

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

WRIT PETITION NO. 15221 OF 2017

THE STATE OF MAHARASHTRA AND OTHERS

VERSUS

THE SHETKARI SHETMAJOOR PANCHAYAT MAH. THROUGH

VICE PRESIDENT AND OTHERS

WITH

WRIT PETITION NO. 7426 OF 2019

THE COMMISSIONER OF AGRICULTURE STATE OF

MAHARASHTRA AND OTHERS

VERSUS

THE SHETKARI SHETMAJOOR PANCHAYAT MAH. THROUGH

VICE PRESIDENT AND OTHERS

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Advocate for the Petitioners/State : Shri N. T. Bhagat
Advocate for Respondent No. 1 : Shri A. N. Sabnis h/f.
Shri V. D. Gunale

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 04th JULY, 2019.

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PER COURT :

1. The learned AGP had requested for an adjournment on the last date to take instructions as regards the factual status of the original complainants, who are respondents herein. Today,

it is submitted on instructions received by the learned AGP, in writing from the petitioners in both these cases, that these workers were initially working on daily wages with the petitioners and subsequently due to a change in policy of the government, they were deployed through contractors. As such, there is no employer employee relationship between the petitioners and the respondents.

2. The learned Advocate appearing on behalf of the respondents who were the original complainants before the Industrial Court submits that the statement made by the learned AGP is purely a statement made across the bar. The complaints filed by the respondents before the Industrial Court were considered by the Court. The pleadings of the parties were taken into account and after recording the oral and documentary evidence, a ULP declaration was made against the petitioners and the complainants were granted permanency from the date of the filing of their respective complaints. He hastens to add that this Court has dealt with identical matters in the cases of Municipal Councils, Municipal Corporations and the Department of Social Forestry and Agriculture Department.

3. In all these cases, this Court has concluded that the deeming fiction of permanency under Standing Order 4C of the Industrial Employment Standing Orders Act, 1946 are not applicable to such state instrumentalities and there can be no declaration of ULP against such instrumentalities as they do not have a right to create posts or regularize employees at their level. He cites one such judgment delivered on 06/10/2018 in the matter of State of Maharashtra, through the Commissioner of Agriculture and others Vs. The Shetkari Shetmajoor Panchayat (the respondent Union in these two cases).

4. I have considered the submissions of the learned Advocate for the respondent original complainants and the learned AGP on behalf of the petitioners. It is no longer *res-integra* that deemed permanency under Standing Order 4C is not applicable to the state and state instrumentalities. This issue was dealt with by this Court (Coram : Myself) in the matters of *Mukhyadhikari Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others, 2015(5) Mh.L.J. 75* and *Chief Officer, Municipal Council, Tuljapur Vs. Baban Hussain Dhale in W.P. 1843/2015 dated 26/02/2015.*

5. *Insofar* as the issue of granting permanency from the date of the filing of the complaint is concerned, there was a conflict of views between two learned Judges of this Court at Nagpur. The matter was referred to a Larger Bench which delivered a judgment in the matter of ***Municipal Council, Tirora, Vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J. 867***, wherein it has been held that the Industrial Court cannot declare ULP against the state instrumentalities who do not have the power to create posts or grant permanency at the Local levels. It was also held that the Industrial Court cannot grant permanency based on the date of the filing of the complaint merely because the workers have completed 240 days in continuous employment.

6. In the instant case, the learned AGP vehemently submits that the workers were engaged through a contractor. However, neither had the State moved an application before the Industrial Court to implead the contractor, nor were the details supplied as to who is the contractor, who has deployed these complainants with the petitioners. The judgment of the

Industrial Court is based on the oral and documentary evidence on record. If the petitioners have failed to bring any evidence on record indicating that these workers were engaged through contractors, the supervisory jurisdiction of this Court cannot be exercised to enable the petitioners to remove the deficiencies and the lacuna. Unless the impugned judgment, on the material available, is held to be perverse and erroneous, there cannot be an order of quashing and setting aside such judgment.

7. Moreover, these workers have been working with the petitioners from 1982 onwards. Their respective periods of employment have been set out before the Industrial Court. A specific chart was placed before the Industrial Court. Despite this fact, the petitioners did not bring any evidence on record to establish that the ULP complaints were untenable in the light of the law laid down by the Honourable Apex Court in the matter of *Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. And another, (2001) 2 Supreme Court Cases 381, Cipla Ltd. Vs. Maharashtra General Kamgar Union and others, (2001) 3 SCC 101*, and in the matter of *Steel Authority of India Ltd.*

And others v/s National Union Water Front Workers, (2001) 7 SCC, decided by the five learned Judges of the Supreme Court.

8. In these set of circumstances, I deem it appropriate to rely upon the observations of the Honourable Apex Court set out in paragraph 44 in the matter of ***Secretary, State of Karnataka and others Vs. Umadevi (3) and others , (2006) 4 SCC*** which reads as under :-

"44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order

as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after the Dharwad decision, the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under [Article 226](#) or 32 of the Constitution or in exercise of power under [Article 142](#) of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality."

9. It was precisely in these circumstance that this Court had issued certain directions in the judgment dated 06/10/2018 delivered in Writ Petition No. 10497/2018 involving the same

petitioner establishment and identically situated workers represented by the same respondent Union.

10. While issuing these directions, I have kept in mind that these workers have been working for more than three decades. After having put in about 30 to 35 years in employment, it would be unfair and inhuman to remand these matters to the Industrial Court at the request of the petitioners who have been totally negligent in conducting the proceedings before the Industrial Court. The directions issued in the said earlier judgment, would balance the equities and do justice to the parties.

11. In view of the above, these petitions are partly allowed only to the extent of quashing and setting aside the declaration of ULP made by the Industrial Court against the petitioners. Similarly, the directions to the petitioners to desist from committing ULP, are also set aside.

12. The direction of the Industrial Court of granting permanency in both the impugned judgments dated

10/02/2017, delivered at Jalna and 26/04/2018 delivered at Latur are set aside. Said directions are replaced by the following directions :-

(a) The petitioner shall prepare a proposal of the complainants alongwith such other similarly situated and comparable daily-wage employees.

(b) The proposals shall include the exact duration of service of such daily-wagers, the nature of work performed by them and the last drawn wages.

(c) Such proposal shall be forwarded to the Department of Agriculture through its Secretary, Government of Maharashtra, Mantralaya, Mumbai within a period of 3 months from today.

(d) The said authority would consider the said proposals in the light of available permanent sanctioned posts and shall grant regularization to these daily-wagers strictly as per their length of service and their seniority, within 04 months.

(e) If sufficient posts are not available to accommodate all such daily-wagers, the petitioner, while following the above principle, would consider the

claims of such daily-wagers in a staggered manner and as and when such position becomes available, the daily-wagers would be regularized.

(f) These daily-wagers shall not be terminated for the reason that they are working on daily-wages or because their proposals are pending.

(g) They would be continued in employment until permanent sanctioned posts become available and their turn arrives for regularization. This protection would not include cases of disciplinary action.

13. It be noted that in the event any such daily-wager who may have approached the Court, has superannuated, his case would be considered in view of the above directions and if he is entitled to regularization with retrospective effect, he or his legal heirs, as the case may be, would be granted notional benefits alongwith all monetary benefits within the same period as directed above.

(RAVINDRA V. GHUGE, J.)

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