

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

WRIT PETITION NO. 13314 OF 2022

The Vice Chancellor Vasant Rao Naik
Marathwada Agriculture University
and others .. Petitioners

Versus

Nayab Nivrutti Bansode and another .. Respondents

Shri Manish N. Navandar, Advocate for the Petitioners.
Shri Swapnil S. Dargad, Advocate for the Respondent No. 1.
Shri R. B. Bagul, A.G.P. for the Respondent No. 2.

AND

WRIT PETITION NO. 113 OF 2023

The Vice Chancellor Vasant Rao Naik
Marathwada Agriculture University
and others .. Petitioners

Versus

Pandurang Ramkrushna Deshpande
and another .. Respondents

Shri Manish N. Navandar, Advocate for the Petitioners.
Shri Swapnil S. Dargad, Advocate for the Respondent No. 1.
Mrs. G. L. Deshpande, A.G.P. for the Respondent No. 2.

AND

WRIT PETITION NO. 115 OF 2023

The Vice Chancellor Vasant Rao Naik
Marathwada Agriculture University
and others .. Petitioners

Versus

Naresh Dhondiraj Bandale and another .. Respondents

Shri Manish N. Navandar, Advocate for the Petitioners.
Shri Swapnil S. Dargad, Advocate for the Respondent No. 1.
Shri S. S. Dande, A.G.P. for the Respondent No. 2.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : 25TH JANUARY, 2023.

FINAL ORDER :

. These writ petitions arise out the orders of the Industrial Court in complaints filed under Section 28 r/w Item Nos 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, whereby the Respondent employee was directed to be granted benefits at par with permanent employees. Common issues arise in the Petitions and hence are disposed of by this common order.

2. Individual complaints came to be filed by the employees of the Petitioner University which came to be allowed by the Industrial Court directing the petitioners to pay the gratuity, wage difference, due pensionary benefits as per the Rules and scheme as applicable to the respondent No. 1 along with all other like mandatory benefits, post retiral benefits at par with the permanent employees.

3. Facts of the cases are as under :

Petitioner No 1 is an Agricultural University governed by the provisions of The Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983 (for short "Act of 1983") and Maharashtra Agricultural Universities (Krishi Vidyapeeths) Statutes, 1990 (for short "Statutes of 1990").

4. In the individual complaints before the Industrial Court, it is the case of the Respondent employees that they came to be

appointed by the petitioner No. 1/university as Karyalay Madatnis in the year 1985, 1987 and 1982 respectively. Government Resolution dated 08th April, 1994 was issued for the purpose of payment of daily wages to the skilled and semi skilled daily wages employees as per the principle of basic wages plus dearness allowance/30 and Respondents were being paid wages accordingly. The posts of Karyalay Madatnis, which were held by the respondent employees was equivalent to the posts of Junior Clerk. It is further case of the respondent employees that they were working continuously with the petitioner No. 1 till the year 2001 and instead of regularizing the services of the respondent No. 1, the petitioners have retrenched the services of the respondent No. 1 without following mandatory provisions of law vide retrenchment order dated 03rd April, 2001 and without paying any retrenchment compensation at the time of retrenchment. However, the compensation was paid later on to the respondent No. 1.

5. It is further case of the respondent employees that after retrenchment, the Respondents came to be reappointed for stipulated period by order dated 05.02.2002 and continuation orders were passed from time to time. Some of the employees who were junior to the respondent No. 1 and who were earlier retrenched, were appointed on permanent basis and their services came to be confirmed. It is the case of the Respondent employees that they were working as against vacant and sanctioned posts on work of permanent nature. The Respondent employees claimed to have been paid benefits of 5th Pay Commission and 6th Pay Commission and as per the amendment in Maharashtra Civil Services Rule (Pension) Rules, 1982 were

entitled to pensionary benefits and having rendered 26 years of service were entitled to pensionary benefits. It is the case of the Respondent employees that in the seniority list published prior to the retrenchment, the working days are mentioned, which reflects that the Respondent employees have worked for more than 240 days continuously as per provisions of Model Standing Order, 1946 and Bombay Industrial Employment Standing Order Rules. Permanency was also claimed by virtue of Kalelkar Award and permanency benefits were sought since 15/11/1992.

6. In the written statement, the Petitioners contended that the petitioners had engaged daily rated labour and skilled labour for the temporary and seasonal temporary work since 1972 and as per the Minimum Wages Act the daily wages are paid. The retrenchment of the daily wages labour and skilled labour was effected pursuant to the G. R. dated 09th November, 2000 by paying the retrenchment compensation as per the applicable laws and the employer employee relationship came to an end. Subsequently, the services of some of the retrenched employees was engaged as per the submissions made by the petitioners on affidavit in a proceeding before this Court that as and when work load is available the retrenched labourers will be engaged as per rules.

7. It is the case of the Petitioner No 1 that being a University the Petitioner No 1 is bound by the Government Resolutions, circulars and the recruitment procedure has to be followed by the university for appointment of any employee on permanent basis, which has not been followed in the case of the respondent employees and as such it cannot be said that they were

appointed on vacant posts through duly constituted selection committee. The petitioner university denied the claim for regularization by mentioning the same as back door entry in the employment. It was contended that the seniority list was not prepared for the purpose of absorption but for the purpose of re-engagement of retrenched labour as per the work available. As far as the applicability of Kalelkar Award is concerned, it was contended that State Government had not made the same applicable to the Petitioner University. The applicability of the Model Standing Orders was denied.

8. By judgment dated 23rd December, 2021, the Industrial Court held that the petitioner/university had engaged in unfair labour practice under Item No. 5, 9 and 10 of Schedule IV of the MRTU and PULP Act by declining pensionary benefits and held the respondent No. 1 entitled for the relief claimed. The Industrial Court came to a finding on the basis of the record that the respondent No. 1 have worked for more than 240 days with the petitioners in the preceding twelve months and considering Order 4-C of the Bombay Industrial (Employment) Rules, 1959, which provides that a temporary workman who has put in 240 days uninterrupted service in any establishment during a period of preceding twelve calendar months, shall be made permanent in that establishment and as such held that only to avoid permanency by giving technical gap fresh orders have been given for 11 months and the services of the respondent No. 1 were kept on daily wages for years together without making an attempt to accord them the status of permanent employee. As the respondent employees had completed more than 65 years of age and were superannuated, the Industrial Court moulded the relief

to grant the monetary benefits and the post retirement benefits as applicable to a permanent employee.

9. Heard Mr. Navandar, learned counsel appearing for the petitioners and Mr. Dargad, learned counsel appearing for the respondent No. 1 in all matters.

10. Mr. Navandar, learned counsel for the petitioners submits that the order of the Industrial Court results into a back door entry for the respondent No. 1. He would submit that the petitioner/university is governed by the Act of 1983 and the statutes thereunder. The main controlling authority is the State of Maharashtra and the recruitment of various posts is undertaken as per the rules as well as the statutory provisions made in this regard by the State Government. He would further submit that by Government Circular dated 25th August, 2005 all the Government and semi Government authorities have been directed not to regularize an employee unless appointment is made on regular basis after following due procedure of law and the respondent No. 1 were neither permanent employees, nor they were appointed by following due process of law and neither they worked continuously for a period of 240 days. He would urge that conferment of benefits of permanency would run contrary to various judicial pronouncements of the Apex Court. As regards the applicability of Model Standing Order, he would submit that the Petitioner-university, is governed by the Act of 1983 and the Statute of 1990. In support of his contention, he relies upon the following decisions:

I. Indian Drugs and Pharmaceuticals Ltd. Vs. Workman,

Indian Drugs and Pharmaceuticals Ltd. reported in (2007) 1 SCC 408.

II. The Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade reported in 2017(4) All MR 166.

III. Judgment dated 22.11.2022 in Writ Petition No. 1546 of 2017 in the case of Vithal Tukaram Londhe Vs. The State of Maharashtra and others.

11. *Per contra* Mr. Dargad, learned counsel for the respondent employees submits that the respondent No. 1 were employed with the petitioner/university against vacant posts and were working continuously since the year 1987, 1985 and 1982 respectively. He would further submit that admittedly after retrenchment of services, all the respondent No. 1 were re-engaged in the year 2002 and were continued from time to time. He would further submit that the juniors who were retrenched along with the respondent No. 1 were given benefit of permanency, but the respondents have been discriminated. He would further submit that as the respondent employees were working against vacant and sanctioned posts and work was of permanent nature, they were entitled to the benefits of permanency and all pensionary benefits. In support of his contention, he relies upon decision of the Division Bench of this Court dated 05th March, 2015 in Writ Petition No. 1533 of 2002 in the case of **Madhukar Gyanji Dhage Vs. Marathwada Agricultural University, Parbhani and another** and another judgment of this Court in the case of **Mahatma Phule Krishi Vidyapeeth, Rahuri Vs. Ganpat Kisan Karle** reported in **2016(4) BCR 790** and the judgment of the Apex Court in the case of **Hari Nandan Prasad and another Vs. Employer I/R to Mangmt. Of**

FCI and another reported in (2014) 07 SCC 190.

12. Considered the rival submissions of the parties:

13. It needs to be noted that there is no reply filed by the respondent No. 1 to the petitions. On 18th January, 2023, this Court had recorded that the matter was argued at considerable length by learned counsel for the parties and upon request of the respondent No. 1 to place on record the compilation of documents and to advance further arguments the matter was adjourned to 25.01.2023. On 25.01.2023, the learned counsel for the respondent No. 1 advanced further arguments, pursuant to which the operative part was pronounced. After the pronouncement of operative part, learned counsel for Respondents sought a direction for calling records and proceedings, which request was declined as the hearing had concluded and operative part had been pronounced.

14. Before dealing with the rival contentions of the parties, the relevant provisions of the Act of 1983 and Statutes of 1990, are necessary to be considered which reads thus:

The Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983

1. ...
2. ...

6. Subject to the provisions of this Act, each University shall have the following powers and functions, namely :—

(i)

(xi) to create administrative, ministerial and other posts and to appoint persons to such posts ;

13. The personnel of each University shall be classified under one of the following categories:—

(a) Executives, Academic Officers and other Officers who have the administrative authority and who are designated as such by or under this Act, or by the Statutes.

(b) Academic staff members who have duties of an academic nature, such as teaching, research and extension education and who hold professional rank of Professor, Associate Professor, Assistant Professor, Lecturer or Demonstrator or the like as may be designated by or under this Act, or by the Statutes.

(c) Ministerial staff members who are in the service of the University and not included in the categories (a) and (b) above.

28. Subject to the provisions of this Act, the designations, qualifications, method of recruitment, pay, allowances and other conditions of service all employees of each University and their powers and duties shall be such as may, from time to time, be determined by the Statutes and Regulations.

37. Subject to the provision of this Act, ¹["*"] the Statutes may provide for statutes, all or any of the following matters, namely :—

(a) the constitution, powers and duties of the authorities of the University, and the declaration of other bodies to be such authorities;

(b) the ²["*"] other conditions of service of the Vice-Chancellor and his powers and duties; Powers and duties of faculties Statutes

(c) the designations, qualifications, method of recruitment, pay, allowances and other conditions of service of various categories of employees of the University, and their powers and duties ;

(d) the constitution, reconstitution or abolition of Faculties and their powers and duties;

(e) the establishment of Departments of Teaching in the Faculties;

(f) the institution of pension or provident fund or insurance scheme, or any one or more of them, for the benefit of employees of the University ;

(g) the designations, qualifications, method of recruitment, pay, allowances and other conditions of service of Professors, Associate Professors, Assistant Professors, Lecturers, Demonstrators and other categories of employees of affiliated colleges and recognised institutions, and their powers and duties ;

(h) registration of graduates and maintenance of a register of registered graduates;

(i) recognition of examinations of other Universities or educational institutions, as equivalent to the examinations of the University ;

(j) any matter which is to be or may be prescribed under this Act;

(k) any other matter which is necessary to give effect to the provisions of this Act.

54. Without the prior approval of the State Government, or an officer authorised by it in this behalf, the University shall not ---

(a) create any new posts of Other Officers "as specified in section 14 or the Heads of Departments or Professors or of any officers of equivalent rank ;

(b) revise the pay, allowances, post-retirement benefit and other benefits of any officers and other employees, both in teaching and non-teaching categories ; or

(c) grant any special pay, allowance or other external remuneration of any description whatsoever, including ex-gratia payment, increase in the rates of scholarships or other benefits having financial implications to any such officers and employees.

Maharashtra Agricultural Universities (Krishi Viyapeeths) Statutes, 1990

Statute 1. ..

Statute 2. ..

Statute 81. Classification of Ministerial Staff Members into various grades.—

(1) Ministerial staff members shall be those who are for the

time being in the service of the University and are not included in the categories of Executive, Academic Officers, Other Officers and Academic Staff Members.

(2) Ministerial staff members shall consist of different grades viz., 'A', 'B', 'C' and 'D' and shall be determined by the State Council having regard to the requirements of the University business, from time to time.

Statute 83. Appointments strictly on the basis of merit. —All appointments of the ministerial staff members shall be made strictly on the basis of merit.

Statute 84. Appointments only on the recommendations of the Selection Committee.—

(1) No person shall be appointed by the University as a ministerial staff member except on the recommendation of the Selection Committee constituted for the purpose :

Provided that in any emergency which in the opinion of the Vice-Chancellor requires that immediate action should be taken, he may make an appointment of a suitable person having prescribed minimum qualifications to any post of the ministerial staff member for the period not exceeding one year without the recommendation of the concerned selection committee or without following the procedure prescribed in the Statute No. 88 made in this behalf:

Provided further that the Vice-Chancellor shall initiate simultaneous action to fill in the post through regular process of selection within a period of one year from the date of such appointment.

(2) Notwithstanding anything contained in clause (1) above, the Executive Council, may direct that a post of ministerial staff member may be filled in by obtaining the services of a suitable person on deputation from the State Government, Government of India, any Statutory University in India, or any Government or Semi Government Organisation or Institution or Corporation established by the law.

3) Appointment of a person on deputation to any post of a ministerial staff member, in pursuance of the provisions of clause (2) above, shall be made by the Vice-Chancellor without reference to or recommendation of the concerned Selection Committee. Selection of such a person and appointment as a ministerial staff member shall be made by the Vice Chancellor on such terms and conditions as may be agreed to between the Vice-Chancellor and the deputing

authority ;

Provided that the period of such deputation shall at the first instance not exceed three years which period may, at the option of the Vice-Chancellor and in consultation with the deputing authority, be extended, from time to time, for a total period not exceeding five years.

Statute 138. Pay, Allowances, Pension, Leave and General conditions of services of the Employees of the University, affiliated colleges and recognised institutions other than those Recognised for Research and Specialised higher Learning.—(1) In accordance with the provisions of section 28 and clause (c) and (g) of section 37 of the Act and the provisions made else where in the Act and the Statutes in this behalf the provisions of the following Maharashtra Civil Service Rules (as amended and added from time to time) applicable to the State Government employees shall be applicable *mutatis mutandis* to the employees of the University, affiliated colleges and recognised institutions other than those Recognised for Research and specialised higher learning.

(i) The Maharashtra Civil Services (General conditions of Services) Rules, 1981; and

(ii) The Maharashtra Civil Services (Pay) Rules, 1981 ; and

(iii) The Maharashtra Civil Services (Joining Time, Foreign Service and Payments during suspension, Dismissal and Removal) Rules, 1981 ; and

(iv) The Maharashtra Civil Services (Leave) Rules, 1981 ; and

(v) The Maharashtra Civil Services (Pension) Rules, 1982; and

(vi) The Maharashtra Civil Services (Commutation of Pension) Rules, 1984 ; and

(vii) The Maharashtra Discipline and Conduct Appeal Rules, 1979, and

(viii) The Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

(2) The employees of affiliated colleges and recognised institutions who are in service prior to the date of passing of this statute shall be governed by such terms and conditions of service contract, if any, agreed to between the employees and the institution in respect of age of superannuation which will not exceed 60 years in

any case.

(3) The Executive Council will determine from time to time the competent authorities for execution of the rules mentioned in clause .(1) above.

15. The Petitioner University is a statutory body governed by the Act of 1983. The above referred provisions makes it clear that the overall control as regards the recruitment of the employees of the university is with the State Government including the creation of new posts, grant of pay scale, allowances, etc. The recruitment process takes into consideration the directives issued by the State Government from time to time including the age limit, reservations, qualifications etc.

16. Statute 83 and 84 of the Statutes of 1990 referred to above provides for the appointment of the employees on merits and on the recommendation of the Selection Committee. The Respondent employees were working with the Petitioner University as “Karyala Matadnis” and were paid wages in accordance with the GR dated 08.04.1994. It is the Respondents own case that the G.R. of 1994 was issued for purpose of payment of daily wages to the skilled and semi skilled daily wages employees. While accepting the appointment, the Respondents were fully aware that they were employed on daily wages employees and opted for the employment. Pursuant to the Government Resolution dated 09.11.2000 7,444 daily rated workers were retrenched from the four agricultural universities under the provisions of Section 25F of Industrial Disputes Act including the Respondent employees. In another proceedings before the Nagpur Bench of this Court, the Petitioner University on Affidavit had submitted that the retrenched labourers will be

engaged as and when work is available as per Rules. Subsequently the Respondents was re-engaged under the powers delegated by Statute 84. For the period from 1983 the Respondents were not employed on regular establishment and the selection was not in accordance with the procedure prescribed by the Act of 1983 and Statutes of 1990.

17. It is the case of the Respondent that the post on which the Respondent was working was vacant and sanctioned post, which has been denied by the Petitioner. Section 13 of the Act of 1983 provides for the classification of the personnel of each University and Statute 81 of the Statutes of 1990 provide for the classification of the ministerial staff in various grades. The Respondent has not produced evidence on record to prove that the post of “Karyala Matadnis” was part of the sanctioned cadre. There is no material on record to show the requisite qualification for appointment to the post of “Karyala Matadnis” and the admitted position is that the appointment of the Respondent was not through the process of Selection Committee. Considering the statutory provisions and the material on record, I am unable to accept the submission that there was sanctioned post of “Karyalaya Matadnis” and that the Respondent was working as against the vacant and sanctioned post.

18. Respondent employees claim that they were in receipt of 6th Pay Commission with Pay Band and as such by virtue of amendment to Maharashtra Civil Services (Pension) Rules, 1982 vide G.R. dated 30/10/2009 are entitled to pensionary benefits. The pensionary benefits are payable upon completion of the qualifying service on regular establishment, which is not so in

the present case. In the year 2001, the services of the Respondent employees were retrenched and the retrenchment compensation was accepted and the Respondents were thereafter re-engaged for stipulated periods as per powers vested under Statute 84 of Statutes of 1990. Neither was the employment of the Respondent employees on regular establishment nor was there completion of qualifying service. Merely being in receipt of 6th Pay Commission with Pay Band will not entitle the employee to claim pensionary benefits.

19. At this stage it will be necessary to consider the decisions of the Apex Court in the context of grant of permanency in public employment. Various decisions following the decision in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others** reported in **(2006) 4 SCC 1** have settled the principal that no casual worker should be regularized by the Courts and the State Government and as per the constitutional provisions all the citizens of this country have a right to contest for the employment and temporary and casual workers have no right to seek any regularization. In the case of **Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd.** (supra) the Apex Court has set out the distinction between the temporary employee and the permanent employee and held that the temporary employee has no right to the post. In paragraph No. 43 and 46 of the decision of the Apex Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others** (supra), the Apex Court has observed as under :

"Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and

since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme".

"While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain & not at arm's length & since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to

that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution".

20. In the case of **Delhi Development Horticulture Employees' Union Vs. Delhi Administration Delhi and others** reported in **(1992) 3 SCC 99**, the Apex Court while deprecating the tendency of engaging daily wagers without advertisement has held that the same amounts to a back door entry and it was well settled that there is no vested right to seek regularization. Regularization can be done only in accordance with rules and not *de hors* the Rules.

21. In the present case, the Respondent employees have not been able to substantiate that their appointments was in accordance with the statutory provisions prescribed by the Act of 1983 read with Statute of 1990. The Industrial Court by relying

upon the Clause 4-C of the Model Standing Order has directed regularization without taking into consideration the applicability of the Model Standing Orders to the petitioner/university, which is governed by the provisions of the Act of 1983 read with Statute of 1990. This Court in the case of **the Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade** (supra) by placing reliance on the decision of the Apex Court in the case of **State of Maharashtra and another Vs. Pandurang Sitaram Jadhav** reported in ***2008(5) ALL MR 497*** has held that existence of a legal vacancy must be established and the power to recruit with the employer must also be demonstrated. In absence thereof, workman cannot succeed in proving the commission of unfair labour practice under item 6 by the employer. These two ingredients, therefore, also must be established when benefit of clause 4-C of the Model Standing Order is being claimed. Unless availability of a vacancy is shown or then power with the employer to create the post and to fill it is brought on record, mere continuation of 240 days cannot and does not enable the workman to claim permanency by taking recourse to Clause 4-C of the Statute.

22. This Court in the case of **State of Maharashtra and another Vs. Pandurang Sitaram Jadhav** (supra) considering the case of daily wagers in the establishment of the government milk dairy for a longer period of 12 to 20 years has held that there being no sanctioned posts and vacancy in existence, it was only unjust to direct the appellant State Government to grant permanency to the respondents and daily wagers are declared to possess no legal right to claim permanency. It is clear from the judicial pronouncements that unless it is demonstrated by the

respondent employees that they were employed against vacant and sanctioned posts by following the due procedure as prescribed for recruitment to the employment in the petitioner/university, the completion of 240 days in the preceding year as provided by Clause 4-C of the Model Standing Order do not confer any right of permanency.

23. On the strength of continuity for a considerable period of time, the respondent employees are not entitled to be absorbed in the regular service and made permanent, if the original appointments were not made by following due process of selection as envisaged under the Act of 1983 read with Statute of 1990. Respondent employees were the daily wagers and did not acquire any vested right to be regularized against the posts *de hors* the rules and regulations governing statutory authority.

24. The decision relied upon by the learned counsel for the respondent No. 1 in the case of **Madhukar Gyanji Dhage Vs. Marathwada Agricultural University, Parbhani and another** (supra) does not assist the case of the respondent No. 1 as the facts of the case are clearly distinguishable and the Division Bench has clarified that the decision shall not be treated as precedent having been rendered in the peculiar facts and circumstances of the case. As regards the decision of **Mahatma Phule Krishi Vidyapeeth, Rahuri (supra)** is concerned, the facts of that case are clearly distinguishable as the Petitioner therein was appointed on permanent establishment. The Apex Court in the case of **Hari Nandan Prasad and another Vs. Employer I/R to Mangmt. Of FCI and another** (supra) held that where the similarly situated workmen are regularized by the employer itself under some scheme or otherwise, direction of regularization in such

cases may be legally justified, otherwise, non regularization of the left over workers itself would amount to invidious discrimination.

25. In the complaints before the Industrial Court, the Respondent employees made vague reference to some of the retrenched employees having been appointed on permanent basis. There is no material produced on record to substantiate the contention of discrimination. The Industrial Court, while granting the benefits of permanency, has considered the Order 4-C of the Bombay Industrial (Employment) Rules, 1959 and has held that the Respondents having completed 240 days in preceding 12 months were entitled to permanency. There is no discussion as regards the applicability of the Order 4-C by appreciating the statutory provisions of the Act of 1983 and Statutes of 1990 governing the Petitioner University.

26. Considering the material on record and the judicial pronouncements, which have been discussed above, the judgment dated 23rd December, 2021 of the Industrial Court cannot be said to be justified and same is hereby quashed and set aside. The writ petitions are allowed. There shall be no order as to costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Feb. 23