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

907 WRIT PETITION NO.862 OF 2014

MARATHWADA SARVA SHRAMIK SANGHATANA,
NANDED
VERSUS
THE DEPUTY CONSERVATOR OF FOREST, FOREST
DIVISION, NANDED

...
Mr A. S. Shelke, Advocate for petitioner
Smt. V. S. Chaudhary, A.G.P. for respondent

CORAM : RAVINDRA V. GHUGE, J

DATE : 8th March, 2022

PER COURT:

1. By this petition, the petitioner/Union has put forth prayer
Clauses (B), (C), (D) and (E), as under:

“B. By writ of Certiorari, order or direction in the like nature, the impugned judgment and order dated 04/02/2011 passed by Learned Judge, Labour Court, at Nanded in Complaint (ULP) No. 36/2006 as well as the impugned Judgment and Order dated 14/02/2013 passed by Learned Member, Industrial Court, at Jalna in Revision Petition (ULP) No. 62/2011, be quashed and set aside.

C. By appropriate writ, order or direction in the like nature, it be held and declared that, the respondent has engaged in and are engaging in Unfair Labour Practice under Item No. 1(a), (b), (d) and (f) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

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D. By appropriate writ, order or direction in the like nature, the impugned termination of the employees as mentioned at Annexure 'A' to the Complaint (ULP) No. 36/2006 be quashed and set aside and the respondent be directed to reinstate the complainant employees with continuity of service and full backwages.

E. Pending hearing and final disposal of the writ petition, the respondent be directed to provide work to the complainant employees as named at Annexure 'A' to the Complaint (ULP) No.36/2006.”

2. I have considered the strenuous submissions of the learned Advocate for the petitioner/Union and the learned A.G.P. on behalf of the respondent/Department.

3. Considering the evidence led by the Union, it is crystal clear that the petitioner/Union was duly authorized to represent the cause of 11 members before the Labour Court in Complaint (ULP) No.36/2006.

4. Though the Hon'ble Supreme Court, vide order delivered in the **State of U.P. Vs. Jai Bir Singh, 2005 II CLR 534**, has referred the issue of 'whether, the Forest Department is an Industry' in paragraph Nos.52 and 53, to the Larger Bench, considering the law laid down in **Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others, 1978 (2) SCC**

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213, the learned Division Bench of this Court [(Coram : A. S. Oak (as His Lordship then was) and M. S. Sonak, JJ)] has held in **Chief Conservator of Forest, Pune (T) and another Vs. Janabai Sonaba Sarpale, 2019 II CLR 28**, that the Forest Department in the State of Maharashtra is an 'Industry'. As such, both these issues are answered

5. There is equally no dispute as regards the retrenchment compensation paid to the 11 members/employees, save and except that, there is some shortfall in the payment of retrenchment compensation and such a minor shortfall would not be a reason for setting aside the retrenchment, more so, in the light of the fact that these 11 employees have not been in employment since 2006 for the last about 16 years and all are nearing the age of retirement, which should be 58 or 60 years of age.

6. Suffice it to say, that the issue is, as to whether, junior daily wagger Majdoors ('Majoor' in Marathi) have been retained while retrenching these 11 employees. The seniority list has been placed on record. The General Secretary of the petitioner/Union was served with the communication dated 10/10/2001 by the Deputy Forest Officer, Nanded along with the seniority list containing 315 persons, all daily wage Majdoors. The petitioner

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has raised a grievance as regards Balaji Govardhan Rathod, whose correct entry in the seniority list indicates that, he joined as a daily wagger in 1993 and not on 01/11/1988, since it appears that he was less than 16 years of age on the said date of alleged appointment, having been born on 14/11/1972. Even if his name is entered in the list of employees, who were recruited in 1993, I still find the said seniority list to be defective, for the reason, by way of an example, two persons Deoram Ramji Tukaram and Milind Daulatrao Nagrale at Sr. No.262 and 263 are shown to have been appointed on 01/12/2012. Probably, there can be a typographical error and it may be 01/12/1992.

7. The second issue with regard to the seniority list is, that these 11 persons are shown at Sr. Nos.54, 83, 270, 271, 273, 274, 275, 277, 283, 288 and 289. The respondent/Department has not mentioned in it's written statement, as to how many daily wagers have been retrenched. If it is a matter of retrenchment, probably it cannot be ruled out that the daily wagers' right upto 315 may have retrenched. No such statement emerges from the written statement, in as much as, no such statement has been made in the affidavit-in-reply filed in this petition by Shri. Sopan Marotirao Pottulwar, Assistant Conservator of Forest, Nanded, dated

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12/09/2014. So also, the Forest Department did not lead any evidence before the Labour Court.

8. If that be so, the question that crops up is, what has happened to the daily wagers from Sr. Nos. 272, 276 and 278 till 287, and 290 till 315 ? If the Forest Department does not aver that all these persons are also retrenched, it has to be taken as they have not been retrenched. If that be so, Section 25 (G) of the Industrial Dispute Act, 1947 is violated. However, I do not wish to draw such an inference after noticing that there is no evidence on record even from the side of the petitioner to establish that all these employees are factually in daily wage employment after the retrenchment of the 11 daily wagers. In such a situation, it would be appropriate to remand the matter to avoid miscarriage of justice.

9. In view of the above, this petition is partly allowed only on account of the petitioner, having not been able to lead evidence to establish that they are juniors in employment, inasmuch as, that the Forest Department has not taken a clear stand as to how many daily wagers had been retrenched by applying the law of “last come first go”. They ought to have led evidence to indicate as to whether, the daily wagers who are below these petitioners in the

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seniority list have been retained or not when a specific allegation was made that juniors to these petitioners have been continued as daily wagers for several years.

10. This petition is partly allowed.

The impugned judgment of the Labour Court dated 04/02/2011 is, therefore, quashed and set aside. The judgment delivered by the Industrial Court, dated 14/02/2013 would not survive and stands set aside. The revision proceedings stands disposed off. Consequentially, Complaint (ULP) No.36/2006 stands restored to the file of the Labour Court at Nanded, with the following directions :-

- (a) Both the litigating parties shall appear before the Labour Court Nanded on 28/03/2022;
- (b) The petitioner/Union is at liberty to issue a notice for production of documents, pertaining to the continuation of the junior daily wagers, post retrenchment of the 11 employees;
- (c) The petitioner/Union is at liberty to lead further evidence after the documents are produced;
- (d) The respondent/Forest Department is at liberty to amend it's written statement by putting forth a clear

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averment as to how many daily wagers in the seniority list of 315 daily wagers have been retrenched , along with their names, dates of retrenchment, etc.

(e) The respondent/Forest Department is at liberty to lead evidence;

(f) The production of documents, amendment to the written statement and the recording of additional evidence, shall be concluded on or before 30/08/2022;

(g) The litigating parties would conclude their oral submission on or before 15/09/2022. Written notes of arguments as well as compilation of case law can be tendered;

(h) The Labour Court shall deliver it's Judgment, on or before 21/10/2022.

11. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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