

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

905 WRIT PETITION NO.1951 OF 2003
WITH
CIVIL APPLICATION NO. 13614/2019 IN WP/1951/2003

DIVISIONAL MANAGER FOREST DEVELOPMENT CORPORATION
NASHIK
VERSUS
MAHADU TULA ANDHALE AND ORS

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Advocates for Petitioner : Mr. P. P. Shahane and Mr. P. L. Shahane
Advocate for Respondents 1 to 9 & 11 to 14 : Mr. V. N. Upadhye

CORAM : RAVINDRA V. GHUGE, J.
DATE : 25th March, 2022

ORDER:

1. The civil application, by which, the petitioner Corporation prays for condonation of delay of 2 years and 2 months in bringing the Legal heirs of deceased respondent No.12 Bapu Balkrishna Rokade, is allowed for the reasons set out in the application and since this petition is pending for final hearing. The said legal heirs be brought on record forthwith.

2. By this petition, the petitioner Forest Development Corporation is aggrieved by the common judgment and order dated 24.03.2003 delivered by the Industrial Court, Ahmednagar in bunch of ULP complaints, by which, the said complaints were allowed and the following directions were issued:

- “1) The Complaint (ULP) Nos.120/1996, 134/1996, 145/1996, 154/1996, 155/1996 and 365/1997 are partly allowed.
 - 2) It is hereby declared that the respondents have committed unfair labour practices under Item-6 of Sch-IV of the Act.
 - 3) The Respondents are further directed to stop and desist from engaging such unfair labour practices.
 - 4) The Respondents are directed to absorb and regularise services of the complainants Mahadu Tula Andhale, Narayan Bhiva Shirke, Nagesh Tulshiram Bhaik, Babaji Dhondiba Niwdunge in Complaint (ULP) No.120/1996, Narayan Raghunath Gadekar, Shivram Mahdu Wagh and Balu Kisan Choure in Comp.(ULP) No.134/1996, Sadashiv Thakaram Kaware in Comp. (ULP)No.145/1996, Sarjerao Jayram Gagare in Comp.(ULP) No.145/1996, Bansi Shankar Pawar in Comp.(ULP) No.155/1996, Dashrath Raghunath Rokade, Bapur Balkrishna Rokade, Balu Rangnath Pawar and Khandu Dashrath Pawar in Comp. (ULP) No. 365/1997, in regular employment in Class-IV category where the work is available and given them benefits of permanency from the date of filing of the complaints.
 - 5) The order should be complied within two months from the date of the order.
 - 6) No order as to costs.”
3. By an order dated 12.01.2004, after this Court had heard the learned Advocate for the respective sides and while admitting the petition, interim relief was granted by directing that if the workers are in services of the petitioner, they shall not be terminated. The directions

as regards absorption and regularization of service of the respondents was kept in abeyance till disposal of the petition. In case any contingency arose and in case the petitioner took adverse action against the respondents, the respondents were at liberty to approach this Court for modification of the order.

4. Having considered the extensive submissions of the learned Advocates for the respective sides, I have perused the impugned judgment and the record available with their assistance.

5. In the entire judgment, the Industrial Court has discussed several reported judgments and concluded in paragraph No. 16 as under:-

“Therefore, even perusing that they have completed 240 days, therefore merely completion of 240 days in any year and completion five years continuous service do not give any locus standi to the complainants to claim absorption in the regular employment unless and until there are sanctioned posts. It is a well settled position of law that when the standing orders provides for grant of benefits of permanency and the respondent is under obligation to grant all benefits of permanency to the employee after completion of 240 days, then there is no need of sanctioned posts. Even the court could give directions to the employer to create posts and given permanent employment to the employees. In addition to these facts the respondent Department has examined its witness by name one Mr. Prafulla Salunke,

Assistant Manager who has stepped into witness box and placed all the facts on record. After going through the evidence of Mr. Salunke it becomes very much clear that the respondent was implementing various schemes from the funds made available by the Government of Maharashtra, but he did not prove that the complainants were engaged in a particular scheme. On the contrary, it has come on record that the complainants were engaged and transferred from one scheme to another after completion of the said scheme and thus the complainants are in the continuous employment of the respondent. He has referred to the various documents filed on record. He has further referred to the seniority list of the employees. Though it is stated by him that the respondent Corporation has handed over the schemes to the Government to the Forest Department as per the order of the District Collector, Ahmednagar, but he could not place on record that there is no work available for the complainant in other Districts under the respondent. On the contrary, it has come on record that various schemes are still going under the respondent corporation at various places. Thus after going through the evidence of the respondent as well as complainants it becomes very much clear that though the respondent has closed Sangamner Divn. permanently then also work is available with the respondent at other places. Therefore, the complainants were directed to report at those places. If it is presumed that the order passed by the respondent dated 31-1-96 is not a transfer then it should be order of allocation of work and under such circumstances the respondent should provide

work to the complainants and given them benefits of permanency, whenever the work is available. It is clear from the record that the respondents have not forwarded proposal of the complainants for grant of benefits of permanency and no obtained the sanction from the Government. Under such circumstances the relief benefits of permanency could not be refused to the complainants. Therefore, though the complainants have failed to prove unfair labour practices under items- 3, 9 and 10 of Sch-IV of the Act, they have succeeded in proving the unfair labour practices on the part of the respondent under item-6 of Schedule IV of the Act. So, I answer the points accordingly.”

6. It is thus obvious from the reproduced portion above, that the Industrial Court carries the misconception that even the Industrial Court can give directions to the employer to create posts and grant permanency. In such identical set of facts in Writ Petition No. 1391 of 2004 preferred by the same petitioner herein (Forest Development Corporation of Maharashtra, Nashik Region Nashik Vs. Ahmednagar Van Kamgar Union), this Court has recorded in paragraph Nos. 4 to 7 of it's order dated 7th May, 2018, as under:-

“4. It is pointed out by the learned Advocate for the Petitioner that the Honourable Supreme Court in the matter of Uttaranchal Forest Development Corporation and another vs. Jabar Singh and others, 2007 (3) Mh.L.J. 354, has settled the issue that the Forest Development Corporation is an industry.

5. Keeping in view the law laid down in the matters of *Mukhyadhikari, Nagar Parishad, Tuljapur vs. Vishal Vijay Amrutrao*, 2015(5) *Mh.L.J.* 75. (S.J.), *Municipal Council, Tuljapur v/s Baban Hussain Dhule*, judgment 26.02.2015 in *Writ Petition No.1843/2015*. (S.J.) and *Municipal Council, Tirora and another vs. Tulsidas Baliram Bindhade*, 2016 (6) *Mh.L.J.* 867. (D.B.), the State Instrumentality cannot create posts. The deeming provisions with regard to permanency under Standing Orders 4C and 4D of the Industrial Employment (Standing Orders) Act, 1946, are not applicable to such State Instrumentalities. Even if daily wagers are working over a period of time, they cannot be granted permanency on the basis of the deeming provision. As such, the directions of the Industrial Court granting permanency to six employees from the date of the impugned judgment, cannot be sustained.

6. Even otherwise, without considering the availability of permanent sanctioned posts, the Industrial Court could not have granted permanency from the date of the impugned judgment only on the ground that they have worked continuously for a period of 240 days in each calendar year.

7. The learned Advocate for the Petitioner submits that these six employees have not been in employment from 01.04.1995 i.e. for the past 23 years. So also, the Petitioner Division has been closed down on 30.04.1998. These workers were given an option to be accommodated in the Nashik Region, which they have not accepted and are out of employment ever since.”

7. The view taken by this Court in the matters of *Mukhyadhipari, Nagar Parishad* (supra) and *Baban Hussain Dhale* (Supra) has been reiterated by the Reference Court Court (Division Bench at Nagapur in the matter of *The Municipal Council & Another vs Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J.867* concluding that in State entities or the State instrumentalities, mere completion of 240 days would not mandate regularization of the employees. Standing Order 4-C and Standing Order 4D of the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946, would not be applicable in such cases, wherein the State or the State instrumentalities are involved. It is equally settled that in State instrumentalities, the State Government has to create post provided the sanction of various department are obtained.

8. The Industrial Court carrying a misconception that it can create posts, therefore, led the Court to issue a direction that the workers should be allotted work in Class IV category wherever work is available and on regular basis and give them benefits of permanency from the date of filing of the complaint. It is a wholly unsustainable direction. None of these workers (14) namely Mahadu Tula Andhale, Narayan Bhiva Shirke, Nagesh Tulshiram Bhaik, Babaji Dhondiba Niwdunge in Complaint (ULP) No.120/1996, Narayan Raghunath Gadekar, Shivram Mahdu Wagh and Balu Kisan Choure in Comp.(ULP)

No.134/1996, Sadashiv Thakaram Kaware in Comp.(ULP)No.145/1996, Sarjerao Jayram Gagare in Comp.(ULP) No.145/1996, Bansi Shankar Pawar in Comp.(ULP) No.155/1996, Dashrath Raghunath Rokade, Bapur Balkrishna Rokade, Balu Rangnath Pawar and Khandu Dashrath Pawar in Comp. (ULP) No. 365/1997, have completed 240 days in a given calendar year.

9. In view of the above and considering the conclusion drawn in identical set of facts vide judgment dated 07.05.2018 in Writ petition No. 1391/2004, this petition is allowed.

The impugned judgment and order of the Industrial Court dated 24.03.2003 is quashed and set aside and Complaint (ULP) Nos. 120/1996, 134/1996, 145/1996, 154/1996, 155/1996, 365/1997 stand dismissed.

10. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

JPC