

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11481 OF 2016

VITTHAL TUKARAM LONDHE
VERSUS
THE VICE CHANCELLOR VASANTRAO NAIK MARATHWADA AGRICULTURE
UNIVERSITY PARBHANI AND OTHERS

Mr.K.M.Nagarkar, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : FEBRUARY 23, 2021

PER COURT :

1. This petition has been filed on 06/02/2016 for challenging the judgment of the Industrial Court dated 17/03/2015 delivered in Complaint (ULP) No.34/2012. This petition was registered after removal of office objections on 14/09/2016. It was not circulated and the matter is on board since the Registry has listed these matters after 5 years of pendency in the Registry.

2. The learned Advocate for the petitioner submits that the petitioner workman seeks to challenge clause 'C' of the operative part of the impugned judgment which reads as under :-

"C. The respondents are further directed to make the complainant permanent with continuity in service without back wages from the date of his re-employment after retrenchment, on the post of Labour or Watchman

from the date of order within one month.”

3. He strenuously canvasses that he had joined the Agriculture University in 1979 on daily wages as a “Labourer”. Subsequently, from 16/05/1986, he was allotted a duty of a “Security Guard”. It is not in dispute that in 2001, the State of Maharashtra granted permission to several Agricultural Universities to retrench daily wagers who were recruited in huge numbers without following the due process of selection and the procedure for recruitment in public employment. Thereafter, the petitioner was re-employed by the Agricultural University on daily wages.

4. The contention of the petitioner is that his entire service from 1979 should be reckoned with keeping in view his retirement in 2015 and he should be granted all benefits incidental and consequential to permanency.

5. Considering the Law laid down by the learned Division Bench of this Court in Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade [2016(6) Mh.L.J.867], Standing Order 4(C) and 4(D) would not apply to State Instrumentalities and Universities. Mere completion of 240 days in continuous employment cannot be a ground for granting regularization. A daily wager can be granted regularization only if a substantive post is created and such post is vacant. Though this Law has not been looked into by the Industrial Court while directing the

regularization of the petitioner, the University has not challenged the impugned judgment in this Court, as per the knowledge of the petitioner. As such, the legality and validity of the direction of the Industrial Court to grant permanency with continuity to the petitioner from the date of his re-employment as a daily wager, cannot be tested in the absence of a challenge by the University.

6. By this petition, the petitioner, who is about 65 years of age today, prays for back wages for the period of his unemployment. It needs no debate that the back wages for the period in which an employee was terminated from service and was un-employed, cannot be granted until the termination/retrenchment is set aside. It is only the Labour Court, which has the jurisdiction to test the legality and validity of termination/retrenchment under Item 1 of Schedule IV, in view of Section 7 of the MRTU and PULP Act, 1979.

7. Considering the above, this petition is dismissed.

(RAVINDRA V. GHUGE, J.)