

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1771 OF 2003

Chalisgaon Textile Mills,
Chalisgaon, Through its
General Manager, Surendrakumar
Kakkad, Age-54 years,
C/o Chalisgaon Textile Mills,
Chalisgaon, Dist. Jalgaon

--PETITIONER

VERSUS

Balu Chhagan Jiremali,
Age-42 years, Occu-Patonda,
Tq.Chalisgaon, Dist.Jalgaon

-- RESPONDENT

Mr.L.V.Sangit, Advocate for the petitioner.
Mr.V.Y.Patil, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 12/06/2019

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment and order delivered by the Industrial Court, Jalgaon dated 30/04/2002, by which Complaint (ULP) NO.846/1999 (Old No.43/1993) is partly allowed. The respondent is granted benefits of permanency from 1986 onwards.

2. After this Court had heard the learned Advocate for the parties, the petition was admitted and Rule on interim relief was made

returnable by 6 (six) weeks. By order dated 03/09/2007, rule on interim relief was discharged and the petitioner/employer was not granted any relief.

3. This matter was heard on 08/05/2019 in the special drive in vacation for taking up old final hearing matters and was posted today for passing orders by the consent of the parties so as to enable them to collect instructions from the respective clients.

4. The respondent/original complainant was working with the petitioner factory from September 1981 as a 'weaver' in the Cloth Department. Since, he worked continuously as a Badli worker for several years, he preferred Complaint (ULP) No.43/1993 (New No.846/1999) before the Industrial Court at Jalgaon seeking permanency in employment of the petitioner. It was alleged that the Management was making him work continuously as a Badli worker for depriving him of regularization. It was out of a sense of insecurity and apprehension that he would be exploited, that he approached the Industrial Court. He also pleaded that he was being given assurances of regularization and when he noticed that the said assurances were only for killing time, that he felt the necessity of approaching the Industrial Court.

5. The Management opposed the complaint by contending that he was a Badli Kamgar and could not be regularized in employment. It was denied that junior employees were granted regularization. It was denied that he had worked continuously and had completed 240 days in continuous employment in each calendar year. The Management, however, stated that it has a Selection Committee of 5 members, who scrutinized the work of Badli Workers over a period of 3 years and the Management grants regularization to those Badli workers, who worked satisfactorily.

6. The Industrial Court considered the pleadings of the parties and the entire oral and documentary evidence adduced before it and concluded that the complainant deserves regularization in employment from 1986 onwards.

7. Learned Advocate Mr.Sangit submits that the petitioner/Textile Mill, which is an establishment under the National Textile Corporation (For short, NTC) , was permanently closed down in 2008. Workers, who were on the permanent rolls of the factory, were paid closure compensation. He regrets to state that he is not aware as to whether such closure compensation was paid as per the provisions of

the Industrial Disputes Act or whether they were paid amounts over and above the prescribed compensation under the Industrial Disputes Act, 1947.

8. The learned Advocate for the respondent/employee points out from the affidavit in reply that he was in employment as on the date of the filing of the writ petition and was continued in service. The affidavit in reply dated 26/06/2003 would indicate that he was in employment.

9. Learned Advocate for the petitioner has also raised an objection with regard to the maintainability of the ULP complaint filed by the complainant worker on the ground that there was a re-cognized union active in the petitioner/factory. Being a textile industry, the Bombay Industrial Relations Act, 1946 was applicable. The complainant should have approached the Industrial Court through the recognized Union. Section 21 and 22 of the MRTU and PULP Act, 1971 would restrict the role of an individual in the face of the existence of a re-cognized union.

10. The learned Advocate for the original complainant submits that as the re-cognized union did not espouse his cause, he had

approached the Conciliation Officer in his individual capacity. If he is precluded from raising any grievance about his personal cause and the injustice caused to him, he would be rendered remediless. Even before the Conciliation Officer, the re-cognized union, did not espouse his cause. Having been left to deal with his own fate, he approached the Industrial Court seeking permanency.

11. I find from the record that respondent No.1 worked continuously, in view of the evidence available, from 1982 to 1988. The worker continued to work even thereafter. He has approached the Industrial court admitting that he was a "Badli Kamgar" and the petitioner / Management conceded that he was working on regular basis and had completed 240 days in each calendar year. In my view, this aspect would satisfy the requirements of Section 25-B of the I.D.Act.

12. It cannot be disputed that a Badli worker is one who works to perform regular work, temporarily in the place of a permanent employee, who is on leave. A register of Badli workers and their dates of first joining to indicate their seniority is required to be maintained. Whenever a temporary vacancy arises on account of an absence of a permanent employee, such badli worker is deployed as

and when such work is available. The senior most badli kamgar is offered work.

13. A “badli” has been classified under Standing Order 3(1)(c) and defined under Standing Order 3(2)(c) as under :-

“3(1)(c) 'badlis' or substitutes;

“3(2)(c) – 'Badli' or 'substitute' means a workman who is appointed to the post of a permanent workman or probationer, who is temporarily absent and whose name is entered in the badli register.”

14. Stand Order 4-B provides for maintaining a record of Badli workers as under :-

“4-B A temporary workman, who has put in 190 days' uninterrupted service in the aggregate in any establishment of a seasonal nature or 240 days, uninterrupted service in the aggregate in any other establishment, during a period of preceding twelve calendar months, shall be made permanent in that establishment by an order in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of the said twelve calendar months.”

15. Standing Order 4-C provides for grant of permanency to a Badli, which reads as under :-

“4-C(1) The Manager shall maintain a waiting list of all

temporary workmen whose services have been terminated on account of the completion of the work for which they were appointed or on account of the expiry of the period for which they were employed, containing the following particulars, namely -

- [i] their names and addresses,*
- [ii] the nature of work or occupation in which they were employed,*
- [iii] the wages paid to them during employment, and*
- [iv] the dates of termination of their services.*

(2) Whenever any vacancies in the establishment are required to be filled the persons included in the waiting list maintained under sub-clause (1) shall be given preference after taking into consideration the nature of work done by them while in employment or the occupation in which they were employed – and on the basis of the aggregate of their services in the establishment prior to the termination of their services.”

16. A badli worker completing 240 days in continuous employment with an employer, is indicative of continuous availability of work. Continuing as a badli for years, therefore has to be interpreted to be a camouflage and a misnomer. Even after the employer has nomenclatured such worker as a badli worker, the Court is expected to lift the corporate veil to find out as to whether he was working as a temporary employee and was merely nomenclatured as a badli worker. The Industrial Court, on the basis of oral and documentary

evidence and especially the admission given by the witness of the petitioner, has, in my view, rightly concluded that the complainant was working continuously for 7 years. It cannot be believed that he was continuously working in place of the permanent workers who were absent. No record has been maintained by the petitioner in this regard to indicate that the respondent was working as a badli.

17. The Hon'ble Supreme Court has held in Karnataka State Road Transport Corporation and another Vs. S.G.Kotturappa and another [(2005)3 SCC 409] that if a badli worker does not perform his duties satisfactorily and commits repeated acts of mis-conduct, he cannot be continued in employment. The status of a 'temporary employee' is higher than a 'badli worker'.

18. The learned Advocate for the petitioner has fairly stated on the basis of the record produced before the Industrial Court and the pleadings of the petitioner in its written statement that after every 3 years, a Committee of Officers used to scrutinize the list of such badli workers, who have consistently worked for a period of 3 years and used to grant regularization to such workers. I find this approach of the Management to be appreciable. However, the Committee is said to have found the work of the complainant to be

unsatisfactory. He was, therefore not considered for absorption. Taking into account the evidence available on record, I cannot approve the opinion of the said committee for the fact that if the complainant was not working satisfactorily and was not suitable for the Organization, he would not have been continued for 7 years in employment. In fact, he continued till the factory was closed down in 2008.

19. Notwithstanding the above, the fact remains that the complainant was in employment during the pendency of the petition. The petitioner factory has been permanently closed down in 2008. This Court had refused to grant interim relief to the petitioner. In my view, after a period of 37 years of the joining of service by the complainant, it would be harsh to deprive the complainant of retiral benefits. He was about 45 years of age as in 2003 and must be about 60 years of age as on today. Since the petitioner/establishment is permanently closed down in 2008 and as the complainant/workman was in service during the pendency of this petition, no relief can be granted to the petitioner.

20. This petition is therefore disposed off with the following observations :-

[a] The respondent/employee is entitled for permanency benefits and closure compensation, gratuity and similar monetary benefits as have been paid by the petitioner to such permanent employees, who are comparable with the respondent.

[b] As the petitioner is a limb of NTC, which is the Holding Company under the Ministry of Textiles, such compensation shall be calculated by the NTC and shall be deposited in this Court alongwith a chart/details of such calculations on or before 20/09/2019, if not already paid.

[c] The above stated calculations would include even the gratuity amount and all such components which were paid to the permanent employees on the date of closure of the petitioner/establishment.

[d] The respondent is at liberty to withdraw the said amount by making an application under identification of the learned Advocate and alongwith a recent photograph, a copy of the Election Commission Voter ID Card and present address proof.

[e] In the event, the respondent/complainant has any grievance about the calculations, he would be at liberty to file a civil application in this disposed off petition.

[f] The impugned judgment of the Industrial Court shall stand merged with the above directions and the respondent/employee would be precluded from making any further claims except those as may be maintainable under any statute or enactment and the liberty granted as above.

21. Rule is discharged.

22. Learned Advocate for the petitioner points out that there is a possibility that the petitioner may have settled a closure package deal with the workers on it's permanent rolls. If that be so, the said package deal would be payable to the respondent/workman and he would then be bound by the same terms and conditions of the said package deal as have been made applicable to similarly situated comparable workers. This would be over and above his service benefits payable as a deemed permanent employee from 1986.

(Ravindra V.Ghuge, J.)