

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11103 OF 2019

Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad,
Tal & District Aurangabad,
Through its Registrar

Petitioner
[Orig. Respondent]

VERSUS

Shri. Nandkishor Hanumantrao Maske
Age 46 years, Occ- Service
R/o. Malaria Colony, TPS Road, Osmanabad,
Tal & District Osmanabad.

Respondent
[Orig. Complainant]

WITH
WRIT PETITION NO. 11675 OF 2019

Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad,
Tal & District Aurangabad,
Through its Registrar

Petitioner
[Orig. Respondent]

VERSUS

Shri. Pramod S/o Limbraj Ingale
Age 43 years, Occ- Service
R/o. Balaji Nagar, Osmanabad,
Tal & District Osmanabad.

Respondent
[Orig. Complainant]

Mr. S.S. Thombre, Advocate for the petitioner.
Mr. V.P. Golewar, Advocate for the respondent.

WITH
WRIT PETITION NO. 13158 OF 2019

Shri. Pramod S/o Limbraj Ingale
Age 43 years, Occ- Service
R/o. Balaji Nagar, Osmanabad,
Tal & District Osmanabad.

Petitioner
[Orig. Complainant]

VERSUS

Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad,
Tal & District Aurangabad,
Through its Registrar

Respondent

WITH
WRIT PETITION NO. 13159 OF 2019

Shri. Nandkishor Hanumantrao Maske
Age 46 years, Occ- Service
R/o. Malaria Colony, TPS Road, Osmanabad,
Tal & District Osmanabad.

Petitioner
[Orig. Complainant]

VERSUS

Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad,
Tal & District Aurangabad,
Through its Registrar

Respondent

Mr. V.P. Golewar, Advocate for the petitioner.
Mr. S.S. Thombre, Advocate for the respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 9th AUGUST, 2023
PRONOUNCED ON: 3rd OCTOBER, 2023

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of parties.

2. Both these petitions challenge judgment of the
Industrial Court, Latur, in Complaint (ULP) No. 12/2017 and
13/2017. Since both these petitions raise similar question of law

and facts, they were heard together and are being decided by this common judgment.

3. The litigating parties, hereinafter shall be referred to as Petitioner as "University" and 'Respondents as "Complaints".

4. Writ Petition Nos. 11103/2019 and 11675/2018 are filed by the University, challenging the judgment dated 29.03.2019, passed by Industrial Court, Latur in Complaint (ULP) Nos. 12/2017 and 13/2017, thereby partly allowing the complaints and directing to pay the complainants wages equal to the lowest grade of salary and allowances being paid to its regular employees, from the date of judgment and further directing to consider claim of the complainants towards permanency as and when clear vacant posts are available.

5. Writ Petition Nos. 13158/2019 and 13159/2019 are filed by complainants, challenging the judgment in Complaint (ULP) Nos. 12/2017 and 13/2017, as their prayer for regularization of service is not granted.

6. Facts in brief are that:

The University has established sub-campus at Osmanabad in the year 2004. Complainant-Pramod is qualified

upto B.Sc., M.A, B.Ed and also possessed certificate of Marathi typing @ 30 W.P.M. and he has also passed MS-CIT course. Therefore, he is qualified for appointment on the Class-III post. Initially there were 8 to 10 employees working in several categories. Complainant-Pramod applied for job and considering his qualification, University appointed him in Micro-Biology department in the year 2005.

Complainant-Maske is qualified upto B.Com., M.A. (Economics) and also possessed certificate of Marathi typing @ 30 W.P.M. and English typing @ 40 W.P.M. and has also passed MS-CIT course. Therefore, he is qualified for appointment on the Class-III post.

7. On the establishment of the University in the year 2004 both the complainants applied for job. After considering their qualification, University appointed them in Micro- Biology department. It is not in dispute that the complainants have worked from 2005-2010 on various posts as accountant, store keeper, data entry operator and lab assistant. Various works were assigned to the complainants like letter writing, maintaining stock register, lab assistant etc. Initially, they were paid Rs. 55/- per day and at the time of filing complaints they

were getting wages at Rs. 10,000/- per month. They were shown as labour supplied through contractor. They claimed that though they were required to perform duties similar to regular employees, but, except provident fund, no other facilities are provided to them. Complainants and other similarly situated employees were constrained to resort to hunger strike. University agreed to regularize services of various workmen. Sanctioned posts are available with the Osmanabad sub campus of the University. By letter dated 25.02.2016, they were engaged for six months at payment of Rs. 10,000/- per month. Though, it was assured that their services will be regularized after six months, no further orders were issued. They have completed more than 240 days continuous service in each year. Therefore, by filing complaints they claimed that the University has indulged in unfair labour practice and claimed relief of permanency w.e.f. 01.06.2006 and consequential benefits of permanency.

8. University opposed the complaints by filing written statement stating that the complaints are not maintainable as complainants are governed by Maharashtra Public Universities Act, and they can approach grievance committee and college tribunal for redressal of their grievance. It is further contended

that initially complainants were appointed on contract basis and subsequently in view of management council's decision dated 16.08.2015, it was decided to take their services on contract basis for a period of six months on the consolidated salary from the university funds. The slabs of consolidated payments were mentioned in the written statement. The complainants have willingly accepted six months appointment on contract basis and therefore they are estopped from claiming relief of permanency. Since, the complainants were not appointed after following due procedure of law, they are not entitled for permanency or other consequential benefits.

9. After hearing the parties, Industrial Court partly allowed the complaints as follows;

:-ORDER:-

- "1. The complaint is partly allowed.
2. It is declared that the respondent has engaged in unfair labour practices as per Item 9 of the Sch. IV of the MRTU & PULP Act, 1971.
3. The respondent is directed not to engage in such unfair labour practices in future.
4. The respondent is directed to pay the complainant wages equal to the lowest grade of salary and allowances being paid to its regular employees from the date of Judgment.
5. The respondent is directed not to terminate the services of the complainant without following due process of law.

6. *The respondent is directed to consider the claim of the complainant towards permanency as and when clear vacant posts are available or recruitment process is carried out giving relaxation in the age limit, if required.*

7. *No order as to costs.*

8. *The proceedings are closed."*

The University as well as the complainants have challenged this decision.

10. Heard the learned advocate for the University and learned advocate for the complainants.

11. Learned advocate for the university assailed the impugned judgment on various grounds. He submits that since the complainants are governed by Maharashtra Public Universities Act, the complaints before the Industrial Court were not maintainable. Further submission is that the Industrial Court has erroneously recorded statement of the university that the university agreed to consider claim of the complainants as and when clear vacant posts are available. According to him, no such statement was made and the said observation is perverse. He further submits that once complainants accepted contractual employment, from 2016 onwards, they are estopped from claiming permanency and salary at par with regular employees.

He submits that in view of judgment in Secretary, State of Karnataka and Others vs. Umadevi (3) and Others, (2006) 4 SCC 1, complainants are not entitled for the relief granted by the Industrial Court. He submits that, admittedly, no advertisement was issued before appointing the complainants. They were working as daily wagers and on humanitarian ground their services were continued from 2016 onwards, purely on contractual basis. Complainants have accepted the service conditions mentioned in the contractual appointment orders issued to them and therefore they have no right to claim equal pay for equal work and regularization. By relying on Umadevi (supra), he submits that Industrial Court has committed a serious error of law and fact in granting equal pay for equal work and further directing the university to consider the claim of the complainants about permanency as and when clear vacant posts are to be filled in. He therefore submits that the impugned judgment and order is unsustainable and same is liable to be quashed and set aside.

12. Per contra learned advocate for the complainants has supported the impugned judgment to the extent it grants equal pay for equal work. He submits that the complainants are

working since 01.06.2005 and after completion of their ten years service they were made to accept contractual appointments. The complainants being beggars could not have refused to accept the contractual appointments as they were in dire need of service as their families were dependent on them. He submits that in fact multiple duties are performed by the complainants and therefore their services are termed as 'Multi Task Services'. He submits that though there are vacancies of Class-III posts, the university is denying permanency benefit to the complainants. He therefore submits that the complaints filed by the complainants deserve to be allowed in entirety. In support of his submission he relied on Raman Kumar & Ors. Vs. Union of India and Ors., Special Leave Petition (C) No. 7898/2020, Secretary, State of Karnataka and Others vs. Umadevi (3) and Others, (2006) 4 SCC 1, Mumbai Vidyapeeth Kamgar Sangathna vs. University of Mumbai, (2020) 2 Mah LJ 637, Sabha Shanker Dube vs. Divisional Forest Officer, 2018 SCC OnLine SC 2440 and Maharashtra State Road Transport Corporation and Anr. v. Casteribe Rajya P. Karmachari Sangathana, AIR 2009 SC (Supp) 2656.

13. Perused the memo of writ petitions, annexures

thereto, impugned judgment and the citations relied upon by the parties.

14. It is not in dispute that the sub-campus of the university is established at Osmanabad in the year 2004 and initially only 8-10 employees were engaged there. Pursuant to the applications made by the complainants they were appointed by university on 01.06.2005 in Micro-Biology department. Record further reveals that multiple tasks/duties were assigned to the complainants by the university which they have efficiently discharged. All these duties are, as can be seen from the record, done by Class-III employee of the university. Since beginning, the complainants are appointed in Micro-Biology department and till date they have performed various duties. Important duties like going to the other university in the establishment department, accounts department, voucher distribution, maintaining cheque book and cash book etc., have been discharged by the complainants from time to time.

15. Complainants obtained relevant information under Right to Information Act and placed it before the Industrial Court, wherein the staffing pattern of the total sanctioned posts are given. 89 posts of Junior Assistant cum Junior Clerk are

sanctioned and out of them 55 have been filled in and 34 are vacant. Complainants have also relied on office order of the university dated 3/5-07-2019, wherein at serial no. 2 name of Mr. Alange, Junior Engineer (Civil) is mentioned. Complainants contended that in the same order names of complainants are at serial nos. 9 and 10 and those are transfer orders. According to complainants, Mr. Alange was issued permanent appointment order. This fact is admitted by the witness of the university during cross examination.

16. The Industrial Court in the impugned judgment has held that from the experience certificates issued to the complainants and from various orders issued from time to time, it is clear that the complainants are working with the university since 2005. It is not disputed that the complainants along with other employees resorted to hunger strike and resolution dated 16.08.2015 came to be passed by the Management Council. However, said resolution was not implemented and again complainants and others resorted to hunger strike. Thereafter, complainants are getting wages at consolidated sum of Rs. 10,000/- per month. By referring to section 5, 8(1)(3)(4), 25 and 31 of the Maharashtra Public Universities Act, 2016, it is

held that, the employment claimed by the complaints are public employment and due process of law i.e. publication of advertisement, selection through written and/or oral examination is mandatory and till that period it was held that the complainants are entitled for equal pay for equal work. Then by recording statement of the university, it is held that the university has impliedly acknowledged that the complainants are performing duties equivalent to regular workman.

17. Learned advocate for the university has vehemently argued that no such statement was made by the university and the said statement is wrongly recorded in the impugned judgment.

18. Even if for the sake of argument, said statement is kept out of consideration, there is ample evidence on record to demonstrate that the complainants are discharging similar duties like that of permanent employees. In that view of the matter, no fault can be found with the direction given by the Industrial Court to pay the complainants wages equal to the lowest grade of salary and allowances being paid to its regular employees from the date of judgment.

19. Learned advocate for the university has relied on Umadevi (supra), wherein it is observed;

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

There cannot be any dispute about the above observations, but in para 53 of the said judgment it is held;

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be

considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

20. Appointments of the complainants are governed by the observations in above quoted para 53 and not by para 47. Hence, said argument of the learned advocate for the university is liable to be rejected.

21. In Raman Kumar (supra), it is held;

"7. In the Constitution Bench judgment of this court passed in Uma Devi (supra), though the Court has held that backdoor entries should not be permitted, it has permitted a one time measure to be conducted for regularization of the services of these employees who had completed the service of more than ten years.

8. Indisputably, the appellants herein have completed service of more than ten years. Even this Court in the

case of Ravi Verma and others v. Union of India and others (Civil Appeal No (s). 2795-2796 of 2018) decided on 13.03.2018 found that the act of regularizing the services of some employees and not regularizing the services of other is discriminatory and violative of Article 14 of the Constitution of India."

22. These observations are applicable to the facts of the present case inasmuch as though the university has regularized the services of Mr. Alange, the university has adopted discriminatory approach in denying the same benefit to the complainants though vacant posts are available.

23. There is no merit in the submission of learned advocate for the university that complaints filed before the Industrial Court, were not tenable. In Mumbai Vidyapeeth (supra), learned Single Judge of this Court, in similar facts held that, "*effective remedy under provision of section 79 of the Maharashtra Public Universities Act, 2016, would not prevent Industrial Court from exercising jurisdiction under MRTU and PULP Act.*"

By referring to decision in **State of Punjab and Others vs. Jagjit Singh and others**, (2017) 1 SCC 148, it is held, "*the judgment recognises the fact that the employees concerned were engaged in the same work that has been done by the*

permanent employees.However item 6 is restricted to persons employed as badlis, casuals or temporary employees and continuing them for years together in that capacity with the intention of depriving them of privileges of the permanent employees." In the said decision it was further observed that, "it would also be appropriate that the university fills up the sanctioned posts by filling up vacant posts from amongst the petitioners since in respect of the sanctioned posts it is not necessary to await State Government approval and where fresh recruitment has to be resorted to for this purpose, the university should proceed to fill up these posts."

24. In Maharashtra State Road Transport Corporation (supra), it is held;

"Umadevi does not denude the Industrial and Labour Court of their statutory power under S. 30 read with S. 32 of the Act to order permanency of the workers who have been victim of unfair labour practice on the part of the employer under item 6 of Sch. IV where the posts on which they have been working exists. Umadevi cannot be held to have overridden the powers on Industrial and Labour Courts in passing appropriate order under S. 30 once unfair labour practice on the part of the employer under item 6 of Sch. IV is established."

25. In Sabha Dube (supra), it is held:

"10. On a comprehensive consideration of the entire

law on the subject of parity of pay scales on the principle of equal pay for equal work, this Court in Jagjit Singh (supra) held as follows:

"58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

26. Learned advocate for the university has relied on decision of learned Single Judge of this Court at Principal Seat in Writ Petition No. 646/2013 and connected matters. In that case, advertisement was issued on 16.02.2008 for filling up 79 regular posts and 30 contractual posts. The respondents applied for non teaching contractual posts. They were interviewed and given appointments on contract basis for a period of 11 months. After

expiry of 11 months period, extension were granted to them and after expiry of extension two extensions of three months were granted. By resolution dated 19.09.2009, Government approved creation of 210 posts of non teaching employees, which were to be filled in on regular basis. Pursuant to said resolution, university issued advertisement on 08.03.2010 and respondents applied and participated in the selection process. However, they failed to qualify. In these facts, it is held:

"24. It is a settled position in law as laid down in catena of judgments of the Supreme Court that the contract appointees can have no any legal right to seek regularization. It is clear that the appointment was purely as an ad-hoc appointment for a fixed period then in that case such employee would not have any legal right to seek regularization so as to change the method of appointment in public services in a manner unknown to law. A useful reference can be made to decision of the Supreme Court in the case of Vidya vardhaka Sangha and Another V/s. Y.D. Deshpande reported in (2006) 12 SCC page 884 in para 4 the Supreme Court has observed as under:-

4. It is now well-settled principle of law that the appointment made on probation/ad hoc basis for a specific period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post. In the instance case as noticed above, the respective respondent have accepted the appointment including the terms and conditions stipulated in the appointment orders and joined the posts in question and continued on the said posts for some years. The respondents having

accepted the terms and conditions stipulated in the appointment order and allowed the period for which they were appointed to have been elapsed by efflux of time, they are not now permitted to turn their back and say that their appointments could not be terminated on the basis of their appointment letters not they could be treated as temporary employees or on contract basis. The submission made by the learned counsel for the respondents to the said effect has no merit and is, therefore, liable to be rejected. It is also well-settled law by several other decisions of this Court that appointment on ad hoc basis/temporary basis comes to an end by efflux of time and person holding such post have no right to continue on the post and ask for regularisation etc.,...”

This ruling is distinguishable on facts and does not assist the case of the university.

27. In the light of observations of the Hon'ble Supreme Court in para 53 of Umadevi (supra) and para 7 of Raman Kumar (supra), Industrial Court ought to have granted permanency benefit to the complainants as complainants have worked on Class-III post for more than 10 years and there are 34 sanctioned posts of Class-III available with the university.

28. In view of aforesaid reasons, following order:

ORDER

(i) Writ Petition Nos. 11103 of 2019 and 11675 of 2019

are dismissed.

- (ii) Writ Petition Nos. 13158 of 2019 and 13159 of 2019 are partly allowed.
- (iii) University shall prepare proposal for grant of permanency to complainants, setting out their engagement, their area of work and total years of service put in, till the date of proposal and the vacant posts of class-III cadre available.
- (iv) Such proposal shall be prepared by University within three months from today.
- (v) University shall forward said proposal to Higher & Technical Education, Department, Mantralaya, Mumbai, which shall take decision on the said proposal within a period of three months from the date of receipt of proposal, considering the seniority of complainants.

Rule is made partly absolute to above extent.

[NITIN B. SURYAWANSHI, J.]