

Pallavi

Digitally
signed by
PALLAVI
MAHENDRA
WARGAONKAR
Date:
2022.09.20
19:08:11
+0530

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.1487 OF 2020

Mr. Suresh Mahadeo Madval & Ors. ...Petitioners

Versus

The Executive Director, Zilla Parishad,
Sindhudurg & Ors. ...Respondents

Mr. Prashant Chawan i/b Mr. Ravindra Chile, for the Petitioners.

Mr. Ramesh Rane, Advocate for Respondent Nos.1 to 3.

Mr. P.P. Pujari, AGP for Respondent No.4 – State.

CORAM : MADHAV J. JAMDAR, J.

DATE : 21st July 2022

P.C. :

1. Heard Mr. Chawan, learned counsel appearing for the Petitioners and Mr. Ramesh Rane, the learned counsel for the Respondent Nos.1 to 3 and the learned AGP for the Respondent No.4.

2. Three Petitioners are Complainant No.2 (Petitioner No.1), Complainant No.7 (Petitioner No.2) and Complainant No.3 (Petitioner No.3) respectively. They have challenged by the present Writ Petition

judgment and order dated 27th February 2019 passed by the learned Member, Industrial Court No.1, Kolhapur in Complaint (U.L.P.) No.30 of 2012 to the extent it deprives the benefits of permanency and consequential benefits of permanency to them. They have further sought relief of permanency and the privileges and consequential benefits of permanency to the petitioners.

3. The petitioners were working with the Respondent No.1 – Zilla Parishad and doing the work of repairs and maintenance of the hand pumps which have been fitted on the bore-wells of the drinking water. The Petitioner No.1 was in the service of Respondent No.1 since 7th April 1986 and he retired on 30th September 2015. Petitioner No.2 i.e. Keshav Mahadeo Marathe was in the employment of Respondent No.1 since 1st January 1988 and he retired on 30th November 2012. The Petitioner No.3 – Anand Babu Shirodkar was in the employment of Respondent No.1 since 1st September 1986 and he is still in the employment. About 13 employees of the Respondent No.1 including the Petitioners filed a complaint U.L.P. No.30 of 2012 on 17th January 2012 before the Member, Industrial Tribunal No.1 at

Kolhapur seeking relief of permanency of their respective posts with consequential benefits from the date they have completed 240 days of consecutive service. The learned Member, Industrial Court No.1, Kolhapur passed the following order on 27th February 2019:-

“ORDER

- 1) The complaint in respect of Complainants No.2, 4, 7 and 11 is dismissed.
- 2) The complaint in respect of Complainants No.1, 3, 5, 6, 8, 9, 10, 12 and 13 is partly allowed.
- 3) It is hereby declared that the Respondent No.1 has engaged in unfair labour practice under Item-6 of Sch.IV of the M.R.T.U. & P.U.L.P. Act, 1971 by not granting permanency to Complainants No.1, 3, 5, 6, 8, 9, 10, 12 and 13 and intentionally depriving them of the status and privileges of permanent employees.
- 4) The Respondent No.1 is directed to cease and desist from engaging in such unfair labour practice.
- 5) The Respondent No.1 is further directed to grant permanency to the entitled Complainants except Complainant No.3, since the date of filing of the complaint with all privileges and consequential benefits.
- 6) The Respondent No.1 is further directed to grant permanency to Complainant No.3 from the date of filing of the complaint

only for the purpose of retiral dues. However, he be granted the privileges and consequential benefits of permanency and consequential benefits of permanency since 07.08.2017.

- 7) The Respondent No.1 is further directed to implement the order within a period of two months from today failing which the Respondent No.1 would be liable to pay interest @8% p.a. on the amount of consequential and accrued benefits till actual payment.”

4. The learned Member, while granting above relief has observed in the judgment that admittedly the complainants were in the employment with the Respondent – Zilla Parishad as daily wagers and at present working in Rural Water Supply Department. The learned Member, while giving reasons for the aforesaid direction has recorded the following findings :-

“14. It is an admitted position that the Complainants are in employment with the Respondent Zilla Parishad as daily wagers and at present are working in Rural Water Supply Department. There is no dispute in respect of the fact that all Complainants were initially appointed on daily wages in Minor Irrigation Department and the same was subsequently converted into Rural Water Supply Department w.e.f. 01.04.2001. It is also not in dispute that the Complainants were transferred thereafter to

Rural Water Supply Department. Further, it is admitted in the pleadings by both parties that the initial appointment of the Complainants was made by virtue of the Government Resolution dated 28.05.1987. Said Resolution is filed on record at Ex.C-10/2. The Respondents have also filed on record a previous Resolution dated 31.03.1978 (Ex.C-10/1), which is the basis of Resolution dated 28.05.1987.

15. As per both Resolutions of 1978 and 1987 it was resolved that “in the whole State there are about 6100 drinking water bore wells constructed in various Districts under the Rural Water Supply programme. **Due to lack of proper repairs and maintenance majority of the bore wells so constructed remain out of order and are thus rendered useless. To overcome this problem regarding maintenance and repairs of hand pump of drinking water bore wells in Maharashtra it was decided to prepare a scheme for maintenance of hand pumps.** In view of this, a **three tier scheme** was adopted for the repairs and maintenance of hand pumps of bore wells. This three tier scheme was to be functioning at **village level, block level and District level. As an administrative set-up of the scheme the Maharashtra Government was pleased to sanction the number of posts of mechanical staff consisting of mechanical supervisory, mechanic and**

helper. Said posts were to be created by each Zilla Parishad on their own establishment and were required to be filled up immediately in consultation with Ground-water Survey and Development Agency. Pay and allowances of the staff required was also fixed. Said resolution also fixed an accounting procedure as per which, the initial amount of repairs will be paid by the Zilla Parishad from their own resources and the Village Panchayat will have to reimburse the Zilla Parishad. If the Village Panchayat fails to repay the Zilla Parishad then it should provide in their annual budget the requisite provision on behalf of the Village Panchayat as an advance to the Village Panchayat. The reimbursement of the expenditure by the Zilla Parishad will be made by the Government by short payment of land revenue grant to Village Panchayat. It is further provided that the necessary provision for expenditure on grant of advances to Village Panchayat from District fund should be made in the Zilla Parishad budget under the head “Deposit and Advances-Advances to Village Panchayats, expenditure-Transfer from Public Health Engineering” by re-appreciation and the recovery of advances should be recorded under the same head of account.”

As per the Resolution of 1987 certain modifications were made in the earlier Resolution of 1978 for effective working of the scheme. However, there was no any change in

the nature of earlier scheme.

16. **Admittedly, the Complainants were appointed under the said three tier scheme. Admittedly, all Complainants were engaged in the maintenance and repairs of hand pumps fitted on the drinking water bore wells constructed under the Rural Water Supply scheme. The date of initial appointment of the Complainants as shown in Annexure-A to the complaint and also their post either as Operator/Driver/ Watchman is not disputed by the Respondents.** On the other hand, the documents filed on record at Ex.C-5/1 to 13, which are the original service books of the Complainants, reflect their date of appointment and posts held by them. These documents are filed on behalf of the Respondents and not disputed by the Complainants. **The service books of the Complainants filed on record further reflect that the Complainants are working continuously from the date of their initial appointment. Though it is shown that they are given order to work for specific period, the service book shows that they have performed work and received wages for more than 240 days each year during their service tenure. As per the service book of the Complainants they were paid on daily wage basis. However, from time to time their daily wage was revised and increased. The**

service book further reflects that these Complainants were granted benefits of leave such as casual and earned leave also.

- 17. Further, it is evident from the letter by the Respondent Zilla Parishad to the Divisional Commissioner, Konkan Division dated 31.01.2008 and annexures thereto filed at Ex.U-16/1 that the Respondent Zilla Parishad, while submitting the details in respect of the Complainants, has informed the fact that these Complainants are continuously working on their respective posts since their initial date of appointment and in view of the same had proposed to regularize them in service and grant them permanency. It is also clear from the record filed at Ex.U-16/5 which is a resolution of the general body of Respondent Zilla Parishad dated 26.06.2001 that there are in all 22 posts created and vacant in Rural Water Supply Department and at that time 16 daily wage employees were working which included the Complainants. Therefore, from the above record it is clear that the Complainants were appointed under the three tier scheme of the Government of Maharashtra for the purpose of repairs and maintenance under the Rural Water Supply programme. Accordingly, Respondent Zilla Parishad created the posts on which the**

Complainants were working on their own establishment. The Complainants started working on daily wages on their respective posts and during their service tenure till this date have worked continuously and completed 240 days of service each year. Therefore, obviously the Complainants are working on created and vacant posts in the establishment of Respondent Zilla Parishad.

18. Further it is clear from the letter dated 29.10.2010 by the Under Secretary, Maharashtra State filed at Ex.U-10/5 that the State Government has directed that it cannot grant any sanction for permanency to the employees including the Complainants on the count that the posts on which the Complainants are working are created in their own establishment by the Respondent Zilla Parishad. Therefore, on this count the proposal for sanction for the purpose of permanency of the Complainants was rejected by the State Government. It is, therefore, clear from the record that **the posts on which the Complainants are working are posts created by the establishment of Respondent Zilla Parishad and the State Government, therefore, has no role to play to sanction or grant permanency to the Complainants. It is, therefore, at the level of Respondent Zilla Parishad to grant and accord the status of permanent employee to the Complainants in its own**

establishment. However, the Respondent Zilla Parishad has failed to do so.

19. No doubt, the Respondent Zilla Parishad has passed a resolution in its general body in the year 2009 to send proposal to the State Government to take sanction for permanency of the Complainants but when the State Government replied that it has no role to play in such sanction since the Complainants were working on the posts created by and in the establishment of Respondent Zilla Parishad, **the Respondent Zilla Parishad ought to have proceeded further towards granting permanency to the Complainants.** However, instead of doing so the Respondent Zilla Parishad continued to issue the Complainants orders to work for specific period from time to time and such periodic orders are continued till this date. The periodic orders are filed on record by both parties. Each such periodic order of each Complainant is not on record. However, the service book of each Complainant reflects such periodic appointments. **Therefore, it is clear from the record that though the Complainants were given periodic appointments from time to time, the nature of work performed by them is of permanent and perennial nature and they have worked continuously.**

25. It has clearly come on record that the **Complainants were eligible for granting permanency in service with the Respondent Zilla Parishad.** The Respondent Zilla Parishad though had created the posts of the Complainants in its own establishment and was liable to make their payments and emoluments from their own funds, may be as a routine practice or as it felt required, sent proposal for sanction of the status of permanency to the Complainants to the State Government with all details, so that the State Government would grant sanction for permanency of the Complainants. The Respondent Zilla Parishad till the proposal was rejected on 29.11.2010 was continuously making communication with the State Government. It is on record that on 29.11.2010 the State Government did not consider the proposal to grant permission to the Respondent Zilla Parishad for permanency of the Complainants on the count that the Complainants are appointed by the Respondent Zilla Parishad on its establishment and it is for the Zilla Parishad to take appropriate decision in respect of permanency of the Complainants. **Therefore, according to me, till the proposal was rejected by the State Government on 29.11.2010 there was no any intention of the Respondent Zilla Parishad to deprive the Complainants of the status and privileges of a permanent employee.** On the other hand, the Respondent Zilla Parishad under misconception

and by misconstruing its powers was seeking sanction from the State Government. However, when the State Government replied that such sanction cannot be granted by it and the Zilla Parishad was authorized to take decision in respect of permanency of the Complainants on its own level, **then the Respondent Zilla Parishad was under obligation to grant such status of permanency to the Complainants. At the same time, it is also evident from the record that the Complainants on their own have not made any efforts or representations with the Respondent Zilla Parishad requesting to grant them permanency. For the first time such grievance is raised by filing present complaint. Therefore, according to me, though the Complainants are entitled for grant of permanency alongwith the benefits and privileges long back, there was complete inaction on the part of the Complainants to approach the legal forum or even the Respondent Zilla Parishad.**

26. Also it can be seen from the record that the Respondent Zilla Parishad from time to time was making efforts to get sanction for permanency of the Complainants from the State Government, though may be it was a misconstrued effort, but even **during the period of such efforts there was no any move on behalf of the Complainants requesting the**

Respondents for grant of permanency. Even otherwise, I have already held that before 29.11.2010 when the proposal of Respondent Zilla Parishad to accord sanction to grant permanency to the Complainants was rejected by the State Government, the Respondent Zilla Parishad cannot be said to had any intention to deprive the Complainants of the status and privileges of permanency.”

(Emphasis added)

5. With the above findings, the learned Member granted relief as set out hereinabove. However, as far as the Petitioner No.2 and 7 are concerned, the complaint is dismissed inter-alia as regards them. The only reason given by the learned Member is that Complainant No.2 retired on 30th September 2015 and Complainant No.7 retired on 30th November 2012. However, undisputedly, Complainant Nos.2 and 7 were in the employment of Respondent No.1 since 7th April 1986 and 1st January 1988 respectively. The reasoning given by the learned Member as regards other complainants is squarely applicable to the Petitioner Nos.1 and 2 i.e. the Complainant Nos.2 and 7. As far as complainant No.3 i.e. the present Petitioner No.3 is concerned, the learned Member directed to grant permanency to him from the date of filing of the complaint only for the purpose of retiral dues.

However, it is made clear that he be granted privileges and consequential benefits of permanency since 7th August 2017.

6. Mr. Chawan, the learned counsel appearing for the Petitioners has pointed that application at Exh.U-34 dated 5th August 2017 filed by the Petitioner No.3 wherein it is specifically stated that at no point of time he has refused to join the duties. On Exh.U-34, the learned Member has passed the order dated 5th August 2017 directing that the Petitioner No.3 shall remain present on duty at Head Office on 7th August 2017 and the Respondent was directed to allow the complainant to resume his duty. It is specifically made clear that all the controversy in respect of the continuity of service will be decided at the time of final hearing. With respect to Petitioner No.3, the learned Member observed in paragraph 33 that the Petitioner No.3 was absent from service since 1st September 2015 and thereafter, failed to attend duty and he was allowed to resume duty on 7th August 2017. However, the fact remains that the said Petitioner No.3 was continuously in service since 1st September 1986 and when the complaint was filed he was in service. There is dispute whether he remained absent from duty since 1st September 2015 till 7th August 2017 or he was not

allowed to join duty. The Respondents can independently take action for said absence against Petitioner No.3. It is admitted that all these complainants were working as daily wagers and the Respondent No.1 was issuing appointment orders every month. In view of this, it will be unjust to not grant relief to the Petitioners. Hence, the following order :-

ORDER

- (i) Order dated 27th February 2019 passed by the Member, Industrial Tribunal, Court No.1, Kolhapur is modified to the extent of Petitioners (i.e. Complainant Nos.2, 3 and 7) and the complaint in respect of Complainant Nos.2, 3 and 7 are partly allowed;
- (ii) It is declared that the Respondent No.1 has engaged in unfair labour practices under Item-6 Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Laws Practices Act 1971 by not granting permanency to Complainant Nos.2, 3 and 7 and intentionally depriving them of the status and privileges of the permanent employees;
- (iii) The Respondent No.1 is further directed to grant

permanency to all the Petitioners since the date of filing of the complaint with all privileges and consequential benefits;

- (iv) Writ Petition is allowed in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)