

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

WRIT PETITION NO. 653 OF 2007

Kinetic Engineering Ltd.,
Ahmednagar Dond Road,
Ahmednagar.

... PETITIONER

VERSUS

Barku s/o Zumbar Borude,
Age 42 years, Occu. Service,
R/o Changdeo Nagar, Tq. Rahata,
Dist. Ahmednagar.

... RESPONDENT

WITH

CIVIL APPLICATION NO.9387 OF 2008

IN

WRIT PETITION NO. 653 OF 2007

Barku s/o Zumbar Borude,
Age 42 years, Occu. Nil,
R/o Changdeo Nagar, Tq. Rahata,
Dist. Ahmednagar.

... APPLICANT

VERSUS

Kinetic Engineering Ltd.,
Ahmednagar Dond Road,
Ahmednagar.

... RESPONDENT

WITH

WRIT PETITION NO. 3689 OF 2009

Kinetic Engineering Ltd.,
Ahmednagar Daund Road,
Ahmednagar.
Through its Senior General Manager.

... PETITIONER

VERSUS

Vilas Saja Shinde,
Age 46 years, Occu. Service,
R/o Pargaon, Post Bhatodi,
Tq. & Dist. Ahmednagar.

... RESPONDENT

AND**WRIT PETITION NO. 4178 OF 2009**

Kinetic Engineering Ltd.,
Ahmednagar Daund Road,
Ahmednagar.

... PETITIONER

VERSUS

Gangaram S/o Pandurang Agarkar,
Age 43 years, Occu. Service,
R/o Chas, Tq. Nagar,
Dist. Ahmednagar.

... RESPONDENT

...

Advocate for the Petitioner :- Shri V. S. Bedre.
Advocate for the Respondent :- Shri S. V. Warad (in
WP/653/07).
Advocate for the Respondent :- Shri P. L. Shahane (in
WP/3689/09 & WP/4178/09).

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 06th JULY, 2019.

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ORAL JUDGMENT :

1. These matters are heard at length.
2. The petitioner is aggrieved by the judgments of the Industrial Court by which the ULP complaints filed by the

respondents have been allowed. The respondents/original complainants have been granted permanency in employment with all benefits. Though all of them have been working intermittently as per the appointment letters issued to them, the breaks in service of about 12 months to 3 years have been bridged by the Industrial Court, which has concluded that they have worked continuously in the employment of the petitioner industry. The petitioner contends that the impugned judgments are unsustainable.

3. In the first petition, the original complainant is Barku Zumbar Borude. Before approaching the Industrial Court by filing a complaint for seeking permanency, he had worked as per the chart supplied by him as under :-

Sr. No.	Appointment period	Department	Designation
1)	27.5.1985 to 26.11.85		
2)	16.1.1987 to 15.8.1987	Sp. Planning	Helper
3)	7.7.1988 to 6.2.1989	L. Planning	Helper
4)	1.9.1989 to 28.2.1990	L. Veh. Assly	Helper
5)	24.10.90 to 23.5.91	L. Planning	Helper
6)	12.3.1992 to 11.8.1992	L. Veh. Assly	Helper

Barku therefore, worked for 38 months, intermittently in

between 1985 to 1992. Since he approached the Industrial Court by filing a complaint, the petitioner Management thereafter continued him. He was given appointment orders for 3 months in 1995, 6 months in 1996, 3 months in 1997, 3 months in 2000 and 5 months in 2001. This duration is about 20 months in between 1995 to 2001. As such, the sum total of his duration of work on daily wages would be about 60 months in a period in between 1985 to 2001, which is 16 years.

4. *Insofar* as the second petition is concerned, the original complainant Vilas Saja Shinde had worked for the following period :-

Sr.No.	Appointment Period	Department	Designation
1.	8.2.1986 to 7.7.1986	M/c Shop	Helper
2.	17.9.1989 to 16.4.1990	L- Plaint Shop	Helper
3.	15.11.1990 to 14.4.1991	L-Planning	Helper
4.	14.4.1991 to 14.6.1991	--"--	--"--
5.	26.3.1992 to 25.6.1992	Quality Control	--"--
6.	8.5.1995 to 7.8.1995	Plaint shop	--"--
7.	7.8.1995 to 7.12.1995	--"--	--"--

This duration comes to about 30 months in between 1986 to 1995 (10 years).

5. In the third petition, the original complainant Gangaram Pandurang Agarkar has received eight appointment orders and the Industrial Court has recorded that on each occasion he had worked for 6 months. He had initially approached the Labour Court by filing Complaint (ULP) No. 44/1995 alleging oral termination on 19/06/1995. He had contended that he was working continuously from December-1985 to June-1995. The documents on record, specifically assessed by the Court, indicate that he had received eight appointment orders and had worked for 6 months under each appointment order. The Labour Court had granted reinstatement with continuity of service and had deprived him of the entire back wages. The Management as well as Gangaram approached the Industrial Court by filing revision petitions under Section 44 of the MRTU and PULP Act, 1971. By the impugned judgment, the Industrial Court dismissed both the revision petitions.

6. In view of the above, I need to consider the case of Barku and Vilas separately as the case of Agarkar is slightly different. Barku and Vilas had approached the Industrial Court seeking permanency. Both had specifically admitted their

tenure of employment. They placed on record their appointment orders. The Industrial Court considered the same and granted permanency by concluding that though the Management is an automobile industry and there are fluctuating market conditions *insofar* as the demand for the product is concerned, it was presumed that Barku and Vilas had been working continuously as there was an involuntary unemployment.

7. These cases are almost identical to the cases of Bajaj Auto Limited at Aurangabad and Pune. The first long list of Bajaj Auto cases, to be termed as the first batch of cases, reached the Honourable Apex Court. The workers had settled their dispute with the Management to quite a large extent. A handful of workers did not settle the matter and this led to the Honourable Apex Court considering the Appeals filed by the Company in the judgment delivered in ***Bajaj Auto Limited Vs. Bhojane Gopinath D. and others 2004(1) CLR page 502.*** The Honourable Apex Court quantified the compensation which was based on the earlier settlement between the company and about 1000 workers. Similar compensation was,

therefore, extended to the remaining about 150 workers who had litigated leading to the said judgment of the Honourable Apex Court.

8. It is informed that the petitioner company was manufacturing gearless two wheeler scooterates, scooters and motor-cycles. The petitioner Kinetic Engineering was a pioneer in introducing the 50 CC scooterates famously known as 'Luna'. Later on, they manufactured 'Spark' and then they ventured into 100 CC gearless scooters known as 'Kinetic Honda' and thereafter the motor-cycles by the brand name as 'Velocity'. The learned Advocate for the Management submits that the said automobile manufacturing activity of the petitioner factory at Ahmednagar was permanently closed down in 2006 and now it does not manufacture any of these products.

9. The learned Advocate for the original complainants submits that the Management had settled their dispute with several workers when the factory was closed down and handsome packages were given. Unfortunately, these complainants who were litigating in Court, were ignored by

the Management.

10. I had an occasion to deal with three similar cases. In ***Writ Petition No. 669/1997, M/s. Kinetic Engineering Co. Ltd. Vs. Shri Ajay Irrappa Basapure and another***, I had delivered a judgment on 13/10/2016 by noting the number of months for which such workers had worked and I had granted them compensation by relying upon the recent judgments of the Honourable Apex Court in four cases. It would be apposite to reproduce paragraph Nos. 4 to 8 from the said judgment as under :-

“4. There is no dispute that the respondent was engaged as a temporary for the period 14.10.1984 to 13.04.1985 to 21.04.1985 to 22.11.1985 by the Ahmednagar Unit of the petitioner. The Chinchwad Unit of the petitioner engaged him from 22.01.1986 till 31.07.1986 and 08.04.1987 till 07.10.1987. He has thus worked for a total period of 25 months in between October 1984 till October 1987.

5. It is not in dispute that the respondent is not working with the petitioner since 08.10.1987 over a period of almost 29 years. It is also not in dispute that his last drawn wages at the rate of Rs.650/- per month.

6. By an order dated 12.06.1997, this Court stayed the impugned award and granted liberty to the petitioner to

consider offering work to the respondent.

7. The Hon'ble Apex Court in the following four cases has settled the law that where a small tenure of employment has been put in by the employee, followed by a long spell of unemployment, grant of compensation instead of reinstatement and continuity and backwages would be appropriate :-

1. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009],

2. Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [{2013) 5 SCC 136],

3. BSNL Vs. Man Singh [(2012) 1 SCC 558] and

4. Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327)].

7. In the instant case the respondent has worked under four appointment orders as a temporary employee over a period of three years. The petitioner is a private company and is not a 'State instrumentality'. Though the impugned award has been stayed by this Court, the respondent had not been granted Section 17B benefits under the Industrial Disputes Act, 1947. Considering this aspect that he would have been entitled to Section 17B benefits and that the petitioner is a private entity, I am enhancing the amount of compensation from Rs.30,000/- per year to Rs.40,000/- per year, as the view taken by the Hon'ble Supreme Court was in matters of 'State instrumentalities'.

8. *In the light of the above, this petition is partly allowed. The impugned award dated 28.06.1996 in Reference (IDA) No.87 of 1998 is modified and the respondent is granted compensation of an amount of Rs.1,20,000/- as quantified compensation and he would not be entitled for any other benefits in relation to his employment and non-employment. The said amount shall be paid to the respondent / employee within a period of 12 weeks from today, failing which the said amount would carry interest at the rate of 6% per annum from the date of the award.”*

11. In another judgment delivered on 08/12/2016 in ***Writ Petition No.2162/1997, M/s Kinetic Engineering Limited Vs. Pramod Gangadhar Mohite and another***, I had passed an identical order and had granted a similar compensation by modifying the impugned judgment of the Industrial Court. In ***Writ Petition No. 4215/1997 (Shri Narayan Venkatesh Bura)*** and ***Writ Petition No. 4117/2004***, decided on ***05/01/2017***, which were counter petitions, I had granted a little lesser compensation considering that Narayan Bura had worked for about 2 years only.

12. Shri Shahane learned Advocate has placed before me four consenting orders passed by the Coordinate Bench of this

Court in the matters of *Mahesh Bhakare, Yadav Kotkar (Deceased), Ajit Changediya and Chandrakant Satpute* in which the Management consented to pay Rs. 7 Lakhs as compensation to each of those workers.

13. The learned Advocate for the petitioners submits that the above four cases in which the Management voluntarily consented to pay the compensation, are distinguishable on facts and cannot be compared to these three cases in hand for the reason that all those four workers were actually contract labourers, who were deployed by contractors in the petitioner factory. They had approached the Court for seeking a declaration of regularization by dislodging the contractors. The Industrial Court had granted reinstatement with the petitioner company though it was a principal employer and these workers were, therefore, reinstated and were in employment. As the company was closed down, the Management had no option but to enhance the compensation.

14. He further submits that in all these cases in hand, this Court had admitted the petition and had stayed the impugned

judgments of the Industrial Court. As a consequence, none of these Respondents were in employment.

15. I had called upon the learned Advocates for the workers to suggest as to whether they would agree to accepting compensation if paid by the Management. They stated that they are not agreeable for the amount of compensation granted by this Court in the three orders referred to in the foregoing paragraphs. They would agree to the quantum of compensation which the Coordinate Bench of this Court had considered and passed an order after the Management gave its consent.

16. The learned Advocate for the petitioner company submits that the company is presently in financial doldrums and the factors in relation to the services of these employees are completely distinct and different than the facts of the case pertaining to the four contract labourers. He, therefore, submits that these two types of cases cannot be equated. The learned Advocates for the respondents workers, therefore, submitted that these petitions may be decided on their own

merits.

17. It is obvious that all these complainant workers were working intermittently for periods ranging from 2 months to 7 months, at times. It is also admitted that there was no continuity of service and they were not working when their tenure of employments, be it 2 months or 3 months or 5 months or 7 months, came to an end. On each occasion, they were disengaged and discontinued after the last day of working mentioned in the appointment order.

18. In the light of the above, Section 25B of the Industrial Disputes Act, will have to be applied to assess as to whether these workers can be said to be in continuous employment with the Management. Section 25B reads as under :-

"25B. Definition of continuous service - For the purposes of this Chapter, –

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer ---

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than –

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than –

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.-- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which –

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks. "

19. It is, therefore, obvious that each of these workers had to complete 240 days in the uninterrupted service of the employer in the 12 calendar months preceding the date of reference, if permanency was to be granted. This position of law is crystalized. The 12 months from the date of reference will be calculated in the reverse order, preceding the date of the filing of the complaints.

20. It is undisputed that in the 12 calendar months preceding the date of the filing of the complaints, none of the complainants had worked for 240 days in the continuous and uninterrupted service of the employer. The Industrial Court has apparently lost sight of the fact that they were working for 3 months or 5 months or 7 months, intermittently. The

impugned judgment is an outcome of misplaced sympathy without considering the law applicable when it comes to granting permanency.

21. Standing Order 4C under Schedule I/A of the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act 1946 pertains to a Badli or a temporary working continuously for 240 days in the uninterrupted service in an aggregate in the preceding 12 calendar months from the date of staking a claim. He is deemed to be a permanent employee. Clause 4C of the Model Standing Orders reads as under :-

*"4C. A Badli or temporary workman who has put in 190 days' uninterrupted service in the aggregate in any establishment of a seasonal nature or 240 days' uninterrupted service in the aggregate in any other establishment, during a period of preceding twelve calendar months, shall be made permanent in that establishment by an **order** in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of the said twelve calendar months.*

Explanation. _ For the purpose of this clause any

period of interrupted service, caused by cessation of work which is not due to any fault of the workmen concerned, shall not be counted for the purpose of computing 190 days or 240 days or, as the case may be, for making a badli or temporary workman permanent."

In the light of Standing Order 4C, none of these original complainants were entitled for permanency.

22. The learned Advocate for the employees relies upon Standing Order 2(g) to lay stress on involuntary unemployment. Section 2(g) reads as under :-

"2(g) 'uninterrupted service' includes service interrupted on account of any of the following reasons, namely :-

- (i) Sickness, as certified by a doctor of Employees' State Insurance Scheme where such scheme is applicable, or elsewhere by a Registered Medical Practitioner,*
- (ii) accident,*
- (iii) authorised leave.*
- (iv) lay-off as defined in the industrial Disputes Act, 1948 (XIV of 1947),*
- (v) strike which is not illegal,*
- (vi) Lock-out,*
- (vii) cessation of work which is not due to any fault of the*

workman concerned,
(viii) involuntary unemployment."

23. Based on the above provision, Shri Shahane learned Advocate canvasses that even if Vilas had worked for 5 months in 1986 and then worked for 7 months, after 3 years and 2 months, in 1989, he should be deemed to be a permanent employee on account of involuntary employment. I find this submission to be fallacious for the reason that this would lead to disastrous consequences if accepted, because I would then have to presume that the 5 months of employment of Vilas in 1986 coupled with the 7 months of the employment in September 1989 to April 1994 should be clubbed together and it would then be deemed that Vilas has been working for five continuous years when he had actually worked for 5 months in 1986 and 7 months in 1989-90.

24. If permanency is to be granted in this fashion, employers/industries would be foisted with such employees, who could be in hundreds. Standing Order 2(g) therefore, has to be interpreted in the present age industrial scenario. This was precisely done by the Honourable Apex Court in the

matter of *Bajaj Auto Limited Vs. Gopinath Bhojane (supra)*. I am, therefore, of the view that Barku and Vilas could not have been termed as being in continuous and uninterrupted service of the employer so as to be granted regularization after Barku had put in 60 months over a period of 16 years and Vilas had put in about 39 months in a period of 10 years of service.

25. *Insofar* as Agarkar is concerned, he had approached the Labour Court against his discontinuation pursuant to the conclusion of his employment as per the appointment order. He was granted reinstatement in service by the Labour Court and which was confirmed by the Industrial Court. This Court admitted the petition filed against Agarkar. He was not reinstated in employment by the employer. The manufacturing activity of the petitioner company has been permanently stopped from 2006.

26. Issue, therefore, is as to whether the judgments of the courts below could be sustained in the above factual legal position. Even if the total months put in by each of these workers is taken together, Barku has worked the maximum for

60 months, which is about 5 years and Vilas and Agarkar had worked for about 40 to 48 months which is about 3½ years and 4 years respectively. All are out of employment for the last more than 24 years.

27. When it comes to payment of compensation, the status of the petitioner, which is a private industry, cannot be equated with a public sector undertaking or with state instrumentalities, who are always facing financial difficulties. No doubt, the petitioner has completely lost its manufacturing activity *insofar* as the scooterates and motor-cycles are concerned and now they do not produce a single unit of such automobiles. Nevertheless, the learned Advocate for the Management has fairly stated on instructions that the Management is presently doing job work in the engineering industry on a limited basis catering to the needs of some other factories. In this view of the matter, I find that it would be appropriate to grant lump-sum compensation of Rs. 3,50,000/- to Barku Zumbar Borude and Rs. 3,00,000/- each to Vilas Saja Shinde and Gangaram Pandurang Agarkar, @ Rs. 75,000/- for one year of service.

28. In view of the above, these petitions are partly allowed. The impugned judgments of the Industrial Court/Labour Court are quashed and set aside and the Management is directed to pay compensation of the amounts as mentioned in the foregoing paragraph to these 3 workers within a period of 12 weeks from today, failing which the said amounts shall carry interest at the rate of Rs. 6% per annum from the date of the impugned judgments. Rule is made partly absolute in the above terms.

29. The pending Civil Applications, if any, do not survive hence stand disposed off.

(RAVINDRA V. GHUGE, J.)

shp/-