

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

WRIT PETITION NO.1665 OF 2009

The State of Maharashtra through
The Executive Engineer & Anr.

..Petitioners

Versus

Sunil Shankarrao Sanagar & Ors.

..Respondents

**WITH
CIVIL APPLICATION NO.381 OF 2019
IN
WRIT PETITION NO.1665 OF 2009**

Ravindra Dashrath Torase & Ors.

..Applicants

IN THE MATTER BETWEEN

The State of Maharashtra through
The Executive Engineer & Anr.

..Petitioners

Versus

Sunil Shankarrao Sanagar & Ors.

..Respondents

Mr. A. P. Vanarase, AGP for the Petitioners/State.

Mr. G. N. Salunke a/w V. S. Kokitkar, for the Respondents.

CORAM : MILIND N. JADHAV, J.

DATE : 11th DECEMBER, 2023

ORAL JUDGMENT

1. This Writ Petition is filed under the provisions of Articles 226 and 227 of the Constitution of India by the State of Maharashtra through Executive Engineer, Water Resources Division, Pune taking exception to the judgment dated 23.10.2008 passed by

the Industrial Court, Kolhapur in Complaint (ULP) No.310 of 1999. By the said impugned judgment, the Industrial Court has allowed the complaint partly and directed the Petitioners to engage/employ the original complainants in accordance with their seniority and exigencies of work and also to consider their cases and bring them/appoint them on converted regular temporary establishment as per the terms of Kalelkar Settlement Award.

2. Mr. Vanarase and Mr. Salunke, both the learned advocates appearing for the Petitioners and Respondents at the outset have fairly conceded that originally when the complaint was filed, it was filed by 38 workers/complainants, out of which two workers expired during the interregnum much before the complaint was even decided and prosecuted by 36 workers only thereafter. Both would jointly submit and in fact draw my attention to one admitted fact, namely that after the original complaint was filed, 17 out of the original 38 workers before the Labour Court agreed to be employed through the contractors appointed by the State Government of Maharashtra and have continued thereafter as contract workers of the contractors. Mr. Vanarase would submit that these 17 labourers/workers would therefore stand outside the purview of the impugned judgment dated 23.10.2008. Though by virtue of the said judgment, a direction has been clearly given to the State Government that all complainants were required to be accorded seniority on and from 2009 onwards and also to consider their cases for being appointed on converted regular temporary

establishment as per the Kalelkar Award. Mr. Salunke in his usual fairness has not opposed this submission made by Mr. Vanarase and would fairly submit that only those workers who were remaining and did not agree to work on contract basis under the contractor appointed by the State Government would be eligible to get the benefit under the impugned judgment, if the said impugned judgment is upheld by this Court in the present Writ Petition.

3. In view of the above background, the brief facts necessary for adjudication of the present Writ Petition are outlined hereunder :-

Originally 38 workers who were employed as Gauge Mazdoors in the Water Resources Division, Sub Division No.6, Kolhapur filed Complaint No.224 of 1999 in the Labour Court at Kolhapur to restrain the State Government of Maharashtra from terminating their services and compelling them to continue in service through the State appointed contractor in respect of the same work. It is an admitted position that these workers were working as temporary daily wage/rate Gauge Mazdoors since the date of their original appointment, which dated back to far as back in 1981-82 in the case of 38 workers and stretching upto 1996-97. The statement showing the particulars regarding services rendered by the original complainants from 1981-82 to 1997-98 is appended at page 65 of the Petition and the date of appointment indicated in column 5 thereof is an undisputed position. Admittedly, the original

complainants were employed every year, year after year on regular basis by the State Government of Maharashtra through the Irrigation and Power Department/Water Resources Department during the rainy season i.e. June to September of every year and their services were laid off during the rest of the year. In the written statement filed to the original Complaint (ULP) No.224 of 1999 the Executive Engineer, Water Resources Division, Pune agreed that the original complainants were appointed on temporary and seasonal basis as Gauge Mazdoors and they were issued temporary appointment orders, which were conditional orders. It is agreed by the State Government that original complainants were appointed in each year for the period 15th June to 15th September for four months for the purpose of rain Gauge reading and the Gauge water flow in various rivers in Kolahpur Region. By judgment dated 07.09.1999, the complaint was dismissed by the Labour Court with the direction that considering the case of the original complainants that they were seasonal employees, undoubtedly they would get preference for getting employment from the subsequent season that would start. The original complainants, however before the said complaint could be decided by Complaint No.310 of 1999 dated 09.07.1999, had already approached the Industrial Court, Kolhapur for seeking a declaration that the respondent/State Government of Maharashtra had engaged in unfair labour practice and sought permanency and benefits of permanent employees along with arrears. Appended to the said complaint at 'Annexure-A' thereto was the statement

showing particulars regarding the services of the complainants from the date of their respective appointments. This complaint was filed under Items 5, 6, 9 & 10 of the MRTU & PULP Act, 1971, in view of the fact that by that time their services were terminated by the State Government of Maharashtra and it was apprehended that they would not be continued in services in the next season. Hence, apart from declaration that having indulged in unfair labour practice, the original complainants sought reinstatement with continuity of service and full backwages along with consequential benefits of permanent employees.

4. Mr. Vanarase, learned AGP on behalf of Petitioners would submit that the said complaint has been partly allowed by the learned Industrial Court and hence, is under challenge in the present writ petition. He would submit that none of the original complainants were eligible for and are entitled to permanent status in view of the fact that they were originally appointed on temporary and seasonal basis as daily wage workers, which is an admitted position. He has heavily relied upon the appointment order issued to the original complainants which was of a conditional nature and which clearly stated that after the rainy season in each calendar year the complainants were not continued for any further work and thus they were employed on temporary basis. It was contended that the Irrigation Department, which employed the original complainants/workers was not an industry and composite complaint was not maintainable. He would therefore challenge the reasoning

given by the learned Industrial Court that since the workers had worked on temporary basis for years together and in any event for a continuous period of five years would entitled them to be regularized as casual temporary establishment by application of the Kalelkar Award. He would submit that if clause 26.4 is read with clause 28 of the Kalelkar Award it is evident that for application of the Kalelkar Award, the twin conditions, namely continuous working for five calendar years and completion of 240 days in each calendar year are requirements and only in such cases the benefit of Kalelkar Award can be extended to a workman for regularizing his services and to grant him permanent status. In the instant case, he would submit that there is material on record to prove that none of these workers satisfied the second condition in the Kalelkar Award stipulated under clause 28 thereof and have completed 240 days of continuous service in one calendar year. He would therefore submit that none of the original complainants/workers are entitled to permanent status or their services can be regularized as permanent employees as sought for by them. Hence, he would submit that the impugned judgment requires interference by this Court.

5. *Per contra*, Mr. Salunke, learned advocate appearing for the workers would submit that the complaint filed by the workers has been partly allowed and the declaration given is to the effect that an unfair labour practice has been committed only in terms of Items 6 & 9 of Schedule IV with a direction to engage the original

complainants in accordance with their seniority and exigencies of work from the next Monsoon/rainy season and consider their cases to bring them on converted regular temporary establishment as per the terms of Kalelkar Settlement. In effect, what Mr. Salunke would submit is that by virtue of the impugned judgment, learned Industrial Court has protected the seasonal employment of the original complainants/workers so as to ensure that they were regularly employed during the rainy season under the status of converted regular temporary establishment norms as per the terms of Kalelkar Settlement.

6. I have heard Mr. Vanarase, learned AGP and Mr. Salunke, learned advocate appearing for the Petitioners and Respondents and with their assistance perused the record and pleadings of the case. Submissions made by the learned advocates have received due consideration of the Court.

7. Mr. Vanarase, learned AGP has drawn my attention to the affidavit dated 5th December 2023.

8. In the present case, it is seen that it is an undisputed fact that the original workers were employed and have been in service since long with the petitioners every year, year after year during the rainy season. The only issue that has been framed by the learned Industrial Court pertains to indulgence in unfair labour practice within the scope of Items 5, 6, 9 & 10 of Schedule IV of the MRTU &

PULP Act and the conclusion in the judgment is that the Petitioners indulged in unfair labour practice under Items 6 & 9 of the Schedule IV. In so far as Item 5 is concerned, it deals with the unfair labour practice of showing favouritism or partiality to one set of workers, regardless of merits and such was not case of the original complainants in the complaint that was filed by them. In that view of the matter, learned Industrial Court rejected original complainants' case on parity and rightly so. In so far as unfair labour practice under Item 6 is concerned, it was the case of the original complainants/workers that they were engaged as temporary workers for years together on a regular basis, year after year and given artificial breaks every year only with the sole object of depriving them status and privileges as permanent employees/workers. The only point of distinction in the present case is that though it is an admitted position that the original complainants/workers were engaged for years together, year after year, they were admittedly engaged as temporary workers on temporary post which was operational/functional only for four months in every year. Since these were the admitted facts, considering the nature of work performed by the original complainants, it was pleaded by the workers that their services were required to be made permanent, which was considered by the learned Industrial Court, however, by giving them the benefit of converted regular temporary establishment post (*emphasis supplied*) on a year to year basis. While doing so, learned Industrial

Court referred to the cases of similarly placed employees/workers, namely R. R. Padewal, B. S. Kamble, S. S. Devkule, B. M. Kolekar, G. B. Satpute, N. M. Jadhav and G. R. Kamble in its judgement, who were also employed as Gauge Mazdoors along with the original complainants but their services were regularized on converted regular temporary establishment under the Kalelkar Award. Affirmative finding to that effect after discussing the cases of above workers has been returned by the learned Industrial Court in paragraph No.14 read with paragraph No.17 in the impugned judgment. However, considering the claim of the original complainants as to whether under the doctrine of legitimate expectations, they would be entitled to be confirmed as permanent employees, the learned Industrial Court while referring to the case of Secretary, State of Karnataka Vs. Uma Devi & Ors. held that in the facts and circumstances of the present case, the original complainants/ workers could not advance the theory of legitimate expectation, considering the admitted position that they were employed on temporary basis, admittedly in every year, year after year, for years together and therefore, their case can be considered as converted regular temporary establishment under the Kalelkar Settlement.

8. The learned Industrial Court has returned a categorical affirmative finding in respect of unfair labour practice under Items 6 & 9 of Schedule IV in paragraphs 10 and 17 of the judgment, which calls for no interference whatsoever by this Court. Those are cogent

and reasoned findings taking into account the facts and circumstances and the work performed by the original complainants in the present case. Admittedly, in every rainy season since long the original complainants/workers have been engaged by the Petitioners and therefore, they are entitled to be brought on converted regular temporary establishment of the Petitioners. The learned Industrial Court has also extensively regularized all several similarly placed employees and on the basis of the original muster roll/pay sheets, office copy of appointment orders, the cases of those employees have been considered by the Petitioners and having brought them on converted regular temporary establishment and a specific direction was given to the Petitioners to produce their orders and documents below Exh.U17. The Petitioners failed and declined to produce the same, only requiring the learned Industrial Court to draw an adverse inference that in so far as the original complainants/workers are concerned, the Petitioners had indulged in unfair labour practice. Such are the findings in paragraph No.14 of the judgment passed by the Industrial Court.

9. In view of above observations and findings, I find no reason whatsoever to interfere with the judgment and order dated 23.10.2008 in its entirety, save and except clarify that the said decision shall be applicable only to those remaining employees out of the original 38 complainants / employees/workers, who did not take up the employment through the contractor appointed by the Petitioners. In that regard, the State Government/petitioners are

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directed to ascertain the same and provide benefit of the order dated 23.10.2008 only to those remaining workmen, who continued to prosecute the present complaint till today. In the event any of the workers are expired and dues are remaining payable to them, the same shall be paid over to the legal heirs of those workmen. The Petitioners are directed to approach the concerned workers, who are entitled for the benefit of the judgment passed by the Industrial Court and intimate them about the same.

10. With the above directions, Writ Petition is dismissed.

12. In view of the above, Civil Application No.381 of 2019 stands disposed.

[MILIND N. JADHAV, J.]

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