

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 1398 OF 2008

1. Chandu S/o Rajaram Tompe
Age 44 years, occ. service
r/o Village Kasarali, Tq. Biloli
Dist. Nanded.
2. Babu s/o Digamber Khandelote
Age 49 years, occ. service,
r/o as above.
3. Digamber s/o Dattatraya Rode
Age 55 years, occ. service
r/o as above.
4. Rukhminbai w/o Laxman Malve
age 40 years, occ. service
r/o as above.

Petitioners

Versus

1. The State of Maharashtra
Through Secretary, Agriculture, Horticulture
department, Maharashtra State, Mumbai.
2. The Director of Horticulture
Maharashtra State,
Pune.
3. Dy. Director of Horticulture,
Nande.
- 4 Taluka Nursery Officer,

Head Quarter, Kasarali
Tq. Biloli, Dist. Nanded.

Respondents

Mr. V.D. Gunale, Advocate for the petitioners.
Mr. P.S. Patil, AGP for respondents no. 1 to 4.

**CORAM: PRADEEP NANDRAJOG, CJ &
R.G. AVACHAT, J.**

DATE: 23.09.2019

ORAL JUDGMENT : (Per Pradeep Nandrajog, CJ)

1] Heard learned counsel for the parties. Vide impugned decision dated 28.11.2007, Writ Petition No. 976/1992 filed by the petitioners which has been transferred before the Maharashtra Administrative Tribunal and numbered as TA No. 51/2002, has been dismissed.

2] The Tribunal has noted a checkered history of the litigation fought by the petitioners herein. On different dates in the years 1984 and 1985, the petitioners claim to have been working as daily wagers. Their services been terminated by an oral order on 16.04.1992 they filed Writ Petition No. 976/1992 in this Court which was registered as Transfer Application No. 51/2002 before the Tribunal on it being transferred and it was disposed of on 01.03.2004 passing directions similar to the one issued in

Writ Petitions No. 983/1992 and 815/2002 by a Division Bench of this Court at Aurangabad, requiring a scheme of regularization to be framed keeping in view the fact that the petitioners had worked for long.

3] Said order was challenged by the State vide Writ Petition No. 6277/2004 which was disposed of by this Court remanding the matter to the Tribunal for being adjudicated afresh keeping in view the principles of law laid down by the Constitution Bench of the Supreme Court in the decision reported as 2006 AIR (SCW) 1991 Secretary, State of Karnataka v. Umadevi & Ors.

4] At the remanded stage, the Tribunal has dismissed TA No. 51/2002 noting that the Court could not direct framing of any scheme of regularization.

5] A perusal of the decision in Umadevi's case shows that the law declared by the Court is that only the executive can create permanent post and a Court cannot direct creation of a permanent post.

6] In view of law declared in Umadevi's case, no relief can be granted to the petitioners. Learned counsel for the petitioners wants to show judgments prior to the decision of the Supreme Court in Umadevi's case where Courts have been issuing directions to either regularise daily wagers who have worked long or frame scheme for regularization. All such decisions would be deemed to have been over-ruled in view of the law declared in Umadevi's case. Writ petition is dismissed. Rule discharged.

(R.G. AVACHAT, J.)

CHIEF JUSTICE

dyb