Government and it is only the State Government that can create posts so as to be filled-in. Being a matter of public employment, a particular procedure is required to be followed. The judgment of the Hon'ble Apex Court in the case of **Mahatma Phule Agricultural University**, (supra), has laid down certain guidelines in matters of granting regularisation to the daily wagers. The Award dated 20th February, 1985 in Reference (IT) No. 48/1981 and the Award delivered in Reference (IT) No. 27 of 1984 dated 1st April, 1985, were also considered. It was then directed that the benefits of the two Awards should be extended to similarly situated employees, who are daily wagers.

8. As such, these three petitions are partly allowed. The declaration of unfair labour practice under clause (2) and (3) is quashed and set aside. The direction in clause No. (4) is modified and the petitioner is directed to consider the total service period of these respondents as per their record and extend them the benefits as has been observed by the Hon'ble Apex Court in the judgment delivered in *Mahatma Phule Agricultural University* (supra).

9. Needless to state, since respondent Vitthal Baburao Harischandre in Writ Petition No. 4342 of 2001 has passed away, the competent authorities would consider the monetary benefits to be paid to the widow of deceased respondent, namely, Smt. Tarabai Harischandre.

10. It is made clear that the petitioner would forward the proposals of all three respondents, within a period of 8 (eight) weeks to the competent authority of the State Government, which shall take a decision within three months.

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

**(RAVINDRA V. GHUGE)
JUDGE**