

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

LETTERS PATENT APPEAL NO.433/2012 IN WRIT PETITION NO.1111/2007 (D)

Shalikram s/o Domaji Sontakke,
aged about 55 years, Occu. Service,
R/o Wakdi, Post Yewali, District Gadchiroli.

APPELLANT

-VERSUS-

1. The Director of Sericulture,
Directorate of Sericulture,
Government of Maharashtra,
Maharashtra Handloom Corporation Premises,
Umrer Road, Nagpur – 9.
2. The Deputy Director,
Tusser Kosa Reshim Kendra,
Wadsa Road, Armori, District Gadchiroli.

RESPONDENTS

Shri Ujwal R. Phasate, counsel for the appellant.
Shri A.M. Kadukar, Assistant Government Pleader for respondents.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : 29TH NOVEMBER, 2021.

DATE ON WHICH JUDGMENT IS PRONOUNCED : 23RD DECEMBER, 2021.

JUDGMENT (PER : A.S. CHANDURKAR, J.)

This appeal under Clause 15 of the Letters Patent takes exception to the judgment of the learned Single Judge dated 18.07.2012 in Writ Petition No.1111 of 2007. By the said judgment, the learned Single Judge allowed the writ petition thereby setting aside the judgment passed by the Industrial Court on 29.07.2005 by which the complaint filed by the appellant seeking regularization of services had been allowed. As a result, the said complaint was dismissed.

2. The facts relevant for adjudication of the present appeal are that it is the case of the appellant that he was appointed as a Helper on daily wages with Khadi and Village Industries Board from 01.08.1984. He was initially being paid Rs.10/- per day which was subsequently increased to Rs.28/- per day. He had completed more than 240 days of continuous service. But his services came to be terminated on 01.07.1990. The appellant therefore had filed Complaint U.L.P. No.184 of 1990 which was allowed by the Labour Court on 23.03.1994 by setting aside the order of termination and directing his reinstatement with continuity in service. He was also directed to be paid full back wages. Consequent thereto the appellant continued in service and it is his case that similarly situated employees were regularized in service but he was denied that benefit. Some of the similarly situated employees were also junior to him and as the denial of benefit of regularization amounted to an unfair labour practice he approached the Industrial Court by filing a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, 'the Act of 1971) invoking Items 5, 6 and 9 of Schedule IV to the said Act.

3. In the written statement filed by the respondents it was admitted that the appellant was working on daily wages but as he failed to fulfill necessary requirements he was not considered for regularization. His continuation was on account of the orders passed by the Labour Court but he was not entitled for the reliefs prayed for in the complaint.

4. Before the Industrial Court the appellant examined himself at Exhibit 25 and deposed about the manner in which he had been discharging duties from 1984 onwards. He had failed to pass in the S.S.C. examination but was fit to be appointed as a Peon. In his cross-examination he admitted that he was not issued any order of appointment but he was working on daily wages.

The respondents examined an Officer from the Department who stated that he was aware that the appellant was working on daily wages. He however had no knowledge as to why the services of the appellant were not regularized.

5. The learned Judge of the Industrial Court after considering the evidence on record found that though the appellant had failed in the S.S.C. examination he was qualified to be selected as Peon/Helper. A finding was recorded that there was no material on record to hold that other employees junior to him had been regularized and hence the ground of unfair labour practice under Item 5 of Schedule IV of the Act of 1971 was not proved. The Industrial Court however granted the relief of regularization on the establishment from 01.01.2000 as Peon/Helper/Technical Assistant. He was also granted monetary benefits from that date.

6. The respondents challenged the aforesaid judgment of the Industrial Court in Writ Petition No.1111 of 2007. The learned Single

Judge held that mere completion of 240 days of continuous service would not entitle the appellant to claim the status and privileges of a permanent employee. In absence of any evidence to indicate that the post in question was either sanctioned or in existence the relief of regularization could not be granted. The continuation as daily wager was only on account of breach of the provisions of Section 25F of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947') but the same would not be a basis for granting the relief of regularization. The writ petition was therefore allowed by setting aside the judgment of the Industrial Court. Being aggrieved, the present appeal has been filed.

7. Shri Ujwal Phasate, learned counsel for the appellant referred to the material on record as well as the evidence of the parties. He submitted that the Industrial Court after considering all relevant aspects as well as the material fact that the earlier complaint filed by the appellant had been allowed by the Labour Court on 23.03.1994 by granting him the relief of reinstatement and continuity in service. It was thus clear that on the basis of this adjudication which was accepted by the respondents, the appellant was entitled to the relief of regularization. He was continuously in service initially from 01.08.1984 and thereafter since the date of judgment of the Labour Court. It was submitted that the appellant had specifically based his claim on the aspect of regularization of the services of his juniors. The claim of the appellant was not based simplicitor on completion of service of 240 days. Since the appellant was

duly qualified to hold the post of Peon/Helper, he could not have been retained on daily wages when the work was always available. The services of the appellant had been transferred on various occasions which indicated availability of such work. The appellant was infact doing skilled work. It was thus submitted that since the services of other junior employees had been regularized the appellant was entitled to similar relief. The learned Single Judge was not justified in setting aside the order passed by the Industrial Court.

8. Shri Ashish Kadukar, learned Assistant Government Pleader for the respondents supported the order passed by the learned Single Judge. According to him, it was rightly found that completion of service of 240 days would not automatically result in granting the relief of regularization. In absence of any evidence to show that the post in question was a sanctioned post there would be no reason to consider grant of relief of regularization. The learned Single Judge was justified in coming to the conclusion that in absence of availability of a sanctioned post no relief could be granted to the appellant. To substantiate his contentions, the learned Assistant Government Pleader relied upon the decisions in *Gangadhar Pillai Versus Siemens Ltd.* [(2007) 1 SCC 533], *Chief Conservator of Forests (Territorial), Nagpur & Others Versus Ashikque Jabbar Sheikh & Others* [2012 (3) Mh.L.J. 478] and the judgment dated 30.09.2021 in **Letters Patent Appeal No.459 of 2011** [*Bal Mandir Sanstha (Paranjape School) Versus Devidas Kawaduji Raghute*].

He therefore submitted that no case was made out to interfere in the letters patent appeal.

9. We have heard the learned counsel for the parties at length and perused the material on record. It is an admitted position that the entry of the appellant in service was as a daily wager in the year 1984. On his services being discontinued he had filed a complaint before the Labour Court and his services were directed to be reinstated with continuity. Perusal of the judgment of the Labour Court dated 23.03.1994 (Exhibit 32) indicates that the relief of reinstatement had been granted for failure to comply with the provisions of Section 25F of the Act of 1947. Thereafter the appellant has continued in service as a daily wager. The Industrial Court while partly allowing the complaint has held in paragraph 15 that from the evidence on record it could not be said that the employees made permanent in service were junior to him. The only basis for granting such relief by the Industrial Court is that the appellant was found to be qualified to hold the post of Peon/Helper.

10. Perusal of the judgment of the Hon'ble Supreme Court in *Gangadhar Pillai* (supra) and especially paragraph 28 thereof indicates that mere completion of 240 days of continuous service in a year cannot be the basis for seeking regularization of service or the status of permanency. The concept of completion of 240 days was with an intention to fasten statutory liability on the employer to pay

compensation as per Section 25F of the Act of 1947. The availability of a sanctioned post is a material factor while considering the grant of relief of regularization. This aspect has been considered by the Division Bench in *Bal Mandir Sanstha* (supra) to which one of us (A.S. Chandurkar, J) was a party. Reference therein was made to the decision of the Hon'ble Supreme Court in the case of *State of Maharashtra & Another Versus R.S. Bhonde & Others* [(2005) 6 SCC 751]. The learned Single Judge while allowing the writ petition preferred by the respondents has also referred to this aspect and has thereafter referred to the decision in *Ashikque Jabbar Sheikh* (supra). It may be mentioned that Letters Patent Appeal No.151 of 2012 challenging the aforesaid judgment was dismissed on 10.09.2012.

11. From the aforesaid, it is clear that in absence of any material on record to indicate availability of a sanctioned post, the mere fact that the appellant had completed continuous service of 240 days and was in service for a long period by itself would not be a valid reason to grant the relief of regularization. As noted above, the earlier order of reinstatement was also as a daily wager and such relief was granted on account of violation of provisions of Section 25F of the Act of 1947. We therefore do not find any reason to take a different view of the matter from the one taken by the learned Single Judge.

12. Consequently, the letters patent appeal stands dismissed leaving the parties to bear their own costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)

APTE