

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

WRIT PETITION NO.789 OF 2019

THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
VISHNU GOPINATH SURYAWANSHI

**WITH
WRIT PETITION NO.993 OF 2019**

THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
SHIVAJI TUKARAM SUDRIK

...
Shri S.P.Tiwari, AGP for the petitioners/ state.
Shri P.V.Barde, Advocate for the respondents.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st June, 2019

Per Court:

1 In both these petitions, the petitioners/ State and Forest Department is aggrieved by the judgment and order delivered by the Industrial Court dated 31.03.2017 in Complaint (ULP) No.146/2013 and dated 01.08.2017 in Complaint (ULP) No.147/2013.

2 The Industrial Court has directed petitioner nos.2 and 3 to submit a proposal to petitioner no.1/ State within two months for granting permanency to the respondents/ original complainants and

refrain from terminating their services without following the due process of law.

3 I have considered the strenuous submissions of the learned AGP and the learned advocate on behalf of the respondents/ original complainants.

4 The learned Division Bench of this Court (Coram : A.S.Oka (as His Lordship then was) and M.S.Sonak, JJ), has held in *Chief Conservator of Forests, Pune (T) and another vs. Janabai Sonaba Sarpale, 2019 II CLR 28*, that the Forest Department in the State of Maharashtra is an industry.

5 In similar set of facts, I have delivered a judgment on 06.05.2019 in Writ Petition No.2021/2006 in the matter of the *State of Maharashtra and the Deputy Director, Social Forestry vs. Ahmednagar Zilla Van Kamgar Union*. I had observed in paragraph 3 of the said judgment as under :-

"3. In so far as the issue as to whether Social Forestry Department is an industry or not, for the present, is a settled position, in so far as this Court is concerned. There is no dispute that the matter is referred to a larger bench in the case of *State of U.P. Vs. Jai Bir Singh (2005) 5 SCC 1* for consideration as to whether Social Forestry Department could be termed as being an 'industry' under section 2(s) of the Industrial Disputes Act, 1947. As the legal position stands today, I am not required to consider the contention of the learned AGP that because the issue is pending before the Hon'ble Apex Court for the last 14 years and as a

larger bench is still not constituted, this petition, alongwith many similar petitions, which are pending for final hearing for 13 years and the litigation dates back to 1988, should be kept pending."

6 Now that the learned Division Bench has concluded that the Forest is an industry in the case of ***Chief Conservator of Forest (supra)***, there is no impediment for deciding these two petitions.

7 In similar set of facts, I have decided Writ Petition No.10719/2018 and connected petitions in the matter of the ***State of Maharashtra and others vs. Asarabai Dashrath Bhagat and others*** on 26.09.2018 and Writ Petition No.2182/1999 and 2183/1999 in the matter of ***The State of Maharashtra and others vs. Dhanu Rama Rathod and Sitaram Lakaji Kamble*** on 06.05.2019. It would be apposite to reproduce the conclusions set out in paragraphs 3 to 12 of the judgment in Writ Petition No.2182/1999 (supra) as under :-

"3. *In both these cases, the original complainants who were working on daily wages from 01/11/1985 and 01/07/1987, respectively, as watchman cum labourer. Both of them approached the Industrial Court by filing their ULP complaints invoking Items 5, 6, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971. They also invoked Standing Orders 4C and 4D of the Industrial Employment (Standing Orders) Act, 1946 seeking regularization on the principle of deemed permanency after completing 240 days in continuous employment. On the basis of the oral and documentary evidence and the pleadings of the parties, the Industrial Court concluded that these workers were entitled to be granted regularization as they had attained the*

deemed status of permanency on completing 240 days in continuous employment.

4. The learned Advocate for the respondent workers has strenuously supported the impugned judgments, notwithstanding the fact that this Court had stayed the impugned judgments by order dated 15/06/1999 and by a subsequent order dated 24/08/1999, the petitions were admitted. However, the services of the respondent workers were protected by the order of this Court.
5. The issue as to whether the deeming fiction of permanency under Standing Order 4C and 4D would be applicable to the state or the instrumentalities of the State, is no longer *Res-integra*. It has been held in the matter of *Municipal Council, Tuljapur Vs. Baban Hussain Dhale* in WP No. 1843/2015 and connected matters, decided on 26/02/2015, *Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others*, 2015 (5) Mh.L.J. 75, that the deeming fiction of permanency, on completion of 240 days in continuous employment, is not applicable to state instrumentalities. The power to create posts and grant financial sanctions is with the State. Merely because an employee completes 240 days in continuous employment, would not entitle him to regularization in the absence of permanent posts. This deeming fiction flowing from the Industrial Employment (Standing Orders) Act, 1946 is applicable only to private sector industries or even some of the public sector industries who have adopted these standing orders.
6. Considering the conflict of views amongst two learned Single Judges of this Court at the Nagpur Bench, the matter was referred to the learned Division Bench at Nagpur in the *Municipal Council Tirora and anr. Vs. Tulsidas Baliram Bindhade*, 2016 (6) Mh.L.J.867. The learned Division Bench concluded that in the case of state instrumentalities, when the role of the Government is decisive in creating posts and

adopting a procedure for regularization, Standing Orders 4C and 4D would not be applicable.

7. In so far as the issue as to whether Social Forestry Department is an industry or not, for the present, is a settled position, in so far as this Court is concerned. There is no dispute that the matter is referred to a larger bench in the case of State of U.P. Vs. Jai Bir Singh (2005) 5 SCC 1 for consideration as to whether Social Forestry Department could be termed as being an 'industry' under section 2(s) of the Industrial Disputes Act, 1947. As the legal position stands today, I am not required to consider the contention of the learned AGP that because the issue is pending before the Hon'ble Apex Court for the last 14 years and as a larger bench is still not constituted, this petition, alongwith many similar petitions, which are pending for final hearing for 13 years and the litigation dates back to 1988, should be kept pending. Nevertheless, the learned Division Bench of this Court (Coram : A. S. Oka and M.S. Sonak, JJ) have held that the Forest department is an industry, in Chief Conservator of Forests, Pune (T) and another Vs. Janabai Sonaba Sarpale, 2019 II CLR 28.
8. Notwithstanding the above, the State of Maharashtra has introduced two resolutions, dated 19.10.1996 and 16.8.2012. By the first G.R., all those daily wagers who have been working for 5 consecutive years with the Social Forestry Department, under any of its schemes, have been held eligible to be brought on regular establishment. Those workmen, in the instant case, who have succeeded before the Industrial Court vide the impugned judgment, are held to have worked for 240 days in continuous employment, are in service and would be eligible for the benefits of the first G.R. Similarly, the second G.R. indicates that those workers, who have been working on daily wages from 1.12.1994 and who have worked for five consecutive years and have completed 240 days in continuous employment in each year in between

1.11.1989 to 31.10.1994, have been held to be eligible for regularisation since the State has created 5089 posts for absorbing such daily wagers working in the Social Forestry Department.

- 9. In view of the above, these petitions are rendered of an academic interest. Nevertheless, since the issue of creation of posts was the core issue before the Industrial Court, these petitions will have to be partly allowed in so far as the declaration of unfair labour practices against the department is concerned. It is settled position that when the power to create posts vests with the State Government and until such posts are created, the Social Forestry Department cannot grant regularisation, there cannot be a declaration of ULP against the department, in the absence of posts.*
- 10. In view of the above, these petitions are partly allowed to the extent of quashing the declaration of ULP under items 6 and 9 of Schedule IV. So also, all those workman who have succeeded before the Industrial Court, vide the impugned judgment, shall be considered for service benefits, inclusive of monetary benefits and regularization, as per the G.Rs. dated 19.10.1996 and 16.10.2012. The petitioners shall consider their cases in the light of the said two Government Resolutions and shall take a decision with regard to grant of the benefits under the said two Government Resolutions, inclusive of monetary benefits and regularization.*
- 11. The proposals shall be prepared by the petitioners / competent authority and shall be submitted to the appropriate department of the State of Maharashtra on / or before 7.6.2019.+ Thereafter, the department would consider the cases of each of the daily wagers, who have succeeded before the Industrial Court, vide the impugned judgment and the decision shall be announced on / or before the 11 th day of September, 2019. Since there is a possibility that most of these successful workmen before the Industrial Court would have completed 58 years of age and may*

have crossed the age of superannuation, the petitioners shall not pray for extension of time and shall consider their cases in view of the order of this Court, expeditiously, with promptitude and by giving highest priority. Their age would not be an impediment.

12. *The impugned judgment of the Industrial Court, therefore, stands merged in the directions of this Court. Needless to state, all the successful daily wagers before the Industrial Court and under the two Government Resolutions, will be eligible for continuity of service, monetary benefits and all benefits incidental and consequential thereto."*

8 It is pointed out that the Government has introduced a Government Resolution dated 10.05.2018 for facilitating the regularization of similarly situated employees as like the respondents in this case. As such, both these petitions stand disposed off with the directions set out in the judgment dated 06.05.2019 in Writ Petition Nos.2182/1999 and 2183/2199 (supra) and dated 26.09.2018 delivered by this Court in identical set of facts in Writ Petition No.10719/2018 (supra). The petitioners shall consider the cases of these respondents as per the Government Resolutions dated 19.10.1996, 16.10.2012 and 10.05.2018. The observations in paragraphs 11 reproduced above from the judgment dated 06.05.2019 shall be applicable even to these two cases.

9 Since the petitioners are duty bound to forward the proposals of these two respondents with urgency, the learned counsel for the

respondents submits, on instructions, that the criminal ULP complaints before the Labour Court would be withdrawn after four weeks. On the condition that the petitioners would proposal their proposals within four weeks from today, the respondents would seek disposal of their criminal ULP complaints within the week from 22.07.2019 till 26.07.2019.

kps

(RAVINDRA V. GHUGE, J.)