

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 5185 OF 2002

1. Udyan Vidyavatta keli Sanshodhan
Kendra, Mahatam Phule Krishi
Vidyapeeth, Jalgaon, Tal. & District.
Jalgaon
2. Mahatma Phule Krishi Vidyapeeth,
Rahuri, Tal. Rahuri, Dist. Ahmednagar,
Through its : Registrar. ... Petitioners

Vs.

1. Mrs. Tulsabai Madhukar Mahajan,
Age : Major, Occ : Nil,
R/o : C/o : Shri Dhangar Master,
Dhangar Wada, Pimprala, Tal. &
Dist. Jalgaon.
2. Madhukar Bhagwan Mahajan,
Age : 51 Yrs. Occu. : Nil,
R/o : C/o : Shri Dhangar Master,
Dhangar Wada, Pimprala, Tal. &
Dist. Jalgaon. ... Respondents

Advocate for the Petitioners : Shri P. L. Shahane
Advocate for the Respondents : Shri V. Y. Patil

CORAM : RAVINDRA V. GHUGE, J.
DATED : MAY 9, 2019

ORAL JUDGMENT :-

1. Shri Patil, learned advocate submits that he is appearing on behalf of the employees in this matter. He has obtained consent of the earlier advocate.
2. The petitioner No.1 is a Research Unit of petitioner No.2 - Mahatma Phule Krishi Vidyapeeth, Rahuri. Both are petitioners in this petition as they were respondents in the (ULP) Complaints before the

Industrial Court, filed by the two employees.

3. In this petition, the petitioners are aggrieved by the impugned judgment of the Industrial Court dated 5.7.2012 by which Complaint (ULP) No. 727 of 1999 (Old No. 419 of 1992) has been partly allowed. The directions of the Industrial Court in clause (ii), (iii) and (iv) read as under :-

“ii. It is hereby declared that the respondent have committed unfair labour practices under Items 5, 6 and 9 of Sche. IV of the MRTU & PULP Act and are directed to desist from continuing the same.

iii. The respondents are further directed to give the privileges and monetary benefits of permanent employees to the complainants for the period of their employment till the retrenchment of March 2001.

iv. The respondents are granted 3 months time for making payment of difference amount to the complainants in terms of the order.”

4. I have considered the strenuous submissions of the learned advocates for the respective sides. I have gone through the judgment delivered by the Hon'ble Apex Court in the matter of **Mahatma Phule Agricultural University Vs. Nasik Zilla Sheth Kamgar Union [2001(8) LJSOFT (S.C.) 136]**.

5. In similar matters pertaining to the Mahatma Phule Agricultural University, this Court has concluded that neither the Registrar nor the Vice Chancellor of the University have the powers to create permanent

posts. It is settled that permanent posts in agricultural and non-agricultural Universities are created by the State Government. It is also settled that in the absence of permanent vacant posts, there cannot be a direction of permanency or grant of benefits and privileges incidental and consequential thereto, as these Universities are not completely financially autonomous. Apart from their consolidated funds and finances generated through fees, such Universities, depend upon the financial aid of the State Government.

6. It is also settled that in State instrumentalities and such Universities, unlike private sector undertakings or factories, merely because an employee completes 240 days in continuous employment in a calender year, would not entitle him to seek deemed permanency. It is also settled in the case of **The Municipal Council, Tirora & Anr. Vs. Tulsidas Baliram Bindhade** [2016 (6) Mh.L.J. 867], that the deeming fiction emerging from the Standing Order 4C of the Industrial Employment (Standing Orders) Act, 1946, would not apply to State instrumentalities.

7. In the instant case, the Industrial Court has declared unfair labour practices as against the University for having not granted permanency to the respondents and has then directed the University to grant privileges and monetary benefits of permanent employees to them.

8. Learned Advocate for respondent No.1 Mrs. Tulsabai

Madhukar Mahajan submits that the impugned judgment was delivered in her case, as well as in the case of her husband Mr. Madhukar B. Mahajan, i.e. Complaint (ULP) No. 728 of 1999 (old No. 420 of 1992). He submits that the impugned judgment as regards her husband Madhukar has been implemented. These very petitioners had preferred Writ Petition No. 2517 of 2004 before this Court challenging the same judgment. Shri Bhagwan Baliram Dhakare, serving as Horticulturist at the Banana Research Station of this Agricultural University, (Petitioner No.1 herein) has made a statement in paragraph 8 of the affidavit, dated 28.9.2004, that Mr. Madhukar was re-appointed in service in 2003. It was in this backdrop that Writ Petition No. 2517 of 2004 was disposed off.

9. The Hon'ble Apex Court, while dealing with the claims of the workers represented by the Nasik Zilla Sheth Kamgar Union, held in its judgment in the Mahatma Phule Agricultural University Vs. Nasik Zilla Sheth kamgar Union case (supra) in para 13 as under :

“13. To be seen that, in the impugned Judgment, the High Court notes that, as per the law laid down by this Court, status of permanency could not be granted. In spite of this the High Court indirectly does what it could not do directly. The High Court, without granting the status of permanency, grants wages and other benefits applicable to permanent employees on the specious reasoning that inaction on the part of the Government in not creating posts amounted to unfair

labour practice under item 6 of Schedule IV of MRTU & PULP Act. In so doing the High Court erroneously ignores the fact that approximately 2,000 workmen had not even made a claim for permanency before it. Their claim for permanency had been rejected by the Award dated 20th February, 1985. These workmen were only seeking quantification of amounts as per this Award. The challenge, before the High Court, was only to the quantification of the amounts. Yet by this sweeping Order the High Court grants, even to these workmen, the wages and benefits payable to other permanent workmen.”

10. After considering that most of the workers have been retrenched by the University, the Hon'ble Apex Court has directed the University to recalculate the retrenchment compensation and pay the same on the basis of the order passed by it. Learned advocate for the University submits that they have considered the last drawn wages of all the workers, including the respondents, herein, and have paid retrenchment compensation to each of such retrenched employees.

11. The issue, therefore, is as to whether the order of the Industrial Court directing the University to give privileges and monetary benefits of permanent employees to the complainants for their entire period till their retrenchment in March, 2001 could be sustained. I find upon considering the view taken by the Hon'ble Apex Court in para 13 reproduced above, that impugned direction would be an unsustainable order. It is for the reasons set out in the said judgment that the Hon'ble Apex Court has considered the Civil Appeals filed by the Agricultural

University and directed it to maintain parity in the quantum of retrenchment compensation to be paid to the daily wagers.

12. In view of the above, this petition is partly allowed. The declaration of (ULP) under items 5, 6 and 9 of Schedule IV, made against the University, is quashed and set aside. So also, the direction to grant privileges and monetary benefits of the permanent employees to the respondent / original complainant cannot be sustained. It is, however, made clear that if the respondent No.1 is of the view that she was paid lesser amount of retrenchment compensation or that her compensation amount was not properly calculated, she would be at liberty to make a representation to the petitioner No.2 University within a period of 90 days from today. If such a representation is made, petitioner No.2 University would consider the said representation and after verification of its records, would pass an appropriate order on the said representation, to be communicated to respondent No.1 with promptitude. Needless to state, the respondent employee should mention her present address for correspondence in her representation along with her cell phone and land line numbers, if any. In the event, she is aggrieved by the decision of the University, she would be at liberty to take recourse to an appropriate remedy, as is permissible in law.

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

(RAVINDRA V. GHUGE, J.)