

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10957 OF 2019

Maharashtra State Co-operative
Tribal Development Corporation Limited,
Nashik & Ors. Petitioners

Versus

Javed S/o. Bahiram Pinjari Respondent

AND

WRIT PETITION NO. 11425 OF 2019

Maharashtra State Co-operative
Tribal Development Corporation Limited,
Nashik & Ors. Petitioners

Versus

Ramesh S/o. Kashiram Saste Respondent

AND

WRIT PETITION NO. 11426 OF 2019

Maharashtra State Co-operative
Tribal Development Corporation Limited,
Nashik & Ors. Petitioners

Versus

Mahadu S/o. Dundya Chaure Respondent

AND

WRIT PETITION NO. 11427 OF 2019

Maharashtra State Co-operative
Tribal Development Corporation Limited,
Nashik & Ors. Petitioners

Versus

Jagan S/o. Deoba Ahire

..... Respondent

AND

WRIT PETITION NO. 11428 OF 2019

Maharashtra State Co-operative
Tribal Development Corporation Limited,
Nashik & Ors.

..... Petitioners

Versus

Dhudku S/o. Nago Mahajan

..... Respondent

AND

WRIT PETITION NO. 11429 OF 2019

Maharashtra State Co-operative
Tribal Development Corporation Limited,
Nashik & Ors.

..... Petitioners

Versus

Ramsingh S/o. Pratapsingh Girase

..... Respondent

.....

In all petitions:-

Mr. Shailendra S. Kulkarni, Advocate for the petitioner
Mr. Prakashsing B. Patil, Advocate for respondent No. 1
Mr. N. T. Bhagat, AGP for respondent No. 2

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 19TH SEPTEMBER, 2019

PER COURT:-

1. In all these petitions, the identical petitioners i.e. the Maharashtra State Cooperative Tribal Development Corporation Ltd., Nashik, the Regional Manager at Nandurbar and the Sub-Divisional

Manager at Nandurbar, who were the original respondents in the Complaint (ULP) filed by the original complainants Workmen, are aggrieved by the judgment and order dt. 23.04.2019 passed by the Industrial Court, Dhule, by which all the Complaints (ULP) are allowed.

2. I have considered the submissions of the learned advocates for the respective sides. I deem it necessary to direct the petitioners to add the Department of Tribal Development, State of Maharashtra, through its Secretary, Mumbai, as respondent No. 2. Addition be carried out forthwith. The learned AGP has caused appearance on behalf of the added respondent.

3. Considering the crystallized position of law in the matters of regularization in State instrumentalities or the limbs of the State, I am not required to advert to the entire contentions of the litigating sides and their pleadings set out before the Industrial Court. Suffice it to say that, the Industrial Court has concluded in the impugned judgments which are identical, that posts of Watchmen/Choukidars appear to be available and vacant with the the petitioners, based on the documents at list Exh. C-13, 24 and 25 filed in Complaint (ULP) No. 32/2015.

4. This Court, in the matters of **Municipal Council Tuljapur vs. Baban Hussain Dhale and others** in Writ Petition No. 1843 of 2015 and connected matters, in the matter of **Mukhyadhikari, Nagar Parishad, Tuljapur vs. Vishal Vijay Amrutwar and others**, 2015 (5) Mh.L.J. 75 and in the matter of **The State of Maharashtra and others vs. Hanmant Dagdu Satpute** in Writ Petition No. 4375 of 1999 decided on 20.06.2019, crystallized that, when it comes to claims for regularization in the State instrumentalities, the deeming fiction of permanency flowing under Standing Order 4-C of the Model Standing Order framed under the Industrial Employment (Standing Orders) Act, 1946, would not be applicable. Merely because an employee has completed 240 days in continuous employment, cannot be a ground for granting permanency on the basis of the deeming fiction, in State instrumentalities. Similar issue was referred to the learned Division Bench of this Court at Nagpur in the matter of **Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade** [2016(6) Mh.L.J.867], wherein the learned Division Bench has concluded that, the provisions of the Model Standing Orders would not be applicable to State instrumentalities.

5. The learned advocate for the petitioners point out that,

the above judgments were cited before the learned Industrial Court and yet, the Industrial Court has declared unfair labour practice and has granted regularization from the date of the completion of 240 days in continuous employment.

6. The learned advocate for the original complainant-employees submits that, these workers are interested in their continued employment. They do not intend to deprive any other similarly situated employee of similar rights. They are aware that, permanency can be granted by the Department after considering their length of service and their seniority.

7. I find that, since the petitioners did not have the powers to create posts, much less grant regularization on available vacant posts, the Industrial Court could not have declared that the petitioners are guilty of unfair labour practice under Items 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. So also, it cannot be ignored that there can be many such Watchmen/Choukidars working with the petitioner-establishment, who may have not approached the Industrial Court. Merely because they have not approached the court would not mean that the complainants, who are before the court,

should be granted benefits by depriving the other similarly situated employees of their rights. This view has been taken in the matter of Tuljapur Municipal Council as well as in the case of Hanmant Satpute (supra).

8. Considering the law and the facts & circumstances recorded as above, these petitions are partly allowed. The declaration of ULP made by the Industrial Court in Clause 2 and 3 of the operative part of the order impugned, stand set aside. The directions set out in clauses 4, 5 and 6 of the operative part, stand modified with the following directions : -

[a] The petitioners shall prepare detailed proposals of all Watchmen/Choukidars similar to the respondent / original complainants in these proceedings, inclusive of these respondents, indicating their actual dates of joining, their length of service and their nature of duties.

[b] These proposals shall be forwarded to the respondent No. 2, Department of Tribal Development through its Secretary, on or before 31.12.2019.

[c] Respondent No. 2 – Tribal Welfare Department shall consider the said proposals as against the available vacant posts and by considering the seniority / length of service of such daily wagers, it shall grant regularization to such daily wagers from the date the permanent post has fallen vacant. All monetary benefits incidental and consequential thereto will also be calculated and paid. This exercise shall be completed upto 31.05.2020.

[d] Depending upon the availability of vacant posts, such regularization shall be ordered. If there is a shortfall of permanent vacant posts, the Tribal Development Department shall not reject the proposals of such daily wagers and shall keep them pending for consideration as per their seniority in a staggered manner as and when the permanent posts become available so as to accommodate them.

[e] Those daily-wager employees, who have attained the age of superannuation, during the pendency of the litigation, but are eligible, shall also be considered from the deeming date on which they would have been entitled to the promotion and all the monetary consequential benefits shall be calculated so as to be paid to them.

(f) The above direction shall also apply to such daily-wagers, who have passed away prior to attaining the age of superannuation and such benefits shall then be extended to their widow or the legal heir.

[g] The daily-wagers, who are in employment, including the respondents herein, shall not be terminated merely on the ground of they being daily wagers. Such protection shall not apply to the cases of disciplinary action.

[RAVINDRA V. GHUGE]
JUDGE

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