

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2021 OF 2006

1. The State of Maharashtra,
Through the Secretary,
Social Forestry Department
Mantralaya, Mumbai.

2. The Deputy Director,
Social Forestry Division,
Badoda Bank Colony,
Sudkemala, Ahmednagar

... Petitioners

Vs.

Ahmednagar Zilla Van Kamgar Union,
(R. No. NSK/A/35, 'Shramik',
Tilak Road, Ahmednagar
Through its president

... Respondent

Advocate for Petitioners : Shri. S. M. Ganachari
Advocate for Respondents : Shri. D. R. Jayabhar

CORAM : RAVINDRA V. GHUGE, J.
Dated : May 6, 2019

ORAL JUDGMENT :-

1. By this petition, the State and the Social Forestry Division have assailed the judgment of the Industrial Court dated 26.4.2002 delivered in Complaint (ULP) Nos. 554 of 1988, 581 of 1988, 108 of 1990, 344 of 1990, 51 of 1991, 246 of 1992, 410 of 1992, 250 of 1993, 433 of 1996. Vide the impugned judgment, the Industrial Court has declared that these petitioners have engaged in unfair labour practices under items 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971. These petitioners were directed to grant those scale of

wages applicable to permanent category employees, to those complainants who have specifically been held to have completed 240 days in continuous and uninterrupted services of the petitioners. The arrears of wages would be paid by adjusting the amount of wages already paid to those employees, who are mentioned in the judgment.

2. I have heard the learned advocates for the respective sides and I have gone through the record available with their assistance.

3. 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.

4. 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 regularisation since the State has created 5089 posts for absorbing such daily wagers working in the Social Forestry Department.

5. In view of the above, this petition is rendered of an academic interest. Nevertheless, since the issue of creation of posts was the core issue before the Industrial Court, this petition will 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 regularisation, there cannot be a declaration of ULP against the department, in the absence of posts.

5. In view of the above, this petition is 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 regularisation, as per the G.Rs. dated 19.10.1996 and 16.10.2012. The petitioners shall consider their cases in the light of the said two Government Resolutions and shall take a decision with regard to grant of the benefits under the said two Government Resolutions, inclusive of monetary

benefits and regularisation, within a period of four months from today. 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 7.6.2019. 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 11th day of September, 2019. 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, with promptitude and by giving highest priority. Their age would not be an impediment.

6. 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 two Government Resolutions, will be eligible for continuity of service, monetary benefits and all benefits incidental and consequential thereto.

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

(RAVINDRA V. GHUGE, J.)

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