

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6143 OF 2018
WITH WP/6175/2018 WITH WP/6176/2018 WITH WP/6177/2018
WITH WP/6178/2018 WITH WP/6179/2018 WITH WP/6180/2018
WITH WP/6181/2018 WITH WP/6182/2018 WITH WP/6183/2018
WITH WP/6184/2018 WITH WP/6185/2018 WITH WP/2907/2019

GAJANAN RAJESHWAR DEBADWAR
VERSUS
THE SECRETARY, APMC UDGIR AND ANOTHER

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Advocate for Petitioner : Shri Yenge B.B. h/f Shri Kudle D.S.
Advocate for Respondents 1 & 2 : Shri Mandlik P.V. Sr. Adv.
i/b Shri Rodge P.G.
AGP for Respondent 3 : Shri Munde S.W.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 22, 2019
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PER COURT :-

1. In all these identical Writ Petitions, the petitioners seek to challenge the identical judgments, delivered by the Industrial Court in a group of their ULP Complaints, by which, the complaints seeking regularization in employment have been rejected.

2. The submissions of the learned Advocates appearing for the petitioners and the Agricultural Produce Market Committee, Udgir, (APMC) were considered and an order was passed on 6.10.2018, permitting the petitioners to bring on record certain documents to show that the APMC is filling up vacancies by following the 'pick and choose' policy.

3. On 27.2.2019 the APMC appeared through another Advocate. The submissions of the learned Advocates were recorded in the order dated 27.2.2019, which reads as under:-

"1. The contention of the petitioners is that though they have completed 240 days in continuous employment with the A.P.M.C., the Industrial Court has dismissed their complaints by concluding that the Model Standing Orders would not be applicable to such employees and hence their prayer for regularization in employment, cannot be considered.

2. Grievance is that the respondent A.P.M.C. has passed a resolution on 28/11/2017 at Sr.No.5 in relation to Complaint (ULP) No.61/2015 filed by Satish Digambar Patil and 62/2015 filed by Dinkar Dattatraya Kamble. In the last paragraph of the said resolution, the A.P.M.C. acknowledges 37 permanent vacant posts and only 16 employees are presently in employment. In order to cope up with mounting work, it resolved to grant regularization to Mr.Dinkar and Mr.Satish on the post of Clerk and Peon respectively. Further grievance is that Dinkar and Satish are junior to these petitioners and there are 3 clerks and several peons amongst these petitioners. Reliance is placed on Section 25-H of the I.D.Act r/w Rules 81 and 82 of the I.D. (Bombay) Rules, 1957.

3. Learned Advocate for the A.P.M.C. submits that though he is well prepared in this matter, he would have to take

instructions on the aspect of seniority.

4. *In view of the above, stand over to 07/03/2019 in the "Urgent Admissions Category".*

4. On 7.3.2019, the learned Sr. Advocate appeared on behalf of the APMC and has assisted the Court by placing certain facts, which would indicate that this issue of irregular appointments needs to be gone into. The submissions of the respective sides were recorded in the order dated 7.3.2019, which read as under:-

" 1. *The submissions of Mr.Yenge on behalf of the petitioners have concluded.*

2. *While advancing submissions, the learned Sr. Advocate appearing on behalf of respondent Nos.1 and 2 has canvassed that though these petitioners may have been working on daily wages in between 2007 to 2015, the procedure prescribed u/s 35 of the A.P.M.C. Act r/w Rule 100 of the Maharashtra A.P.M. (Development and Regulation) Rules, 1967, was not followed.*

3. *I find that two ULP complaints filed by Satish Digambarrao Patil, No.61/2015 and Dinkar Dattatraya Kamble, No.62/2015 with identical pleadings and though prima facie junior to these petitioners, were settled before the Industrial Court. A resolution was also passed by the petitioners on 28/11/2017 by which it was admitted that*

37 permanent vacant posts are available and there are only 16 employees working, other than these 37 posts. Dinkar and Satish were granted regularization before the Industrial Court when their complaints were pending. At the same time, the claims of these petitioners were overlooked though their complaints were also pending.

4. Considering the submissions made by the Senior Advocate on instructions, that no procedure was followed by the A.P.M.C. while recruiting these petitioner, learned advocate for the petitioner makes a serious grievance. He submits that most of the daily wagers are engaged by the A.P.M.C. without following a specific procedure. Only to defeat the claims of these petitioners, that the A.P.M.C is putting forth such a submission. It has become a fashion for employers to allege irregularities in recruitment only to defeat the claims of such workers. He, therefore, submits that if the same analogy is to be applied to Dinkar and Satish, then both of them as well as all such daily wagers will have to be dispensed with.

5. He, therefore, submits that this Court may consider the entire record of the A.P.M.C. through the Director, Marketing, State of Maharashtra, Pune so that the truth would surface. He seeks liberty to add the Director of Marketing, State of Maharashtra, Pune as respondent No.3.

6. It is from the above recorded statements that I find that if it is ultimately revealed that this A.P.M.C. had never followed a specific procedure while recruiting daily wagers and yet several such daily wagers have been regularized in employment, then it

would amount to the A.P.M.C. having played a fraud on this Court and on the justice dispensation system. For lifting such a veil drawn by the A.P.M.C., the assistance of the Director of Marketing could be solicited.

7. Stand over to 05/04/2019 in the "Urgent Admissions Category.

8. Respondent No.3 shall cause a detailed enquiry and shall state on affidavit as to how many daily wagers were granted approval at the time of their appointments, from 2007 onwards and at the time of their regularization, with the petitioners. The A.P.M.C. would file an affidavit in reply placing on record the advertisements published from the year 2007 onwards for causing the recruitment of daily wagers, the minutes of the selection committee's selection process and the approval obtained while making such appointments of daily wagers.

9. I deem it appropriate to record, so as to preempt the A.P.M.C., that if I find that the A.P.M.C. has put forth the plea of irregular appointments only to the extent of these petitioners and the procedure of recruitment was not followed in the cases of other daily wagers, it would amount to playing a fraud on the Court and this conduct shall be met with imposition of heavy costs not less than Rs.10,00,000/, besides initiating an enquiry for fixing the liability on those who were connected with such irregular appointments.

10. It is made clear that the A.P.M.C. and respondent No.3 shall be precluded from seeking extension of time for implementing the above mentioned directions.

11. Until further orders, the APMC shall keep 7 posts of Junior Clerks and 6 posts of Peons, vacant and any disobedience of these directions shall be viewed as an act of aggravated contempt."

5. Today, the Director of Marketing, State of Maharashtra is present in the Court and an affidavit dated 20.4.2019, pursuant to the earlier directions, has been filed along with several documents. I find from the report that the Director of Marketing has conducted a scrutiny of certain appointments and has brought before the Court the following aspects, which are found in paragraph Nos. 3 to 6 reproduced as under:-

"3. I say and submit that, as per the orders of this Hon'ble Court, this respondent has instructed the District Deputy Registrar, Cooperative Societies, Latur vide letter dated 11/04/2019 to enquire into the recruitment of daily wages and regular employees in the respondent no.1 APMC, Udgir. The District Deputy Registrar, Cooperative Societies, Latur has submitted his report on 15/04/2019. The copy of the said enquiry report is hereto annexed and marked as Exhibit-1.

4. From the report submitted by the District Deputy Registrar, Cooperative Societies, Latur dated 15/04/2019, it is revealed that seven daily wagger employees were appointed on regular posts in applicable pay scale by the Respondent No.1 APMC since 2007 onwards. Out of these seven employees, 5

employees were appointed on daily wages basis before 2007 and two employees were appointed on daily wages basis in the year 2008 and 2009. The details of recruitment process of these 7 employees are submitted at Annexure A.

5. I say and submit that, the respondent No.1 APMC has engaged 38 daily wages employees from 2007 onwards.

a) Out of 38 employees, 2 daily wages employees were appointed on regular basis vide resolution dated 28/11/2017 and approval to these appointments given by the District Deputy Registrar, Cooperative Societies, Latur vide order dated 06/06/2018.

b) 14 daily wages employees have filed complaint application in the Industrial Court, Latur regarding their appointments. The complaint applications of 13 employees were rejected by the Industrial Court, Latur. Subsequently, these 13 employees filed the writ petitions before this Hon'ble Court. Complaint application filed by one employee before the Industrial Court, Latur is still pending. The details regarding recruitment process of these 14 employees are submitted at Annexure B.

d) 22 daily wagger employees were employed in the respondent No.1 APMC from 2007 onwards. Out of 22 employees, 2 had filed complaint applications before the Industrial Court, Latur, which came to be rejected. All these 22 employees are no more in the service of the respondent No.1 APMC. The details regarding

recruitment process of these 22 employees are submitted at Annexure C.

6. I say and submit that, while recruiting the daily wager employees for more than 6 months in the employment of respondent No.1 APMC, the requisite permission of the Director as per provisions of Rule 100(5) of Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 was required to be sought by the Respondent No.1 APMC.

Sub Rule (5) of Rule 100 of Maharashtra Agricultural Produce Marketing (Development & Regulation) Rules, 1967 reads as under:-

" No new post shall be created or any existing post abolished, no appointment to any post (not being a temporary or officiating appointment to any post for a period not exceeding six months) shall be made, and no person in the service a Market Committee shall be discontinued as a measure of retrenchment or economy in rank except with the previous approval of the Director."

As per the above provision, it appears that no permission appears to have been obtained by the respondent No.1 APMC. Similarly no publicity regarding recruitment of the daily wager employees appears to have been given by the respondent No.1 APMC in daily news paper / weekly."

6. The learned AGP has drawn my attention to the annexures placed on record by the Director of Marketing. Out of 7 regularized candidates set out in Annexure "A", two candidates namely, Shri

Waliyoddin Mujawar and Shri Pradip Suresh Patil have been recruited in regular employment on the basis of an advertisement, published in a completely unknown local weekly, by name, 'Saptahik Yuwa Prati jang'. In so far as Dinkar Dattatray Kamble, Shri Satish Digambarrao Jadhav and Shri Shivshankar Ramchandra Biradar, are concerned, their matters were before the Labour / Industrial Court. Shri Birdar was directed to be reinstated by the Labour Court. He was reinstated in July 2003 and subsequently he resigned on 27.5.2018. Shri Kamble and Shri Jadhav were granted regularization after the APMC submitted consent terms before the Industrial Court. Both of them appeared to have been inducted as daily wagers in October, 2008 and September 2009, respectively.

7. The learned Sr. Advocate submits on behalf of APMC that he is instructed to state that the APMC is willing to have a complete scrutiny of its recruitment of daily wagers and their regularization, with regard to candidates, who were recruited from the year 2003 onwards. He fairly states that the APMC has realized certain irregularities and the elected representatives, at the relevant times, have resorted to such irregularities.

8. I find that the law laid down by the Honourable Apex Court in the matter of Secretary, State of Karnataka Vs. Umadevi & Others

[(2006) 4 SCC 1], is that illegal appointments cannot be regularized and irregular appointments of such candidates, who otherwise may not be ineligible for appointments, could be considered for regularization as a one time scheme. Now, that the Director of Marketing, Maharashtra State is before this Court, I would find it appropriate to allow him to conduct a detailed enquiry in the recruitment of candidates on daily wages and regularization of some candidates vis-a-vis the available vacancies. The Sr. Counsel rightly points out Rule 100(5) of the Maharashtra APM (D & R) Rules, 1967, as has been pointed out by the Director of Marketing in his affidavit, that such regularization can be made after considering the Rules applicable.

9. I find that litigants like these petitioners, who have been working in between 8 to 12 years and have been disengaged only because they demanded regularization and/or approached the Industrial Court are left in the lurch and need to be given a chance by imposing certain fetters on bodies like the APMC. The APMC cannot be permitted to take advantage of their own wrongs by irregularly recruiting daily wagers, continuing them for 8 years or a decade and then select fresh candidates from the Society for regular employment by publishing advertisement in local weekly papers, like, Yuwa Prati Jang, of which no localites have heard off. If a technical view is to be

taken, none of these petitioners would find a chance of getting regular employment after having worked for a decade on daily wages and this would give an impetus to bodies like APMCs to resort to fresh recruitment of 'pre-selected' candidates on the basis of 'pick and choose' policy.

10. Since these petitioners have suffered adverse judgments in the Industrial Court and as they have been disengaged in the last 2-4 years, in view of their litigation, I deem it appropriate, as an exceptional case, to permit the Director of Marketing, State of Maharashtra to scrutinize all the candidates who have been engaged as daily wagers from January 2003 onwards, until March, 2019 and depending on their seniority, length of service and availability of posts, accord a sanction to their regularization, so as to undo the injustice and the damage caused by the elected office bearers of the APMC in the last about 15 years.

11. These petitions are, therefore, disposed off, with the following directions:-

(A) The Director of Marketing, State of Maharashtra, shall direct the APMC Udgir, to produce the records pertaining to daily wagers from January 2003, in addition to the record available with his office, within four weeks.

(B) All such cases of daily wagers would be scrutinized by the Director and their seniority, length of service and area in which they have worked, would be considered, in relation to the permanent available posts, for regularisation.

(C) In order to do justice to one and all, the Director, Marketing is permitted to call upon such daily wagers, to appear before him and submit details of their daily wage employment, which he would consider along with the record available before him, segregate the bogus cases and consider the genuine cases for regularization.

(D) If some daily wagers have been working for long periods, the age barrier would not be an impediment to hold them eligible for regularization.

(E) The Director of Marketing will also be cautious of the financial aspects while granting regularization, meaning thereby, that he would take into account restrictions on expenditure towards salary / wages of employees, while considering cases for regularization.

(F) If work is available and financial sanction for regularization is not available, he would direct the APMC to allot such work on seniority basis on daily wages to such daily wagers, until their turn for regularization.

(G) The above stated exercise shall be completed within the period of four months beginning from 2.5.2019. In the event, he feels that he is running short of time, he is at

liberty to move a Civil Application before this Court for seeking extension of time.

(H) In the event, the Director Marketing arrives at a conclusion that nepotism was involved in regularizing undeserving candidates or compromise was arrived at before the Industrial Court to suit a particular candidate, he would be at liberty to issue notice to such a candidate, cause a hearing and if he is of the view that service benefits have been undeservingly acquired by him and are required to be taken away, he would pass an appropriate reasoned order in such a case.

(I) The Director of Marketing would prepare his report after the aforesaid exercise is completed and would forward a copy of the report along with his directions to the APMC Udgir through its Chairman, to the appropriate department of the Government of Maharashtra and a copy to the learned Registrar (Judicial) of this Court. If any daily wager or petitioner seeks a copy of the findings, he can apply to the APMC and such a copy would be made available by the concerned APMC on payment of requisite charges as per the policy of the Government. Any of these petitioners or any daily wager or employee who is not before this Court and is aggrieved by the decision of the Director of Marketing, would be at liberty to take recourse to a remedy as may be permissible in law.

(J) The Director of Marketing shall issue a common directive to all the APMC in the State of Maharashtra that they shall seek sanction of his office even while making

recruitment on daily wages for more than six months and when it comes to publishing an advertisement in future for making regular recruitments or even recruitments on such daily wages, the APMC would be bound to publish such advertisements only in the largest circulated regional news paper in the local limits of the district and no advertisement shall be published in relatively lesser circulated or unknown news papers or weeklies, which would create a doubt about the bonafides of the APMC.

12. Needless to state, since the above directions have been issued so as to do justice to the daily wagers who have been working for years together, I have not proceeded to draw any conclusion as to whether the APMC has played a fraud on this Court. This aspect is now left to the Director of Marketing to consider and who will adopt remedial measures with regard to those candidates, who have been undeservingly / surreptitiously regularised.

(RAVINDRA V. GHUGE, J.)

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