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

902 WRIT PETITION NO.10406 OF 2019

THE SUB DIVISIONAL OFFICER, MINOR IRRIGATION,
ZILLA PARISHAD SUB-DIVISION, PARTUR AND OTHERS
VERSUS
PRATAP SURYAKANTRAO SRIMANGLE AND ANOTHER

...

Mr U. B. Bondar, Advocate for petitioners;
Mr R. K. Ingole, Advocate for respondents

CORAM : RAVINDRA V. GHUGE, J

DATE : 16th March, 2022

PER COURT:

1. On 22/08/2019, after briefly hearing the learned Advocates for the respective sides, I had passed the following order :

“2. The Industrial Court has delivered the impugned judgment dated 03/01/2019, by which the petitioners are directed to place the original complainants on Converted Regular Temporary Establishment (CRTE) from the date they have completed 5 years in employment with the petitioners, in view of the Kalelkar Award.

3. The terms and conditions of the Kalelkar Award are crystallized. A candidate has to work in each year, irrespective of the number of days that he works. The mandate of completing 240 days in one calendar year is not applicable. The requirement is that a daily wager must work for a total period of 5 consecutive years irrespective of the number of days that he works in each year. After completing such employment over 5

(2)

consecutive years, these daily wagers are automatically absorbed on CRTE and 5 years thereafter, they would be taken on the regular establishment of the employer.

4. The learned Advocate for the petitioners submits that he desires to take instructions whether the Kalelkar award has been continued after 1998. The learned Advocate for the respondents submits that the State Government has recently given a further extension to the Kalelkar Award and the said award is still applicable.

5. The learned Advocate for the respondents makes a grievance that they are not being paid their wages for the last 25 months even though they are discharging their duties.

6. Stand over to 06/09/2019 in the "Urgent Admissions Category". The petitioners shall make a statement on the next date as regards the payment of the arrears of 25 months salary and such payment will have to be made within 2 weeks from the said date.

7. In so far as the Criminal ULP No.1/2019 filed by the respondents against the petitioners before the Labour Court is concerned, it is informed that the Labour Court has issued summons to the petitioners to appear in person.

8. Considering the above, except petitioner Nos. 3 and 4, petitioner Nos.1 and 2 shall appear before the Labour Court on the next date and shall apply for exemption. Only after they appear in the said proceedings, the Labour Court would then adjourn the same until further orders in this petition."

(3)

2. On 17/10/2019, the learned Advocate for the petitioners had taken instructions and on instructions, it was submitted that the arrears would be paid to the respondents. The learned Advocate appearing on behalf of the original complainants, submits on instructions that, pursuant to the above directions, these workers were paid the arrears of 25 months salary. However, thereafter, a period of 32 months have lapsed and wages have not been paid.

3. The learned Advocate for the petitioners has placed a heavy reliance upon the Government Resolution dated 24/04/2001 and has vehemently submitted on instructions that, as these complainants have joined as daily wagers in 2004 and in 2007, they are not covered by the said Government Resolution and as such, they would not be eligible to the benefits under the 'Kalelkar Settlement'.

4. The learned Advocate appearing on behalf of the original complainants submits that the State of Maharashtra has taken a conscious decision of continuing the applicability of the 'Kalelkar Settlement', the 'Lad and Page' Committee's recommendations and the 'Shastri Award'. He then places reliance upon a view taken by this Court in the following matters :-

(4)

(I) Zilla Parishad, Aurangabad and ors. Vs. The State of Maharashtra and ors., 2017 (2) Mh.L.J. 837; and

(II) Zilla Parishad, Nanded Vs. The State of Maharashtra & anr., (Writ Petition No.2617/2008) decided on 08/05/2018.

5. He then places reliance upon the Government Resolution dated 10/07/1974, which enables the employees working on work-charged daily rated establishment under the Zilla Parishad, to be brought on regular establishment. He has then relied upon the note explaining the procedure for bringing a work-charged employee to the regular establishment, annexed to the said Government Resolution.

6. It calls for no debate that the 'Kalelkar Settlement' is made applicable to various Departments, including the Zilla Parishad and the petitioners/Departments are covered by the said Settlement. The Government Resolution of 1974 is enforced for the last almost five decades. Converted Regular Temporary Establishment (CRTE) is well explained and there is no confusion as regards such daily wagers who have worked for five consecutive years, notwithstanding that they have not completed 240 days in continuous employment in each calendar year, being

(5)

entitled for the benefits of the 'Kalelkar Settlement', by virtue of which, they are to be brought on CRTE. Once they are on CRTE, they are expected to perform their duties diligently and complete five consecutive years in employment depending on the work that is allotted to them. With these phases of five years in employment being fulfilled, they are then brought on regular establishment.

7. There is no dispute that respondent No.1 joined employment in 2007 and respondent No.2 joined employment in 2004. The first phase of five years of being in employment would therefore, be calculated from 2004 and 2007. Naturally, the further period of five years so as to bring them on regular establishment would be calculated from 2009 and 2012. These two employees are said to be in employment even today. They would, therefore, be entitled for the benefits of the 'Kalelkar Settlement'.

8. These employees had approached the Industrial Court in 2017. By that time, the appropriate authority which is the State Government dealing with the said department, had not taken any decision about these employees. It calls for no debate that respondent Nos.1 to 3 in the original complaint, who are petitioner Nos.1, 2 and 4, did not have the powers to issue orders

(6)

without the intervention of petitioner No.3 herein i.e. the Secretary, Village Development and Irrigation Department, Mantralaya, Mumbai. These three authorities could not have taken any decision at the local level. As such, the declaration of unfair labour practice by the Industrial Court under Section 5, 6 and 9, could not have been made at least against the original respondent Nos.1, 2 and 3. Hence, the Clause 2 of the operative order stands set aside to the extent of the original respondent Nos.1, 2 and 3.

9. Insofar as respondent No.4 is concerned, he represents the appropriate/competent authority, which has to issue orders on a proposal being sent to his office by the Zilla Parishad. Moreover, the original complainants could not establish that either the Zilla Parishad or the Secretary, Village Development and Irrigation Department had treated one set of workers differently by showing them favoritism or partiality in utter disregards to comparative merits. In this backdrop, the unfair labour practice declared by the Industrial Court under Item 5 of the Schedule IV against this authority is unsustainable and stands quashed and set aside.

10. Consequentially, this petition is partly allowed to the above extent and it is further directed as under :-

(7)

a) The original respondent No.3 i.e. Chief Executive Officer, Zilla Parishad, Jalna, shall prepare a proposal of these two complainants by mentioning their dates of entering service and the Department, in which they are working, the completion of five years in consecutive employment, so as to enable the Secretary to issue the orders of bringing these two employees on CRTE, accordingly.

b) The proposal would also mention the period in which these two complainants have worked for further five years so as to enable the Secretary to issue appropriate orders of bringing these two employees on regular establishment after completion of total 10 years in service.

c) Such proposal shall be forwarded, as expeditiously as possible and in any case, on or before 30/04/2022.

d) Original respondent No.4 - Secretary, shall issue appropriate orders/directions, for bringing these two employees on CRTE and then on regular establishment, on or before 31/05/2022.

(8)

e) Needless to state, their unpaid wages, based on they being brought under CRTE and regular establishment, as the case may be, shall be calculated as per the Pay-Scale available to them and the said arrears shall be paid, on or before 30/07/2022.

f) Needless to state, these employees would then be entitled for all incidental and consequential benefits, consequent to they having been brought on regular establishment.

11. The petitioners are directed to ensure that, until the above process is completed, their wages as per the daily rate, to which they are entitled to even today, and which are in arrears, shall be calculated and shall be paid to them, as expeditiously as possible and in any case, on or before 21/04/2022.

(RAVINDRA V. GHUGE, J.)

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