

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

WRIT PETITION NO. : 4375 OF 1999

1. The State of Maharashtra
2. The Regional Deputy Director
Ground Water Survey and
Development Agency,
Aurangabad.
3. Senior Zeologist,
Ground Water Survey &
Development Agency,
Division, Central Building,
Osmanabad.

**... PETITIONERS
(Ori. 1st party)**

VERSUS

Hanmant Dagdu Satpute,
Age 25 yrs., Occu. Service r/o
Ambejavalgaon, Tq. & Dist.
Osmanabad.

**... RESPONDENT
(ori. complainant)**

...

AGP for the Petitioners :- Shri S. R. Yadav - Lonikar
Advocate for the Respondent : Shri N. R. Solunke

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 20th JUNE, 2019.

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ORAL JUDGMENT :

1. The State has challenged the Judgment and order of the Industrial Court dated 14/10/1998, by which, it has allowed complaint (ULP) No. 222/1991, thereby declaring that the petitioners have committed Unfair Labour Practices by continuing the respondent on daily wages. The petitioners were directed to grant permanency to the respondent forthwith.

2. I have heard the learned AGP on behalf of the petitioners and Shri Solunke, learned Advocate on behalf of the respondent.

3. The respondent contends that because he has completed 240 days in continuous employment with the petitioners, he was eligible for permanency. In my view, this issue is no longer *res integra* considering the judgment delivered by this Court in the matters of *Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others, 2015 (5) Mh.L.J. 75 and Municipal Council, Tuljapur Vs. Baban Hussain Dhale in WP No. 1843/2015 and connected*

matters, decided on 26/02/2015.

4. There was a contrary view taken by two learned Judges of this Court at Nagpur and hence the matter was referred to the learned Division Bench by framing the issue as to whether the Model Standing Orders would apply to the state instrumentalities. The learned Division Bench has delivered a judgment in the case of ***Municipal Council Tirora and anr. Vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J.867*** holding that the concept of completing 240 days leading to the deeming fiction of permanency under Standing Order 4C of the Industrial Employment (Standing Orders) Act, 1946, is not applicable to state instrumentalities. On this count, the impugned judgment deserves to be interfered with.

5. The record reveals and as has been pointed out by the learned AGP that the Directorate of Ground Water Survey & Development Agency (GSDA) issued a notification on 29/01/2010 declaring the list of candidates eligible for regularization with the GSDA. A list of ineligible candidates as well as a list of those candidates who had not completed 5

years on daily wages on 31/12/1998, was also published.

6. By the impugned common judgment of the Industrial Court, the respondent herein Hanmant Dagdu Satpute and another employee by name Sudhakar Megha Janrao, Complaint (ULP) Nos. 222 and 223 of 1991 were granted permanency by the Industrial Court on the ground that they had completed 240 days in continuous service. The name of Sudhakar Megha Janrao was in the list of eligible candidates at Sr.No. 20 published by the Directorate of GSDA. Since he was granted permanency, Writ Petition No. 4376/1999 filed by the State was disposed off. In the instant case, the respondent is held to be ineligible and hence he was not absorbed in regular employment.

7. The learned AGP submits that presently he does not have any instructions as to whether the employee is still in employment on daily wages. Before the Industrial Court he was continued in employment on account of the interim order passed by that Court. This Court has stayed the judgment by order dated 06/09/1999.

8. When called upon, the learned Advocate for the respondent was hesitant in stating as to whether the respondent is still in employment. He then submits that the respondent may be in employment.

9. Considering the above, the impugned judgment of the Industrial Court cannot be sustained. The same is rendered perverse and erroneous as the GSDA, Osmanabad did not have the jurisdiction and the power to create posts or grant regularization to the respondent at its level.

10. This petition, is therefore, partly allowed. The impugned judgment of the Industrial Court dated 14/10/1998 is quashed and set aside.

11. As it is unclear as to whether the respondent is still in employment or not, I deem it appropriate to observe in the interest of the respondent that in the event he has continued in employment during the pendency of this petition as a driver, the petitioner shall forward his proposal to the Directorate of

Ground Water and Survey Development Agency, State of Maharashtra with all details of his employment, within a period of 8 weeks from today. The Directorate of GSDA would consider the said proposal and in the event the respondent is found to have been working for a long duration and could be accommodated as a driver by ignoring the qualification of VIII Standard Education as he has passed IV Standard, an appropriate order be passed within four months from the date of receiving such proposal.

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

(RAVINDRA V. GHUGE, J.)

shp/-