

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

25 WRIT PETITION NO.13179 OF 2022

CHHAGAN SAHEBRAO JADHAV AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH PRINCIPAL SECRETARY AND OTHERS

...
Advocate for Petitioners : Mr. Balaji B. Yenge.
AGP for Respondent/State: Mr. S. K. Tambe.
...

CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 02nd January, 2023.

Per Court:

1. The learned advocate for the petitioners assures that the deficit Court fees of Rs.500/- would be deposited in this Court.

2. All these petitioners claim to be working as *Majdoors* on daily wages from 1980 onwards. All claim to have worked continuously for 240 days in each calendar year for about 15 to 20 years. All claim to have retired from employment. By this petition, filed on 24th August, 2022, these petitioners pray that they should be granted permanency with effect from 2002 and grant salaries and consequential benefits by treating all these petitioners as having worked for 240 days in continuous employment in each calendar year. Further grievance is that several employees, who were juniors to the

petitioners, have been regularized and have been granted benefits of permanency.

3. In the light of the above, the petitioners desire that we should consider the disputed questions, which are as under:-

- a) Which of the petitioners have been working as daily wagers from 1980 or 1981;
- b) Which of the petitioners have completed 240 days in continuous service in each calendar year;
- c) Which of the petitioners have put in how many number of years in employment;
- d) Which are those employees, who were juniors to the petitioners and were granted benefits of regularization; and
- e) Whether any evidence is available with the purported employer in order to enable the Court to scrutinize as to whether these petitioners could be granted permanency with effect from 2002.

4. It is well settled that in establishments operated by the State or State Instrumentalities or Universities or Agricultural Universities, mere completion of 240 days in continuous employment is not enough to grant regularization / permanency. Permanency can be granted only on a permanent vacant post. Standing Orders 4C and

4D of the Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946, would not apply to the State or State Instrumentalities. Considering a similar position, this Court at the Nagpur Bench has delivered a judgment in the matter of ***Municipal Council Tirora and another Vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J. 867.***

5. The learned advocate for the petitioners strenuously relies upon a judgment delivered by the Honourable Supreme Court dated 26th July, 2021 in the matter of Vice Chancellor Anand Agriculture University Vs. Kanubhai Nanubhai Vaghela and Anr., in Civil Appeal No.4443 of 2021 arising out of SLP (C) No.12171 of 2019. Having perused the said judgment, it is apparent that the employees had raised an industrial dispute under the Industrial Dispute Act, 1947 and had succeeded before the Industrial Tribunal where the dispute was referred by way of a reference. The Gujarat High Court interfered with the conclusions of the Tribunal. The Honourable Supreme Court set aside the judgment of the High Court.

6. In view of the above, we do not find that this petition could be entertained under the Writ of Mandamus or Article 226 of the Constitution of India. The petitioners have a statutory remedy of raising an industrial dispute notwithstanding that they have crossed the

age of superannuation, for espousing their cause of action, which would constitute an industrial dispute under the Industrial Dispute Act, 1947.

7. In view of the above, this petition is disposed off with liberty to the petitioners to raise an industrial dispute.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]

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