

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

WRIT PETITION NO.4556 OF 2003

- 1 The Chief Executive Officer &
Chairman, Zilla Parishad
Multi Drug Treatment Project,
Zilla Parishad, Osmanabad.
- 2 The Assistant Director,
Health Services (Leprosy),
Osmanabad (Samata Colony).
- 3 The Joint Director,
Health Services (Leprosy), Pune,
Raja Bahaddur Mill Marg, Pune-1.
- 4 Deputy Director, Health Services,
Latur.
(Amended as per leave granted today)
(Earlier it was :-
Deputy Director, Health Services,
Aurangabad, Near Baba Petrol Pump,
Aurangabad.)

...PETITIONERS
(Original Respondents)

-VERSUS-

- 1 Shri Pandurang Rambhau Choudhary,
Age : 47 years, Occupation : Service,
R/o Girvale, Tq.Bhum,
Osmanabad.
- 2 Shri Anil Shrirang Gaikwad,
Age : 30 years, Occupation : Service,
R/o Bhim Nagar, Near Civil Hospital,
Osmanabad.
- 3 Shri Manohar Brahmaji Gore,
Age : 38 years, Occupation : Service,

R/o Vijay Chowk, Mali Galli,
Osmanabad,
C/o Lalbavata Shramik Kamgar Union,
Datta Nagar, Solapur.

...RESPONDENTS
(Original Complainants)

WITH
WRIT PETITION NO.4557 OF 2003

- 1 The Chief Executive Officer &
Chairman, Zilla Parishad
Multi Drug Treatment Project,
Zilla Parishad, Osmanabad.
- 2 The Assistant Director,
Health Services (Leprosy),
Osmanabad (Samata Colony).
- 3 The Joint Director,
Health Services (Leprosy), Pune,
Raja Bahaddur Mill Marg, Pune-1.
- 4 Deputy Director, Health Services,
Latur.
(Amended as per leave granted today)
(Earlier it was :-
Deputy Director, Health Services,
Aurangabad, Near Baba Petrol Pump,
Aurangabad.)

...PETITIONERS
(Original Respondents)

-VERSUS-

Maijoddin Adamoddin Kazi,
Age : 32 years, Occupation : Service,
R/o Vashi, Tq.Bhoom,
Osmanabad.

...RESPONDENT
(Original Complainant)

WITH
WRIT PETITION NO.6796 OF 2007

- 1 Maijoddin Ajimoddin Kazi,
 Age : 36 years, Occupation : Nil,
 R/o Dargah Road, Near Pokharni Well,
 Osmanabad.
- 2 Manohar Brhamaji Gore,
 Age : 54 years, Occupation : Nil,
 R/o Vijay Chouk, Mali Galli,
 Osmanabad.

...PETITIONERS
(Original Complainants)

-VERSUS-

- 1 The Chief Executive Officer,
 Zilla Parishad and Chairman,
 District Leprosy Eradication Committee,
 Z.P. Osmanabad.
- 2 Assistant Director,
 Health Services (Leprosy),
 Secretary District Leprosy
 Eradication Committee,
 Central Administrative Building,
 Osmanabad.
- 3 Joint Director,
 Health Services (Leprosy),
 Raja Bhaddur Marg,
 Pune-1.
- 4 Deputy Director,
 Health Services,
 Mahatma Gandhi Chowk,
 Latur.
- 5 The State of Maharashtra.
 Through it's Secretary,
 Health Services, Mumbai.

(Copy to be served on G.P.
High Court of Bombay,
Bench at Aurangabad.)

...RESPONDENTS
(Nos.1 to 4 Orig. Respondents)

WITH
WRIT PETITION NO.594 OF 2008

- 1 Majjoddin Ajimoddin Kazi,
Age : 36 years, Occupation : Nil,
R/o Dargah Road, Near Pokharni Well,
Osmanabad.
- 2 Manohar Brhamaji Gore,
Age : 54 years, Occupation : Nil,
R/o Vijay Chouk, Mali Galli,
Osmanabad.

...PETITIONERS
(Original Complainants)

-VERSUS-

- 1 The Chief Executive Officer,
Zilla Parishad and Chairman,
District Leprosy Eradication Committee,
Z.P. Osmanabad.
- 2 Assistant Director,
Health Services (Leprosy),
Secretary District Leprosy
Eradication Committee,
Central Administrative Building,
Osmanabad.
- 3 Joint Director,
Health Services (Leprosy),
Raja Bhaddur Marg,
Pune-1.
- 4 Deputy Director,
Health Services,

Mahatma Gandhi Chowk,
Latur.

- 5 The State of Maharashtra.
Through it's Secretary,
Health Services, Mumbai.
(Copy to be served on G.P.
High Court of Bombay,
Bench at Aurangabad.)

...RESPONDENTS
(Nos.1 to 4 Orig. Respondents)

...

Shri S.R.Yadav, AGP for the Petitioners in WP/4556/2003 and 4557/2003
and for the Respondents in WP/6796/2007 and WP/594/2008.

Shri A.N.Nagargoje, Advocate for the Respondents in WP/4556/2003 and
4557/2003 and for the Petitioners in WP/6796/2007 and WP/594/2008.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th October, 2019

Oral Judgment :

1 Leave to correct the description of the Deputy Director,
Health Services, Aurangabad by mentioning Latur in place of Aurangabad,
in the first two writ petitions. Correction be carried out forthwith.

2 In the first two writ petitions (Nos.4556/2003 and
4557/2003), the petitioners/ management are aggrieved by the judgment
and order dated 01.08.2003 delivered by the Industrial Court by which,
the ULP complaints filed by the respondents/ four workers have been
partly allowed and they have been granted permanency w.e.f. 01.04.1991

in view of they having completed 240 days in continuous employment with the petitioners. Further benefits, of pay scales available to the drivers and peons, have been granted and the difference of amounts is also directed to be paid.

3 This Court, vide order dated 07.12.2004, had stayed the criminal ULP proceedings filed by the respondents/ workers under Section 48(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the MRTU & PULP Act"). By a detailed order dated 15.04.2005, interim relief in terms of prayer clause "C" was granted in both the petitions. Consequent upon the interim relief granted by this Court, it is informed that, these respondents/ workers have been terminated from service only because they were temporary workers and the judgment of the Industrial Court was stayed.

4 I have heard the learned AGP for the petitioners/ management and the learned advocate for the respondents/ workers. I have perused the record available. These respondents/ workers were working from 1987-1989 onwards till they were disengaged on 13.12.2005.

5 The contention of the petitioners/ management in the first two writ petitions is that these four workers were daily wagers and they were working under a project. Firstly, some of them were engaged as drivers or peons depending upon the work available. Secondly, they were

aware that they were being engaged on daily wages and there was no assurance of permanency keeping in view that their deployment was on a project for eradication of leprosy. The learned AGP hastens to add that as things stand today in the State of Maharashtra, leprosy has been practically eradicated on account of the aggressive programmes aimed at preventing leprosy and the scheme has been brought to an end.

6 The learned advocate for the workers points out from the judgment delivered at the Principal Seat on 11.04.2018 in the matter of the *State of Maharashtra and another vs. Kishor N. Chemburkar and others, Writ Petition No.4561/2001*, that the writ petitions filed by the State, as like these petitions filed in this Court, have been dismissed and the judgment of the Industrial Court that was impugned before the Principal Seat has been sustained. He further adds that the Special Leave Petition filed by the State Government before the Honourable Supreme Court has also been dismissed on 04.07.2019. He, therefore, prays for parity.

7 In the third and fourth writ petitions (Nos.6796/2007 and 594/2008), only two workers, namely, Maijoddin Kazi and Manohar Gore, are aggrieved by the judgment of the Industrial Court dated 20.06.2007 by which, the revision ULP petitions filed by the management have been allowed and the judgment of the Labour Court dated 31.03.2007, partly allowing the ULP complaint filed by these workers for challenging their

disengagement, has been quashed and set aside.

8 After this Court granted interim relief in favour of the management in the first two petitions, the management disengaged these workers in December, 2005 after they had continuously worked from 1987-88 till December, 2005. This led the workers to the Labour Court in ULP complaints for challenging their termination. It was brought on record that these workers were appointed in the health scheme as peons/drivers as the Multi Drug Therapy Programme and the National Leprosy Eradication Programme were undertaken by the State Government. These workers were also deployed for medical assistance and rehabilitation of the disastrous 1993 Killari-Sastur earthquake victims. Their services were also utilized in several programmes like HIV control, prevention and control of tuberculosis and leprosy, family planning, elimination of blindness, vaccination of tender age children, etc.. They used to be given only two days break in service after working for 30 days in each month.

9 The management opposed the ULP complaints by contending that these workers were engaged purely under the Central Government scheme. The National Leprosy Eradication Programme was brought to an end in September, 2000. There are no funds available for making payments of daily wagers. As the High Court has stayed the judgment of the Industrial Court dated 15.04.2005 granting permanency to the workers (first two petitions herein), there was no law prohibiting the

management from disengaging the workers. The Labour Court analyzed the oral and documentary evidence placed on record and concluded that these workers had worked as daily wagers since the work was available and they had put in about 16 to 18 years in employment. Artificial breaks were aimed at projecting that they had not continuously worked in employment. I find that the case of these workers is squarely covered by the law laid down by the Honourable Supreme Court in the matters of *H.D. Singh vs. Reserve Bank of India and others, (1985) 4 SCC 201* and *State of Haryana v/s Piara Singh and others, 1992(4) SCC 118*. By considering the judgments cited and in view of *Secretary, State of Karnataka v/s Umadevi, 2006 (4) SCC 1 : AIR 2006 SC 1806*, the Labour Court partly allowed the complaints and directed the management to pay the retrenchment compensation to the workers.

10 The workers as well as the petitioners approached the Industrial Court by filing the revision petitions under Section 44 of the MRTU & PULP Act, 1971. The Industrial Court invoked Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and concluded that as these workers were working only for 28 days in a month of 30 days and every time they were engaged in each month, there was a break of two days and hence, their termination cannot be said to be retrenchment. The Industrial Court then set aside the judgment of the Labour Court. As a consequence, the third and fourth petitions have been filed by the two workers.

11 The law is now crystallized that a temporary employee or an adhoc appointee cannot be disengaged only to be replaced by another temporary or adhoc appointee. In such circumstances, such employees have to be continued in employment as temporaries subject to their rights to regularization or any specific recruitment procedure being followed by the employer for recruiting the employees.

12 The first two writ petitions are, therefore, interconnected with the third and fourth writ petitions.

13 In the proceedings before this Court in the case of *Kishor Chemburkar (supra)*, the Industrial Court had directed regularization. In the instant case, the Industrial Court apparently relied upon the deeming provision of permanency, which flows from Standing Order 4-C of the Industrial Employment (Standing Orders) Act, 1946.

14 The issue as to whether, Standing Order 4-C would encompass the State instrumentalities, is no longer res-integra. This Court has laid down the law in the matter of *Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others, 2015 (5) Mh.L.J. 75*, concluding that Standing Order 4-C would be applicable to private sector industries, which are not under the mandate or subject to the policy of the State Government pertaining to creation of posts and recruiting fresh hands from the public at large, keeping in view the aspect of public employment. In private sector undertakings, the employer is the master

and is not required to approach the Government for creation of posts. In the matters as like the one in hand, the State instrumentalities have to approach the State Government for creation of posts. Regularization is also granted as a policy decision by the State Government. The authorities like the petitioners/ management herein, did not have the power and jurisdiction either to create posts or to grant permanency.

15 An identical issue was considered by way of a reference, by the learned Division Bench in the matter of *Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J.867*. The reference Court dealt with the issue and concluded that the deeming provision of permanency would not apply to the State Government entities or State Instrumentalities.

16 I find that this aspect was not canvassed before this Court in the matter of *Kishor Chemburkar (supra)*. The view taken by this Court in *Mukhyadhikari, Nagar Parishad, Tuljapur (supra)* and in the matter of *Municipal Council, Tirora (supra)*, was not cited before the Court in the matter of *Kishor Chemburkar (supra)*.

17 I find it advantageous to deal with the issue of break in service, that has been taken up by two workers in the third and fourth writ petitions, since that would have a direct impact on the fate of the four workers, which hangs in balance in the first two writ petitions. I am conscious of the law that a daily wager is normally not granted back

wages since the principle of "no work- no wages" would apply to daily wagers. It emerges from the record in the third and fourth writ petitions that the petitioners/ management had no reason to disengage these employees. But for the fact that the moment this Court granted interim relief to the management by the order dated 15.04.2005, the management proceeded to disengage these employees/ daily wagers. It is quite obvious that the design of the management was to frustrate the rights of these employees by disengaging them, though the learned AGP has denied this object. There could be no other reason for the management to sever ties with these employees except to frustrate their success in getting regularization.

18 It also cannot be overlooked that the State Government was implementing the leprosy eradication scheme as a part of discharging it's sovereign functions. It had, therefore, roped in the services of the Zilla Parishads keeping in view that they had the infrastructure to implement such schemes. Additional staff, as like these employees involved in these petitions, was engaged purely on daily wage or contractual basis.

19 In labour legislation, the Labour Court or the Court of Record is not only required to consider as to whether, the law of termination was duly followed or not, but it is also incumbent upon such court to assess as to whether, the disengagement was justified. The hire and fire policy, which has died down, cannot be pressed into service in such matters, lest

it would amount to resurrecting the ghost of hire and fire policy.

20 Considering the above aspect and also keeping in view that the management has been suffering paucity of funds from time immemorial, it would be inappropriate to grant back wages to the two daily wagers before this Court by applying the principle of "no work- no wages". However, considering the reasons assigned by the Industrial Court in delivering the impugned judgments in the third and fourth petitions by which, it has overturned the findings on facts arrived at by the Labour Court, I find that the said judgments call for an interference keeping in view the limited scope of the revisional jurisdiction being exercised by the Industrial Court under Section 44 of the MRTU & PULP Act.

21 The sufferings of these two respondents/ workers could be softened by granting them notional continuity in service without back wages from the dates of their disengagement till their reinstatement or till the date any one amongst them has attained the age of superannuation. In my view, this would amount to balancing the equities and doing justice to these two employees in the peculiar facts and circumstances of this case.

22 Since I find that the Industrial Court completely lost sight of the fact that there was no reason for the management to disengage these daily wagers and especially when their petitions were pending before this Court and in view of the Principal Seat of this Court, in *Kishor Chemburkar (supra)*, had granted protection against termination to

similarly situated workers during the pendency of the petitions, that the fourth **Writ Petition No.594/2008 is partly allowed**. The third Writ Petition No.6796/2007 is filed by the same two workers, namely, Maijoddin Kazi and Manohar Gore, in which, they have prayed for payment of retrenchment compensation and have not prayed for reinstatement in service. The fourth petition filed by the same two workers brings in the prayer for reinstatement in service. As such, the third **Writ Petition No.6796/2007 is rendered infructuous and stands disposed off. Rule is discharged in Writ Petition No.6796/2007**. The impugned judgments of the Labour Court and the Industrial Court are partly modified. The order of declining reinstatement with continuity in service, by the Labour Court is set aside. Back wages are deprived to these two workers and even for the reason that they have not prayed for the said relief.

23 Having decided the third and fourth petitions as above and since the petitioners/ management did not have the power to create posts, much less grant regularization in service, the first two **Writ Petition nos.4556/2003 and 4557/2003** filed by the management are, therefore, **partly allowed** with the following directions :-

- (a) The declaration of unfair labour practices under item 6 and 9 of Schedule IV of the MRTU & PULP Act stands quashed and set aside. Consequentially, clauses II and III of the operative

part of the impugned judgment dated 01.08.2003 are quashed and set aside.

- (b) Insofar as clause IV of the impugned judgment is concerned, by which, the Industrial Court has granted permanency to these employees w.e.f. 01.04.1991 purely on the basis of the deeming provision of permanency, the said direction is also quashed and set aside. Consequentially, the directions in clauses V and VI of the impugned judgment are also set aside.
- (c) The petitioners/ management shall prepare the proposal of these four employees, keeping in view that there are no other identically placed daily wager with the management, setting out the details of their engagement from 1986-1989, their area of work and total years put in till the date of the proposal.
- (d) Such proposal shall be prepared by the petitioners/ management within THREE MONTHS from today.
- (e) Since the notional continuity in service is granted by this Court, these employees shall be considered to be in employment as on date or till the date of superannuation of any of these employees.
- (f) In view of the record available and the Government Resolution dated 10.09.2001 and any subsequent

Government Resolution applicable, such proposal prepared by the petitioners/ management shall be forwarded to petitioner no.3/ Joint Director of Health Services (Leprosy), Pune for consideration, either for regularization in the said scheme if the said scheme is still in force or by virtue of any policy decision taken by the State Government of handing over such employees to the respective Zilla Parishads. Petitioner No.3 would be at liberty to take guidance from any nodal/ higher authority of the State Government if he finds it appropriate and such decision would then be arrived at.

- (g) The decision by petitioner no.3/ Joint Director of Health Services (Leprosy), Pune or such authority, as the case may be, shall be arrived at within FOUR MONTHS from the date of the receipt of the proposal.
- (h) While deciding the proposal of these employees, they would be granted the deemed date of permanency from the dates on which the posts have fallen vacant or are created. Their proposal should not be rejected merely on the ground that the scheme has concluded or the posts are not available.
- (i) The respondents/ employees, save and except those having attained the age of superannuation, shall be forthwith reinstated in service w.e.f. 01.11.2019 on the same service

conditions on which they were earlier working. However, the daily wages payable to such daily wagers today shall be paid to these employees w.e.f. 01.11.2019.

- (j) The protection granted to these employees, of continuation in employment, would be subject to the exception of disciplinary proceeding, if any.
- (k) All these employees, who are granted the deemed dates of permanency in view of the continuity in service granted by this Court, would be entitled for consequential benefits available to such employees including pay scales from 01.11.2019, as back wages have been denied.

24 Rule is made partly absolute in the above terms, in the three Writ Petition Nos.4556/2003, 4557/2003 and 594/2008.