

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6398 OF 2003
WITH
CIVIL APPLICATION (ST) NO. 27096 OF 2012

The Deputy Conservator of Forest,
Nashik Van Vibhag (E), Nasik & Ors.

.. Petitioners

Versus

Nasik Zilla Van Shramik Sangh

.. Respondent

.....

- Mr. A.P. Vanarase, AGP for Petitioners / State
- Mr. Sanjeev B. Deore a/w Ms. Suchita J. Pawar for Respondent
- Mr. Sagar S. Dhole, Range Forest Officer present

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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 06, 2023

ORAL JUDGMENT:

1. This Writ Petition is filed by Petitioners on behalf of the State of Maharashtra under Article 227 of the Constitution of India taking exception to the common impugned Judgment & Order dated 06.03.2002 passed by Industrial Court, Nasik allowing 5 separate ULP Complaints filed by Respondent – Nasik Zilla Van Shramik Sangh on behalf of workers and 6 individual Complaints filed by 6 workers, disposing them all by the common Judgment / Order. By the impugned Judgment & Order, *inter alia*, the Industrial Court allowed all Complaints and directed Petitioners to extend the benefit of status of permanency and to maintain seniority list of the employees employed in forests under Nashik Van Vibhag, Nashik. Rule was

issued on 29.09.2003.

2. Briefly stated, original Complainant i.e. Respondent Union (Sangh) filed 5 Complaints being (ULP) Nos. 320/1997, 636/1998, 63/1999, 30/1999 and 34/2000 in a representative capacity on behalf of various workers / labourers engaged in the Forest Department in Nasik Division before the Industrial Court under the provisions of Section 28 read with items 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 seeking declaration against Petitioners that they had committed unfair labour practices and denied status of permanency to the workmen. Further 6 separate Complaints being Complaint Nos. 244 to 249/2000 were filed by 6 individual workmen on the same grounds and for the same reliefs. All 11 Complaints were decided by the common impugned Judgment.

3. It was contended by Respondent Union before the Industrial Court that work performed by the workers / labourers was of a permanent nature and perennial one which was supervised by the Forest Guards and Range Forest Officers. That workers were engaged on daily wages but paid monthly wages on daily rate basis and their attendance was recorded and maintained by the Forest Guards and / or Range Forest Officers of the concerned Forest Office where they were working. It was contended that minimum wages paid to workers were increased from time to time keeping in view the circular

issued by the Government of Maharashtra and as per the rate fixed by the Wage Board. It was contended that all workers had completed more than 5 years of continuous service and simultaneously 240 days of service in each calendar year in continuity for 5 years and in view of the extant Government Resolutions issued by the Government of Maharashtra in 1996 and 1999, they ought to have been given the benefit of status of permanency. Hence, the Complaint came to be filed by the representative Union before the Industrial Court.

4. Mr. Vanarase, learned AGP appearing on behalf of Petitioners would contend that the workers were engaged temporarily and on daily wages; that there was no employer-employee relationship between parties and hence they would not have any *locus standi* to file the original Complaint itself which was not maintainable before the Industrial Court. He would submit that most of the workers were engaged under various Government Schemes namely the Employment Guarantee Scheme, Jawahar Rojgar Yojna and various Plantation Schemes initiated by the State Government at various points of time and in that view of the matter, it cannot be contemplated that the workers had completed 240 days of continuous service per year and that too in continuity for a period of 5 years to be eligible for status of permanency. He would next submit that the Forest Department under which the workers were employed is not an 'Industry' as contemplated

under Section 2(j) of the Industrial Disputes Act, 1947 as the said Department performs sovereign functions and in that view of the matter, Complaints filed by the Union on behalf of the workers as by well as some of the workers individually were not maintainable. It was submitted that Petitioners did not have availability of funds, that there was no sanctioned / budgetted posts available for absorption of these workers in service and granting them status of permanency and hence they cannot be made permanent. Such are the grounds pleaded in paragraph Nos. 5(a) to 5(r) of the Petition.

5. Though the Respondent Union is not represented before me today when this Petition is taken up for final hearing after almost 21 years after its filing, I have permitted Mr. Deore, learned Advocate practicing in this Court as an Advocate to espouse the cause of one of the workman concerned namely Mr. P.A. Dhondage whom he desires to represent. He has sought leave of the Court in view of the fact that there is no representation on behalf of the Respondent Union i.e. Nasik Zilla Van Shramik Sangh. Since none appears for the Respondent nor any of the individual workers, I have permitted Mr. Deore to address and assist the Court.

6. In the impugned judgment and order of the Industrial Court it is seen that after considering the entire evidence on record, the Court has returned a categorical finding that Mr. P.A. Dhondage

(worker) was one of the 56 employees whose cause was espoused by the representative Union (Respondent herein) in Complaint (ULP) No. 34/2000 and he had completed 240 days of service in each year and worked for more than 5 years in continuous service with the Petitioners and was therefore granted benefit of permanency. This is one more reason for me to allow Mr. Deore to address the Court in the interest of justice.

7. *PER CONTRA*, in response to Mr. Vanarase's submissions, Mr. Deore, learned Advocate for Respondent has made the following submissions:-

7.1. He would submit that Petitioners have challenged the impugned order dated 06.03.2002 passed by the Industrial Court allowing the Complaint filed by the Respondent Union; that by the impugned order the Industrial Court directed Petitioners to accord permanent status to the workers in Category 'D' of class IV employees by taking necessary sanction within 06 months from the date of the order and award them consequential benefits, however since the said order was challenged by the Petitioners in this Petition, the order was stayed by this Court resultantly many eligible workers had since retired / passed the superannuation age, some of them have expired and many may not be even aware of these proceedings.

7.2. That Mr. P.A. Dhondage was a member of the Respondent Sangh who was complainant in Complaint (ULP) No. 34/2000 which was allowed by the Industrial Court by order dated 25.02.2002 and even upheld by this Court by order dated 25.08.2003 passed in Writ Petition No. 3476 of 2004. Copy of this judgment is placed on record; that facts of this case were identical to the facts of the present case;

7.3. He would submit that the issue of Van Majoors (Forest workers) being eligible for grant of status of permanency has already been decided by this Court by its judgment dated 08.09.2010 passed in Writ Petition No. 3274/2002 and followed by another judgment dated 18.11.2010 passed in Writ Petition No. 2223/1997 wherein this Court has confirmed the judgment & order passed by the Industrial Court and bestowed status of permanency to the Van Majoors (workers) who are all identically placed and therefore covered.

7.4. He would submit that till date, Petitioners have not complied with the order of Industrial Court and till date Mr. P.A. Dhondage has not been given the status of permanency.

8. I have heard the submissions advanced by Mr. Vanarase, learned AGP on behalf of Petitioner and Mr. Deore, learned Advocate and perused the record and pleadings in the Writ Petition with their able assistance. I have also perused the following judgments of this Court which are directly relevant for adjudication of the present Writ

Petition:-

- (i) Writ Petition No. 3274 of 2002 (Conservator of Forests & Anr. Vs. Savala Dhondiba Pise) & 5 other Companion Writ Petitions decided on 08.09.2010;
- (ii) Writ Petition No. 2223 of 1997 (Indubai Narayan Chavan Vs. Dy. Conservator of Forest, Pune Division, Pune & Anr.) along with 17 other Writ Petitions decided on 18.11.2010 and
- (iii) Writ Petition No. 3476 of 2004 (The Conservator of Forests & Anr. Vs. Ananda Some Ughade) decided on 25.08.2023.

9. Perusal of the impugned judgment would show that a group of 11 Complaints, *inter alia*, pertaining to several employees filed by the Complainant - Union i.e. Nashik Zilla Van Shramik Sangh were heard and decided by the learned Industrial Court by the common judgment. It was submitted by Complainants that workers since the time of their joining duty were in continuous employment with Petitioners; that they completed more than 5 years in continuous service and 240 days of service in each calendar year and in view of the extant Government Resolutions then prevailing were entitled for the benefit of permanency. It was submitted that in view of the findings and recommendations of the Kalelkar award which was

accepted by the State Government for granting status of permanency and permanency benefit to temporary employees / workers who were engaged continuously for a period of 240 days in one calendar year and in continuous service for a period of five years was required to be adopted in the case of the present workers. Hence the Industrial Court framed the following issues for determination:-

- “1. Does the Complainant prove that Respondents have committed unfair labour practices under items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971?*
- 2. Whether the Respondent proves that the Complaints are not maintainable as the Respondent Department is not an Industry u/S. 2(J) of the Industrial Disputes Act, 1947?”*

9.1. Learned Industrial Court after considering the record and documents below Exh. C-4 and C-5 which included the abstract of the working days and the work performed by the workers under various Schemes after their appointment with the Petitioners, came to the conclusion that it was an admitted fact that the workers were engaged on daily wages and that they were working continuously for the last so many years and they had completed more than 240 days in each calendar year under various Schemes. (emphasis supplied) Industrial Court further returned a categorical finding that it was an admitted fact that these workers were working continuously since the last 10-15 years or even more than that under various Schemes formulated and implemented by the functionaries of the Petitioners as per the directions given by the State Government according to availability of

funds. A further categorical finding was returned concluding that it was an undisputed fact that even after completion of one Scheme the services of these workers were never terminated by Petitioners and on the contrary their engagement was continued in another Scheme and hence their services were continuous. It was held that these workers were continued in employment for several years and were not terminated until filing of the Complaints before the Industrial Court. It was held that Petitioners did not follow its own Circulars in the case of the workers in the present case and in fact, majority of the Complainants were still in the employment of the Petitioners.

9.2. After looking into the evidence placed on record by the Petitioners themselves, *inter alia*, pertaining to the abstract of working days below Exh. C-4, Exh. C-5, Exh. C-8, Exh. C-9 and further relevant information below Exh. C-10, it was categorically held as proved that majority of the employees / workers were in continuous employment of the Petitioners for several years.

9.3. Learned Industrial Court from paragraph No. 20 of the impugned judgment thereafter undertook the exercise of categorising these workers namely those workers who were covered by the aforesaid findings and those who were not.

9.4. All eleven Complaints were dealt with by the Industrial Court separately while deciding the aforementioned two issues based

on the facts and timeline of each worker. It is seen that in each and every Complaint, details of the workers with their names and all other requisite details were stated in Annexure 'A' to the respective Complaint. These details were juxtaposed and compared by the Industrial Court with the details of the workers furnished below Exh. C-9 with respect to the number of working days of each worker from 1990 onwards while in the employment with Petitioners. After an elaborate exercise with respect to determination of those workers who would be covered by the provisions after having worked continuously for 240 days in one calendar year and that too continuously for a minimum period of 5 years in continuity and / or much more than that, the learned Industrial Court returned a categorical finding with respect to each of the workmen who were covered by the aforementioned time frame / conditions. It is seen that each of the 11 Complaints have been dealt with in separate paragraphs.

9.5. With such overwhelming evidence having been considered by the learned Industrial Court for determining the question of grant of status of permanency, no fault can be found with the impugned Judgment & order. Reading of the impugned Judgment & Order reveals that those workers who did not qualify within the aforementioned terms / conditions were in fact not granted the status of permanency and were categorically left out.

9.6. In this regard, I would like to draw sustenance from the decision in the case of *Conservator of Forests & Anr. Vs. Savala Dhondiba Pise (supra)* passed by the learned Single Judge (Coram : Smt. Nishita Mhatre, J.) of this Court, the ratio of which squarely covers the present case. The issues involved in those bunch of cases were of similarly placed workers and agitated by the Respondent – Sangh as well as many individual workers independently. The learned Single Judge considered all objections which were advanced by Mr. Vanarase on behalf of Petitioners therein and decided them on merits by confirming the judgment passed by the learned Industrial Court in the case of identically and similarly placed co-workers who were found to be eligible. Findings returned in paragraph Nos. 11, 12, 13, 18, 19, 20, 21, 22 to 25 are directly relevant and answer the issues and grounds raised by Petitioners herein. In fact Mr. Vanarase has argued the same proposition in the present Writ Petition before me which have been dealt with and decided by this Court earlier on merits. The above paragraphs are reproduced below for reference:-

“11. It is true that such workmen may not have a fundamental right as observed by the Supreme Court. However, the Court has not dealt with the statutory rights of an industrial worker in either of the aforesaid judgements. The MRTU & PULP Act is a statute which deals with unfair labour practices. Under Industrial jurisprudence, which is based on welfare legislations, certain rights have been bestowed on the workmen. The workers cannot be divested of these statutory rights by the judgement in Umadevi's case (supra). Nor does the judgement in the case of Umadevi (supra) say so. To read the judgement in the case of Umadevi in a manner so as to deprive the workmen of their statutory rights, would do violence to the language of the judgement. Therefore, it is not possible to accept the submission of the learned AGP that

merely because of the judgement in the case of Umadevi (supra), the rights conferred on a workman under the Industrial Disputes Act or the MRTU & PULP Act or the other labour legislations are to be ignored.

12. In *The State of Maharashtra & Anr. vs. Pandurang Sitaram Jadhav*, **Letters Patent Appeal No.14 of 2008**, the Division Bench of this Court (Swatanter Kumar, C.J. and A.P. Deshpande, J.) considered a case where the Industrial Court found that the workman in that case had been engaged on daily wages for years together. The Industrial Court held that each of the workmen had completed 240 days in service and had not been made permanent, in breach of the standing orders applicable. The Industrial Court therefore granted permanency to the complainants from the date they completed 240 days in service and extended all benefits of permanency. The Single Judge of this Court upheld the view of the Industrial Court by observing that the judgement in Umadevi's case (supra) would not apply to the facts in that case, as the Supreme Court had not dealt with an industrial establishment to which the Industrial Employment (Standing Orders) Act applies. The Division Bench of this Court, after quoting certain passages from the judgement in Umadevi's case (supra), held that the provisions of the Model Standing Orders by themselves do not confer any right of permanency unless the two prerequisites are satisfied namely (i) the appointment is in conformity with the Rules relating to appointment and (ii) permanent sanctioned vacant posts being in existence. The Court therefore held that the provisions of Model Standing Orders are subject to the rules regulating selection and appointment so also subject to the constitutional scheme of public employment. I am informed at the bar that the judgement of the Division Bench has been challenged in the Supreme Court.

13. In *The Conservator of Forests & anr. v/s. Shri Bajarang Popat Kale* (supra) a learned Single Judge of this Court (Chandrachud, J.), while dealing with similar writ petitions in the case of employees working in the Junnar Forest Range held that the recruitment of the workmen was not in accordance with regular process of selection. The workmen were employed on the Employment Guarantee Scheme and were provided some work as a form of livelihood. It is in these circumstances the learned Judge, by relying on the judgement in Umadevi's case (supra) and the aforesaid judgement in the Letters Patent Appeal held that, in the absence of sanctioned and vacant posts and particularly because the complainants were not appointed after following the regular process the relief granted by the Industrial Court was not warranted. The Writ Petitions were therefore allowed. In the present case, the workmen were employed for years together on work which was of a perennial nature and not on the Employment Guarantee Scheme. Thus this judgement is clearly distinguishable from the facts and circumstances in this matter.

18. What emerges from this conspectus of decisions is:

(i) the High Courts acting in their writ jurisdiction under Article 226 of the Constitution of India, cannot regularise the services of a person who is appointed illegally in any public employment.

(ii) regular appointments are those which have been made in

consonance with the recruitment rules and against sanctioned posts.

(iii) irregular appointments are not always illegal appointments and can be regularised.

(iv) regularisation of irregular appointments can be ordered only when sanctioned posts are available and not merely because the employees have been in service for a long number of years.

(v) the powers conferred on the Industrial Court and the Labour Court under the labour legislations have not been abrogated by the decision in Umadevi's case.

(vi) the provisions of the legislations governing industrial jurisprudence have not been denuded of their status by the decision in Umadevi's case.

19. Bearing in mind these principles, it would be necessary to consider some relevant provisions of law. A workman has been defined as follows in section 2(s):

2(s). "workman" means any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—"

20. The section does not draw a distinction between a workman who is employed on wages payable at a daily rate and another being paid on a monthly rate or on piece rate or time rate. A person may be a workman, regardless of the manner in which he is remunerated or paid wages. Only those persons who are mentioned in the exclusive part of the definition are not considered as workmen. Nor does the definition distinguish between those workmen who are appointed against sanctioned posts and others who are not. A distinction has been drawn in the status of the workmen, under the model standing orders framed under the Industrial Employment (Standing Orders) Act, 1946. The workmen who are doing manual or technical work can be classified as (a) permanent (b) probationers (c) badlis or substitutes (d) temporary (e) casual and (f) apprentices. The categories are dependant on the nature of work performed by these workmen and not on the manner in which they are paid wages. In my opinion, the learned AGP has attempted to draw an invidious distinction between temporary and casual workmen and those who are paid wages at a daily rate. This distinction is misconceived and unsustainable.

21. Undoubtedly, the Petitioners are an industry as held in *Chief Conservator of Forests & anr., etc. etc. vs. Jagannath Maruti Kondhare, 1996 I CLR 680*. In this case, the Supreme court was dealing with the employees working in the Forest Department of the State of

Maharashtra where they had been continued as temporary/casual workers for years together. Complaints had been filed before the Industrial Court complaining of unfair labour practices under Item 6 of Schedule IV of the MRTU & PULP Act. The facts were similar to the circumstances in the present case. The Supreme Court held that depending on the facts in a particular case it would be possible to infer that the mere fact that the workmen had been employed as casual / temporary workers for years together indicated that the intention was to deprive them of the status of permanent employees. The judgement in Kondhare's case (supra) has not been overruled and still holds the field. The nomenclature used by the petitioners for classifying the workmen cannot deprive them of their rights under the labour legislations. Besides, as observed by the Supreme Court in the case of MSRTC & Anr. vs. Casteribe Rajya Parivahan Karmchari Sanghatana (supra), the powers of the Labour Court and the Industrial Court acting under the MRTU & PULP Act are not denuded by the judgement of the constitution bench in the case of Umadevi (supra).

22. *There is no dispute that each of the workers have completed 240 days in service and that each of them were employed from 1990 and had worked for at least 7 years before their services were terminated. There is sufficient evidence on record to indicate that these workmen were employed for work which was perennial in nature despite which they had not been accorded the status of permanent workmen. The Industrial Court in my view, has not committed any error while declaring that the Petitioners had indulged in an unfair labour practice under Item 6 of Schedule IV. The submission of the learned AGP, that though a declaration has been granted that the Petitioners had committed unfair labour practices under Item 6, the Industrial Court could not have granted any consequential relief as the workmen had not sought a prayer for permanency, is without any substance. Once such a declaration is granted the Petitioners would naturally have to be directed to treat them as permanent workmen and to pay wages and other benefits in consonance with their status. Section 30 of the MRTU and PULP Act empowers the Industrial Court to take such affirmative action as is necessary, including payment of compensation, in order to effectuate the policy of the Act, once it finds that any person has indulged in or is engaging in an unfair labour practice.*

23. *The learned AGP had contended that the recruitment of these workmen was not in accordance with the procedure for selection. However, this is not borne out from the pleadings and evidence on record. In fact the pleadings in the written statement indicate that there were no rules for recruitment of these workmen for the nature of work that they were performing. The witness for the Petitioners also concedes that there are no such rules. Thus the contention of the learned AGP is unsustainable. If there are no rules for recruitment of the workmen such as the present respondents, it cannot be contended that there recruitment was not made in consonance with the rules. A contention, similar to the one raised by Mr. Vanarase was argued by the Corporation in the MSRTC's case (supra). The Supreme Court has observed that the employees had been exploited by the Corporation for years together by engaging them on piece rated basis and it was too late in the day for the Corporation to urge that the procedure for*

recruitment had not been followed and that consequentially its employees could not be given the status and privileges of permanency. In the present case, the workmen had been recruited without there being any recruitment rules in place. The petitioners had extracted work from them for years together without bothering whether their appointments fulfilled the conditions for recruitment. The unlawful acts of the Petitioners in appointing employees for years together as casual and temporary workmen without affording them the benefits of permanency cannot be permitted to be perpetuated when the MRTU and PULP Act has been enacted specifically to prevent such eventualities and to prohibit unfair labour practices. The argument of Mr. Vanarase, if accepted, would only mean that an unfair labour practice indulged in by the Petitioners was being encouraged or in any event being condoned by this Court. The policy of the Act must be effectuated and the Court cannot be expected to be a mute spectator while the Forest Department of the State flouts the law. Therefore this submission is untenable.

24. In any event the appointment of these workmen cannot be termed as illegal, per se. At best, it may be possible to contend that the recruitment was irregular. However such recruitment can always be regularised as held in para 53 of Umadevi's case. In fact the G.R. of 1996 has been issued towards this end.

25. The next issue which I shall advert to is whether there were sanctioned posts when the complaint was filed. As stated earlier, permanency cannot be denied to a workman on the specious contention that there are no sanctioned posts. This is because the MRTU & PULP Act provides that denying a workman the status and privileges of a permanent workman for years together amounts to an unfair labour practice. In any event though it has been strenuously argued by Mr. Vanarase that there are no sanctioned posts available, there is not even a whisper to that effect in the written statement filed by the petitioners in the Industrial Court; nor is there any evidence led to substantiate this argument. Indeed, there was not even a suggestion put to the workman by the Petitioners while cross-examining him. Therefore, the argument is baseless. Thus the Petitioners have committed an unfair labour practice by not paying the wages and other benefits to the workmen which they would be entitled to receive as permanent workmen. As stated earlier, the G.R. of 1996 stipulates the number of posts required for the absorption of the forest labourers was 10160 out of which 8038 supernumerary posts were created by the State for absorption of those who had completed 5 years in service as on 1.11.1994 and had worked for 240 days in each year. Admittedly, the workmen had not completed 5 years of service on 1.11.1994. However, clause 12 of this G.R. stipulates that the Chief Conservator of Forests is expected to review the position of the number of workers employed after filling in the posts with those who had completed 5 years in service up to 1.11.1994 and for creating additional posts for the remaining workers. There is no material on record as to whether this exercise was carried out by the Chief Conservator of Forests at all. Thus there can be no dispute that there is a violation of this Government Resolution which forms a part of the terms and conditions of employment."

10. In view of the above, it is held that the Industrial Court has committed no error whatsoever in declaring that the Petitioners were indulging in Unfair Labour Practices. The impugned Judgment & Order dated 06.03.2002 passed by the learned Industrial Court, Nashik is therefore sustained and upheld. Ad-interim relief granted and which was in operation stands vacated.

11. Writ Petition stands dismissed. Pending Civil Application stands disposed.

12. Considering the fact that the present Petition was filed in the year 2003, there is every possibility that many of the workers concerned may have attained the age of superannuation, and / or expired. At the request of Mr. Deore, I therefore direct the Petitioners to ensure that benefit of permanency be extended, paid and given to all those workers whose cases have been considered and allowed by the learned Industrial Court in its judgment for grant of status of permanency and whose names specifically appear in the Judgment & Order dated 06.03.2002.

13. In view of this Judgment, Petitioner is directed to complete the computation and calculation of the wages of the workers who have been granted benefit of permanency vide the Judgment & Order dated 06.03.2002 within a time bound programme and in any event, within a period of four months from the date of uploading of this

Judgment and pay the same to the eligible workers within a period of two weeks thereafter without fail and file a compliance report to that effect in this Court after four and half months.

14. Place the Writ Petition for compliance on **10th April, 2024.**

15. With the above directions, Writ Petition is disposed.

Pending Civil Application also stands disposed.

Amberkar

[MILIND N. JADHAV, J.]

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