

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

WRIT PETITION NO. 23 OF 2003

- 1) The State of Maharashtra.
 - 2) Divisional Agricultural Director
(Extension) Aurangabad.
 - 3) The District Seeds Officer
Agricultural Div. Subhash Road, Beed.
 - 4) Divisional Soil Conservation Officer
Bashirganj, Beed.
- .. PETITIONERS**
(Ori. Respondents)

Vs.

Sow. Dwarkabai Bapu Jadhav,
R/o : Narsobanagar, Dhanora Road,
Dist. Beed – 431122.

.. RESPONDENT
(Ori. Complainant)

...

AGP for the Petitioner : Shri P. N. Kutti
Advocate for the Respondent : Shri V. Y. Patil

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 09th MAY, 2019.

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ORAL JUDGMENT :

1. The petitioner State and Department of Agriculture is aggrieved by the judgment and order dated 27/07/2002 delivered by the Industrial Court, Aurangabad, vide which,

complaint (ULP) No. 198/1995 filed by the respondent herein was allowed and she was granted permanency from the date of the filing of the complaint alongwith all benefits incidental thereto.

2. I have heard the learned AGP and the learned Advocate for the respondent, at length. I have perused the affidavit in reply filed by the respondent - original complainant and the additional affidavit dated 30/10/2017 filed by Anil Uttamrao Kulkarni - Technical Officer in the office of the Sub Divisional Agricultural Officer, Beed.

3. The original complainant has pleaded in her complaint that she joined the petitioners at Beed on 01/07/1983 on the Seed Farm as a Majoor. The evidence to that effect has also been led before the Industrial Court. It appears that the witness of the petitioners namely Dattatraya Gorakh Muley, Sub-Divisional Agricultural Officer, has inadvertently stated in his deposition that she joined service on 20/03/1976, as against the actual date being 01/07/1983.

4. The additional affidavit filed by Shri Kulkarni indicates that the respondent joined as a daily wage labourer on the Trial-Cum Demonstration Farm, Bindusara, Beed in 1983. Her number of days of working are set out in paragraph 4 of the affidavit to indicate that she has been working for minor periods in between 1983 to 1999. In 1988 to 1990, she was never in employment.

5. The learned Advocate for the original complainant submits that she is still working on the said Farm at Beed. About 41 employees have been imported from Nanded to Beed as the work is available. In identical set of facts involving the same petitioner department in Writ Petition No. 96/2008, this Court (Coram : B. R. Gavai – J.) delivered a judgment at the Aurangabad Bench on 08/12/2008 and directed these petitioners to regularize the daily wagers at their nurseries within six months. They were granted pay scales at the minimum level as applicable to Class IV employees in nurseries operated by the horticulture department or the forestry department.

6. In the similar set of facts involving the same petitioner establishment, this Court (Coram : K. U. Chandiwal - J.) delivered a judgment on 29/02/2012 in Writ Petition No. 871/2011, granting regularization to similar daily wagers.

7. The above judgment was challenged in the Honourable Apex Court. Shri Shahane relies upon the order dated 26/04/2013 passed by the Honourable Apex Court in the said case in the matter of *State of Maharashtra and others Vs. The Shetkari Shetmajoor Panchat, (Maharashtra), Special Leave to Appeal (Civil) No. 8871/2013*, dismissing the SLP.

8. Considering the effect of the above recorded facts, it appears that the respondent has been working from 01/07/1983. Shri Shahane points out the Government Resolution dated 26/06/2014 recommending regularization of similarly situated employees in view of the dismissal of the SLP by the Honourable Apex Court. He further adds that there are 341 posts of such Shetmajoor which are vacant and have to be filled in.

9. It is now well settled that the deeming fiction of permanency on completion of 240 days under Standing Orders 4C, would not be applicable to state instrumentalities or departments like the petitioners. The learned Division Bench of this Court has concluded in the ***Municipal Council Tirora and anr. Vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J.867*** that merely because an employee completed 240 days in a state establishment, he would not be entitled for regularization under the deeming fiction of permanency under Standing Order 4C. The impugned judgment, therefore, cannot be sustained to the extent of the direction that the respondent should be made permanent from the date of the filing of her complaint in 1995 before the Industrial Court.

10. As such, this petition is partly allowed. The direction in Clause 2 of the order of the Industrial Court, is set aside and the following directions are issued :-

(a) Petitioner Nos. 3 and 4 shall prepare a proposal of the respondent, setting out the details of her employment, to petitioner No. 2 – Divisional Agricultural Director (Extension), Aurangabad, within a period of 60 days from today.

(b) Petitioner No.2 Divisional Agricultural Director shall forward the said proposal to the Commissioner of Agriculture State of Maharashtra, Central Building Pune, forthwith.

(c) The said authority at Pune would consider the length of service of the original complainant and the posts available and shall grant her regularization on a permanent vacant post by according a deemed date depending on the date on which the post has fallen vacant, within 4 months.

(d) The said authority at Pune shall also consider the effect of such regularization and calculate the monetary benefits incidental and consequential to regularization and make the said payment to the respondent while delivering a decision of regularizing her, within 4 months from the date of such order.

(e) In the event the respondent is aggrieved by the deemed date granted to her as a permanent employee, she would be at liberty to take recourse to an appropriate remedy as may be permissible in law.

(f) It is also made clear that, in order to avoid multiplicity of the litigation, that as and when the original complainant attains the age of her superannuation, her service put in as a daily wager would be considered as per the rules applicable for

calculating the qualifying the period of service for pensionary benefits.

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

(RAVINDRA V. GHUGE, J.)

shp/-