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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION(ST)NO.31530 OF 2017

Dy. Conservator of Forest

.. Petitioner

Vs.

Prakash S. Chikhalkar & anr.

.. Respondents

WITH

WRIT PETITION NO.13180 OF 2017

Dy. Conservator of Forest

.. Petitioner

Vs.

Ashok S. Chikhalkar & anr.

.. Respondents

Mrs. M. S. Bane, AGP, for the petitioner.

Mr. K.P. Lad for the respondent no.1 in both petitions.

CORAM : A.K. MENON, J.

DATED : 23RD JANUARY, 2019.

P.C. :

1. The challenge in these two petitions are directed against the impugned orders dated 23rd February, 2016 passed by the Industrial Court, Kolhapur in Revision Applications no.68 of 2011 and 69 of 2011 and to an order dated 18th March, 2017, Criminal Complaint (ULP)no.11 of 2016 and Revision Application no.83 of 2017 and the order dated 18th September, 2017 passed thereon.
2. The facts in both these petitions are similar. There is no dispute before me today as to the fact that both the 1st respondents were identically

placed and were employed at the material time with the 2nd respondent. The 2nd respondent is stated to be a temporary project oriented committee which was set up by the petitioner for a specific purpose.

3. The case of the petitioners is that the services of the 1st respondents were no longer required upon completion of the project in the year 2002 and therefore they could not be absorbed by the petitioner. The learned AGP has submitted that the 1st respondents had not completed 240 days in continuous service, moreover, even assuming that they have completed 240 days she submits that by virtue of the judgment relied upon in Executive Engineer, ZP Engg. Divn. v/s. Digambara Rao (2004 AIR (SC) 4839) for daily wagers under a specific scheme, even completion of 240 days of continuous service will not entail their being appointed or their service being regularized. The learned AGP submits that the 1st respondents cannot be said to be employees of the petitioner especially since the 2nd respondent is now closed.

4. I may mention that notices were issued to the respondents and affidavits of service filed by the State is to the effect that the 2nd respondent is now closed. Although the office notings show that the 2nd respondent was served, it appears from the record that the closure

of the 2nd respondent Samitee is not in dispute since even earlier, the 2nd respondent has upon completion of the project written to the petitioner that the employees may be taken back by the petitioner in view of the completion of the project and since their services were terminated with effect from 1st March, 2002.

5. Ms. Bane therefore submits that the impugned orders allowing the revision applications in part declaring that the petitioner had engaged in unfair labour practice under item 1(a), (b) of the Act and modifying the award by directing reinstatement with continuity of service but with 50% back wages cannot be sustained.
6. It is further submitted by the learned AGP that after passing of this impugned order on 23rd February, 2016 the 1st respondents had filed Criminal Complaint (ULP)no.11 of 2016 in which process came to be issued. As a result of which the revision application came to be dismissed with a reasoned order on 18th September, 2017 finding that there was no error apparent on the face of the record. Moreover, there is a finding recorded that the order passed by the Industrial Court on 23rd February, 2016 had not been challenged in writ petition although such a submission appears to have been made at that time.

7. The submission made on behalf of the petitioner in the Revisions Application no.83 of 2017 may not have been incorrect since as on date of the order in that revision application, this writ petition seems to have been filed since it was filed in or around July. There is an order in revision application no.83 of 2017 passed on 18th September, 2017. Be that as it may, what is to be noted is that the order passed by the First Labour Court, Kolhapur, on 29th April, 2011 in the complaint filed by the respondents herein was subjected to revision applications no.68 and 69 of 2011 which came to be disposed vide common judgment dated 23rd February, 2016 and perusal of the said order reveals that both the original complainants i.e. 1st respondents herein had completed 240 days of service between 1991-92 to 1994-95 and the Labour Court had considered all the facts and had concluded that the 1st respondents have completed 240 days of service in a calendar year and that their termination was without notice, notice pay or retrenchment compensation under the Industrial Disputes Act, therefore illegal and also amounted to unfair labour practice under item 1(a) and (b) of Schedule IV of the Act.
8. The contention of the petitioners that the appointment of the 1st respondents with respondent no.2 ceased upon completion of the project and there being no work and that their services had to be

terminated is not correct in view of the fact that the Labour Court had found that in 1997 itself the 2nd respondent Samitee had called upon the petitioner to take back the 1st respondents on the petitioner establishment but the petitioner had not responded to this request and on completion of the project work, respondent no.2 terminated their services. Furthermore and as rightly canvassed by the learned counsel for the 1st respondents, the findings of the Labour Court are seen to have been accepted by the petitioners. This is evident from paragraph 7 of the impugned judgment in the revision application. That apart the respondent did not challenge the said order at the material time and the contention that the 1st respondents were daily wagers and had completed 240 days of continuous service was not supported by any kind of documentation, therefore the Revisional Court came to the conclusion that the contention that the appointment of the 1st respondents were illegal could not be considered.

9. Although in that case reliance was placed on the judgment of *Secretary, State of Karnataka and Ors. v/s. Umadevi & Ors. (2006 II CLR 261)*, the Court also considered the fact that the law laid down by the Supreme Court in *Umadevi (supra)* does not necessarily mean that services of the respondent could never be regularized since the Courts were not denuded of power in those specified cases. In the case at hand

there is no dispute as to the appointment of the 1st respondents by the petitioner since in the written statement filed by the petitioner and respondent no.2 before the Labour Court, the petitioner states as follows:-

“Actually the complainant was not in the employment of the respondent nos.1 and 2. The complainant was working with the respondent no.1 on lump sum amount of Rs.600/- p.m. on contract basis and not as a daily wages labour. The complainant had worked since 1991 to 1996 and thereafter he was working with the respondent no.2 till February 2002 on contract basis an on lump sum amount of Rs.600/- p.m.”

10. Thus, it is seen that there is an admission on behalf of the petitioner itself that the 1st respondents were engaged by the petitioner on lump sum basis and not as daily wager and that the 1st respondents had worked from 1991-1996 and thereafter was working with respondent no.2 till February 2002, thus coming the conclusion that 240 days continuous service cannot now be the question. Based on these admissions, there is nothing in the impugned judgment that can be faulted. There is no perversity or illegality that has been demonstrated. The order has been passed on the basis of a clear admissions. In that view of the matter, there is no reason to call for interference. Hence, the challenge fails and I pass the following order.

- (i) Writ petitions are dismissed.
- (ii) No costs.
- (iii) Statement made on behalf of the respondents on 22nd January, 2018 that the respondents will not take further steps pursuant to the impugned order, shall continue for a period of four weeks.

(A.K.MENON,J.)

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