

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

WRIT PETITION NO. 1813 OF 2019

Kamlesh Bhiku Baglane & Ors.

....Petitioners

Versus

The State of Maharashtra & Ors.

....Respondents

...

Mr. Avinash B. Avhad a/w. Mr. Sahil S. Ghule for the Petitioner.

Ms. R. A. Salunkhe, AGP for Respondent Nos.1 & 2 - State.

...

**CORAM: NITIN JAMDAR, ACJ &
SANDEEP V. MARNE, J.**

DATE : 13 JUNE 2023.

P.C.:

Petitioners have filed this petition seeking a Writ of Mandamus against Respondent No.1 to 3 for issuance of orders of permanency in service in the Government Industrial Training Institute, Khed Rajgurunagar with consequential benefits.

2. Facts of the case are that the Government of Maharashtra, through Directorate of Vocational Education and Training, runs Government Industrial Training Institute (ITI) at Khed-Rajgurunagar, District Pune which is engaged in imparting vocational training. Bharat Forge Ltd. (BFL) proposed to setup a Multi Product Special Economic

Zone at Khed, Taulka & District Pune. A Memorandum of Understanding (**MoU**) was executed between BFL and Government of Maharashtra on 25 May 2007 under which the Government ITI, Khed was to impart training in various trades with the objective of upliftment of people in and around company's Multi Product Special Economic Zone. Under the MoU, BFL was to appoint teaching and non-teaching staff on contract basis as per staffing pattern of ITI for a period of 5 years. The Directorate of Vocational Training was to assist BFL for selection of teaching and non-teaching staff. However, the staff was not to get any service benefits from the Government.

3. In pursuance of the MoU, BFL appointed Petitioners from time to time on contract basis as Instructors in the ITI, Khed. Petitioners claim that they worked continuously with the ITI, Khed till the filing of the petition. It is submitted that during pendency of the petition, their services were terminated. Petitioners claim permanency in the services of ITI, Khed on the strength of past services rendered by them since the year 2008.

4. Appearing for the Petitioners, Mr. Avhad the learned counsel would submit that Petitioners were appointed after following due process of selection in ITI, Khed and worked continuously and in the process rendered more than 10 years of service. That Petitioners' conditions of service were regulated by ITI Khed alone and that BFL had no say in the same. That therefore petitioners were employees of the ITI Khed and not that of BFL. Having continuously worked for more than 240 days in

several years, petitioners deserve to be granted permanency status in the services of ITI Khed. He placed reliance on judgment of the Apex Court in **Arjun Sing & Ors. Vs. State of Himachal Pradesh & Ors.**¹.

5. Ms. Salunkhe the learned AGP appearing for Respondent Nos.1 and 2 opposed the petition. She submitted that Petitioners were never appointed by the government in any manner. That they were employees of BFL as their salaries were always paid by BFL. That there is no question of granting permanency to them in the services of ITI Khed.

6. Having heard the learned counsel for the parties and after perusal of pleadings and documents on record, the short issue that arises for our consideration is whether Petitioners are entitled to be treated as permanent employees of ITI Khed. Perusal of appointment order produced by Petitioners would indicate that they are not appointed by the ITI Khed but are appointed by BFL. It is not in dispute that their salaries are paid from time to time by BFL and not by the ITI. Petitioners can not be treated as employees of ITI Khed. Issuance of appointment orders and payment of salaries by BFL would leave no matter of doubt that petitioners were employees of BFL and not that of ITI.

7. Petitioners have placed heavy reliance on the MoU to contend that they are required to be treated as employees of ITI. Clauses 11, 12, 13 and 14 of the MoU are reproduced below -

11. *BFL shall constitute Institute Management Committee which*

1 2015 DGLS (Soft) 51.

shall be chaired by BFL officials and Principal ITI, Khed will be the member secretary other composition of committee shall be as per notification of State Govt. Role and Responsibility of the Institute Management Committee (UMC) shall be as specified in Annexure-A. This Committee shall only look after Six trades agreed under this MOU.

12. The infrastructure provided by BFL such as building, machinery, equipments etc. shall become the property of the Govt. of Maharashtra, Department of Higher & Technical Education/Govt. ITI Khed. This staff will not get an benefits of services from Government.

13. Bharat Forge Limited shall appoint a teaching and non-teaching staff on contract basis as per staffing pattern of I.T.I. for the period of Five year i.e. up to the validity of MOU if the MOU is extended for further period then appointment will be continue by the Bharat Forge Limited, Pune.

14. Directorate of Vocational Training will assist for selection of teaching and non-teaching staff for conducting the training in the trade as per its rules and regulations.”

8. Thus under the MoU, it was specifically agreed that the staff employed by BFL and deployed in ITI Khed would not be treated as employees of the government. The arrangement agreed in the MoU was for setting up infrastructure of ITI by BFL for training the personnel around its SEZ at Khed-Rajgurunagar. Record indicates that one of the objectives of making facilities available for imparting vocational training in specified trades was to make available trained staff for employment in the industrial activities undertaken by BFL. Merely because BFL agreed to provide infrastructure and teaching and non-teaching staff in the ITI at Khed Rajgurunagar would not *ipso facto* mean that the teaching and non-teaching staff appointed by BFL on contract basis would automatically become employees of ITI.

9. Petitioners have also relied upon various communications at Exh-H to the petition, under which the ITI issued various orders for deployment of staff employed by BFL. The appointments of teaching and non-teaching staff though were made by BFL, they were deployed for work at ITI. Once services of petitioners were placed at the disposal of ITI, their postings in various departments were bound to be made by ITI. This would not mean that the staff employed by BFL would become employees of ITI.

10. The appointments of petitioners were not against regularly sanctioned vacant posts existing in ITI. On the contrary, petitioners were employees of BFL who were merely deputed to work in ITI. Petitioners therefore have no semblance of right to seek regularization of their services in ITI. The law on regularization of casual / ad-hoc / contract / temporary employees is now well settled by catena of judgments. The Apex Court in **Secretary, State of Karnataka Vs. Umadevi** (2006) 4 SCC 1, held that mere continuance of casual / ad-hoc / contract / temporary employees in service for long time does not create a right in their favour to seek regularization. Only one time exception is carved out by the Apex Court in paragraph No. 53 of the judgment, under which irregularly employed casual / ad-hoc / contract / temporary employees against sanctioned vacancies/posts and who continued in service upto 10 years could be regularized in services as a one-time measure.

11. In **Official Liquidator Vs. Dayanand**, (2008) 10 SCC 1, A three judge bench of the Apex Court reiterated the principles expounded

in *Umadevi* and held that the said principles must be scrupulously followed and a somewhat discordant note struck in the Judgment of two judges bench in **U. P. State Electricity Board Vs. Pooran Chandra Pande** (2007) 11 SCC 92 to water down the binding effect of *Umadevi* was directed to be treated an *obiter* and not a binding precedent for High Courts, Tribunals and other judicial fora.

12. Petitioners' reliance on the judgment of the Apex Court in *Arjun Sing* (Supra) would have no application to the case in hand. In that case, the employees therein were appointed against 14 vacant posts, albeit on contract basis. Since the appointments in that case were made against regularly sanctioned vacant posts, they were held to be eligible for regularization in services.

13. In the instant case, Petitioners' appointments were not against sanctioned vacancies / posts in ITI. In fact, they were never employed by the ITI but employed by a private company (BFL).

14. Resultantly, we do not find any merit in the present petition. The petition is therefore dismissed with no order as to costs.

SANDEEP V. MARNE, J.

ACTING CHIEF JUSTICE