

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8115 OF 2005
WITH
CIVIL APPLICATION NO. 66 OF 2022
IN
WRIT PETITION NO. 8118 OF 2005

Zilla Adhikshak Krushi Khate Sanlgi & Anr. .. Petitioners
Versus
The General Secretary
(Sarva Shramik Sangh, Sangli) & Ors. .. Respondents

WITH
WRIT PETITION NO. 7090 OF 2006

Adhikshan Krushikhate, Maharashtra Rajya &
Ors. .. Petitioners
Versus
Vilas Hariba Kharade & Ors. .. Respondents

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- Mr. S.H. Kankal, AGP for Petitioners.
- Mr. Saurabh Mandlik i/by M.S. Topkar, Advocate for Respondent No.1 in Writ Petition No.8515 of 2005.
- Mr. Manoj Patil, Advocate for Respondent Nos.2 to 11 in Writ Petition No.8115 of 2005.

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CORAM : MILIND N. JADHAV, J.
DATE : NOVEMBER 04, 2023

JUDGMENT:

1. Writ Petition No.8115 of 2005 is filed by Zilla Adhikshik, Krishi Khate, Sangli i.e. on behalf of the State Government of Maharashtra under the provisions of Article 227 of the Constitution of India to challenge the judgment and order dated 11.01.2005 passed by the learned Industrial Court, Kolhapur in Complaint (ULP) No.172 of

1988. By the said judgment, the learned Industrial Court allowed the Complaint filed by the Respondents (original complainant) and directed the Petitioners to grant permanency benefits to the employees mentioned in Annexure-A to the Complaint except two persons w.e.f. 01.07.1988.

2. Briefly stated, Complaint Exhibit 'U-1' and amended Complaint Exhibit 'U-21' was filed by the registered Trade Union on behalf of the employees whose names were stated in Annexure-A to the Complaint who were members of the Respondent – Union. The employees worked under the control of Petitioner Nos.1 and 2 and were engaged in process of preparing fruit plants, tree plants, vegetable plants, plantation activity of various varieties of plants viz. coconut, lemon, mango etc. taking care of mother trees, maintaining the plants, watering them etc. Petitioners used to sell these plants and earn profit on the same. The members of the Union were engaged to work on 30 acres piece of land situated at village Kupwad, Taluka – Miraj, District – Sangli for the aforesaid activity. Apart from the members of the Respondent – Union whose names were appended in Annexure-A to the original Complaint, Petitioners also engaged permanent employees for the same work / activity who were duly paid all benefits of permanency. However, members of the Respondent – Union whose names are appended in Annexure-A to the original Complaint were continued to be engaged by the Petitioners as

temporary employees for years together, year after year, without giving them the benefit of permanency namely pay-scale, dearness allowance, leave facility, allowances etc. Respondent – Union therefore filed the original Complaint alleging unfair labour practice within the meaning of Item Nos. 5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short “**MRTU and PULP Act**”).

2.1. Petitioners in their written statement before the learned Industrial Court filed below Exhibit ‘C-20’ took up the defence that the Petitioners were not an ‘industry’ and as such provisions of the Industrial Disputes Act, 1947 (for short “**ID Act**”) would not apply to the original Complaint filed by the Respondent – Union.

2.2. It was contended that members of Respondent – Union whose cause was espoused in the Complaint were appointed on daily wages as no permanent work was available to be given to them. It was contended that work available with Petitioners relating to plantation was seasonal work and therefore it was not necessary for the Petitioners to engage employees on permanent basis. It was denied by Petitioners that the work undertaken by the temporary employees was equivalent to the work done by its permanent employees. It was contended that plantation work was skilled work undertaken by its permanent employees and only for the purpose of additional

miscellaneous maintenance work i.e. watering of plants, digging of land, cutting of plants etc. which was of unskilled nature the temporary employees were appointed to work. It was contended that Petitioners' establishment at Kupwad was a nursery. That it was engaged in making graft of various fruit plants which were preserved and such nature of work was not perennial. It was contended that merely because the temporary employees were engaged by the Petitioners for a long time year after year on temporary basis they cannot seek entitlement to permanency in services. It was contended by Petitioners that the activity of Petitioners at Kupwad nursery was not to earn profit from the sale of plants, rather its intention was to sell plants at low costs and spread the scheme to agriculturists.

2.3. It is seen that original Complaint (ULP) No.172 of 1988 came to be allowed by judgment and order dated 29.11.1994. That judgment was challenged by the Petitioners in this Court in Writ Petition No.2687 of 1995. By order dated 23.03.2004, this Court set aside the judgment and remanded the matter back to the learned Industrial Court afresh for adjudication. The learned Industrial Court thereafter framed issues, recorded the evidence and passed the judgment and order dated 11.01.2005 which is impugned by the Petitioners in the present Writ Petition No.8115 of 2005.

3. Mr. Kankal, learned AGP appearing on behalf of the

Petitioners has taken me through the impugned judgment and order and would contend that none of the members of the Respondent – Union have completed 240 days for service in the employment of the Petitioner at Kupwad nursery. He would submit that in the written statement filed before the learned Industrial Court a specific averment was made to the effect that there were no sanctioned posts available for confirming appointment of these members of the Respondent – Union as permanent employees, despite which the learned Industrial Court directed the Petitioners to employ them as permanent employees. He would submit that the Court has no jurisdiction and power to direct creation of permanent posts in this manner and it is the sole function of the Executive depending upon various other factors. He would submit that the members of the Respondent – Union whose names are appearing in Annexure-A to the original Complaint were admittedly employed as temporary daily wages as seasonal workers and therefore, they cannot seek permanency merely because they have been continued in service for a long time. He would submit that these workers were neither recruited in accordance with recruitment rules nor sponsored by the employment exchange of the State Government and therefore their appointments cannot be regularized as permanent employees.

4. Next he would submit that there is no evidence placed on record that these workers had completed 240 days of service in each

calendar year and continuously for a period of 5 years to be entitled to any benefit under the Government Resolutions and the Government Policy for appointing them as permanent employees.

5. *PER CONTRA*, Mr. Patil, learned Advocate appearing for the Respondent – Union would submit that the impugned judgment squarely answers the issues raised by the Petitioners while returning cogent and reasoned findings on issue Nos. (iii) and (iv). He has drawn my attention to the issues framed below Exhibit ‘U-3’ by the learned Industrial Court. Out of those issues, issue Nos. (iii) and (iv) are relevant and are reproduced below for reference:-

“iii) Whether this employment was with a view to deprive them of the status of permanency, thereby attracting item 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971?

iv) Whether Respondents have committed any unfair labour practice under items 5, 6 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971?”

6. He would submit that before the learned Industrial Court the Respondent – Union led oral evidence of two of the employees whose names are appearing in Annexure-A to the original Complaint namely Smt. Nilamma Anjanappa Shingade, below Exhibit ‘U-23’ and Sou. Latabai Appasaheb Bodhgire, below Exhibit ‘U-22’. These two witnesses in their cross-examination have described the nature of work undertaken by the workers at Kupwad nursery Taluka – Miraj in the land of 30 acres. He would submit that in rebuttal the Petitioners

have not examined any witness before the learned Industrial Court. He would submit that all workers who were engaged on temporary basis as seasonal workers have all completed 240 days in one calendar year and that too continuously for years together. He would submit that the evidence given by the witnesses on behalf of the Respondent – Union has gone uncontroverted and unchallenged and has been accepted by the learned Industrial Court while delivering its verdict dated 11.01.2005. He has drawn my attention to paragraph No.12 of the impugned judgment and contended that the evidence given by the witnesses on behalf of the Respondent – Union has gone unchallenged and has been accepted by the learned Industrial Court and affirmative findings have been returned that the establishment of the Petitioner is an ‘industry’ within the meaning of definition of ‘industry’ in clause (s) of Section 2 of the ID Act.

7. He has next drawn my attention to the findings returned by the learned Industrial Court in paragraph No.13 of the impugned judgment wherein a chart produced below Exhibit ‘C-30’ on behalf of the Respondent – Union was accepted by the Court and it was held that the names of the employees stated therein had completed 240 days work in one calendar year and some of them have been engaged for years together.

8. Mr. Patil, in support of his submissions has referred to and

relied upon the decision, in the case of ***Chief Conservator of Forests and Anr. Vs. Jagannath Maruti Kondhare and Ors.***¹ in support of the employees' case seeking permanent status. In that case similarly placed employees were appointed as badli and casual workers to work on the Pachgaon Parvati Scheme which was a social forestry work undertaken in Ahmednagar district for preservation of forest and environment. In that case, the employees had admittedly being in the employment of the State for 5 to 6 years in that capacity and in each year had worked for a period ranging from 100 to 330 days. Those workers approached the Industrial Court and pleaded that considering their continuous engagement in service over a few years, there should not be any doubt that had worked for long despite which they were continued as casual labourers. It was contended by the workers that they were continued in that capacity with the sole object of depriving them of the status and privileges of permanent employees. This stand of the employees was accepted and upheld by the Supreme Court while returning its findings in paragraph Nos.22 to 26 of the said judgment, which are directly relevant to the facts and circumstances of the case before me. For reference and convenience, paragraph Nos.22 to 26 are reproduced herein below and read thus:-

“22. We have given our due thought to the aforesaid rival contentions and, according to us, the object of the State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is

1 (1996) 2 SCC 293

placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case inasmuch as from the materials on record we are satisfied that the 25 workmen who went to Industrial Court of Pune (and 15 to Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object as, it may be remembered that the Pachgaon Parwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on increase because of increase in pollution. Permanency is thus writ large on the face of both the types of work. If even in such projects, persons are kept in jobs on casual basis for years the object manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants.

23. The final point which needs our determination is regarding the reliefs granted by the Industrial Court, which is to make the workmen, in both the matters, permanent with all benefits of a permanent worker, which would include payment of wages etc. at the rate meant for a permanent worker.

24. On the relief part, it is Shri Bhandare who principally addressed us. His contention in this regard is that the relief of making the workmen permanent, that is, to regularise them was not justified inasmuch as some of them had been employed under the Maharashtra Employment Guarantee Act, 1977. In any case the drain on State exchequer which would follow if all workers like the respondents are to be paid as permanent employees would be so enormous that the State would find it difficult to engage in other welfare activities.

25. To bring home his submission regarding the unjust nature of the relief relating to regularisation, Shri Bhandare sought to rely on the decision of this Court in Delhi Development Horticulture Employees' Union V. Delhi Administration. We do not think that the ratio of this decision is applicable to the facts of the present case inasmuch as the employment of persons on daily wage basis under Jawahar Rozgar Yojna by the Development Department of Delhi Administration, whose claim for regularisation was dealt in the aforesaid case was entirely different from that of the scheme in which the respondents-workmen were employed. Jawahar Rozgar Yojna was evolved to provide income for those who are below the poverty line and particularly during the periods when they are without any source of livelihood and, therefore, without any income

whatsoever. It is because of this that the Bench observed that the object of the scheme was not to provide right to work as such even to the rural poor, much less to the unemployed in general. As against this, the workmen who were employed under the schemes at hand had been so done to advance objects having permanent basis as adverted to by us.

26. Therefore, what was stated in the aforesaid case cannot be called in aid at all by the appellants. According to us, the case is more akin to that of Haryana v. Piara Singh in which this Court favoured the State Scheme for regularisation of casual labourers who continued for a fairly long spell - say two or three years, (paragraph 51). As in the cases at hand the workmen concerned had, by the time they approached the Industrial Courts worked for more or less 5 years continuously, no case for interference with this part of the relief has been made out.”

8.1. Further, it is seen that the argument relating to financial burden pleaded by the Forest Department was also considered by the Supreme Court as one of despair or *in terrorem*. It was held by the Supreme Court that relief of permanency to the State employees cannot be denied only because if they are granted relief they would be required to be paid wages meant for permanent workers. It was held by the Supreme Court that the right of the employees flows automatically from the relief of regularization to which no objection could be reasonably taken. Paragraph Nos.28 and 29 of the said judgment are also therefore relevant and are reproduced below and read thus:-

“28. In so far as the financial strain on the State exchequer is concerned, which submission is sought to be buttressed by Shri Dholakia by stating that in the Forests Department itself the casual employees are about 1.4 lacs and if all of them were to be regularised and paid at the rate applicable to permanent workmen, the financial involvement would be in the neighbourhood Rs 300 crores - a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri

Dholakia as the same has been brought out almost from the hat. The argument relating to financial burden is one of despair or in terrorem. We have neither been impressed by the first not frightened by the second inasmuch as we do not intend that the view to be taken by us in these appeals should apply, proprio vigore, to all casual labourers of the Forests Department or any other Department of the Government.

29. We wish to say further that if Shri Bhandare's submission is taken to its logical end, the justification for paying even minimum wages could wither away, leaving any employer, not to speak of model employer like the State, to exploit unemployed persons. To be fair to Shri Bhandare it may, however, be stated that the learned Counsel did not extend his submission this far, but we find it difficult to limit the submission of Shri Bhandare to payment of, say fair wages, as distinguished from minimum wages. We have said so, because if a pay scale has been provided for permanent workmen that has been done by the State Government keeping in view its legal obligations and must be one which had been recommended by the State Pay Commission and accepted by the Government. We cannot deny this relief of permanency to the respondents-workmen only because in that case they would be required to be paid wages meant for permanent workers. This right flows automatically from the relief of regularisation to which no objection can reasonably be taken, as already pointed out. We would, however, observe that the relief make available to the respondents is not one which would be available ipso facto to all the casual employees either of the Forests Department or any other Department of the State. Claim of casual employees for permanency or for higher pay shall have to be decided on the merits of their own cases."

8.2. Mr. Patil, has thereafter referred to and relied upon the following decisions of this Court in support of his submissions:-

- (i) Century Rayon (A Division of Century Textiles and Industries, Ltd. Vs. Anand Dadau Ubale and Ors.²;*
- (ii) Maharashtra State Electricity Board Vs. Sunil More and Ors.³;*
- (iii) Burroughs Welcome (I) Ltd., Mumbai Vs. D.H. Ghosle and Ors.⁴;*
- (iv) Parke-Davis (India) Ltd. Vs. Mahadev Bhiku Jadhav and*

² 2005 (3) L.L.N. 470

³ 2002 (3) L.L.N. 964

⁴ 2001 (2) Mh.L.J. 54

*Ors.*⁵;

(v) *Navnath Maruti Chavan Vs. Conservator of Forest, Pune and Anr.*⁶;

(vi) *Shahar Palika Kamgar Union Vs. Chief Officer, Ahmednagar Municipal Council*⁷; and

(vii) *Laxman Mahadev Teli Vs. Sri Pancham Khemraj Mahavidyalaya*⁸.

8.3. In support of employees' case, this Court in the case of *Century Rayon* (2nd *supra*) in paragraph No.10 of the said judgment has referred to the judgment of the Supreme Court in the case of the *Chief Conservator of Forests* (1st *supra*) laying down the binding principles in paragraph No.22 which have been referred to herein above.

9. In that view of the matter, he would submit that the impugned judgment and order being a well reasoned judgment does not call for any interference and should be upheld.

10. I have heard Mr. Kankal, learned AGP appearing for the Petitioners - State and Mr. Patil, learned Advocate appearing for the Respondent – Union and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of this Court.

11. At the outset, it is seen that originally there were 17

5 2008 (3) Mh.L.J. 823

6 2006 (1) Mh.L.J. 710

7 2006 SCC Online Bom 1570

8 WP No.2749/1987 decided on 25.10.1988

members of the Respondent – Union whose names have appeared in Annexure-A filed alongwith the original Complaint. Out of those 17 employees after the amendment only 12 employees remained as part of the original Complaint. Thereafter, it is seen that 2 out of 12 employees namely Smt. Anubai Anjappa Masraj and Smt. Anjamma Somanna Reddi are no longer in employment of the Petitioners and therefore they have not been given the benefit of permanency by the impugned judgment and order. It is seen that the benefit of permanency has been extended to the remaining 10 employees only. It is seen that these 10 employees were working with the Petitioners as labourers during the span of two years to six years prior to 1987 – 1988. The witnesses of the Respondent – Union filed details of the number of days of work done by these employees and they having worked with the Petitioners below Exhibit ‘C-30’ which shows that they were indeed working with the Petitioners from the year 1982 to 2004. It is seen that what has weighed with the Industrial Court is the stand adopted by the Petitioners for giving them continuous work. The learned Industrial Court has in paragraph Nos.16 to 17 of the impugned judgment and order analyzed the specific reason as to why these employees were entitled to status of permanency. For reference and convenience, paragraph Nos.16 and 17 of the impugned judgment and order are reproduced below and read thus:-

“16. The Union representative for complainant invited my

attention towards the judgment of this court in Complaint (ULP) No.95 to 116 of 1986, certified copy of which is produced on record with list Ex.U-27 to show that this Court has granted benefits of permanency to the daily rated employees working with the respondent and the said judgment of this court has been confirmed by the Hon'ble Bombay High Court in Writ Petition No.4284 of 1989 and by the Hon'ble Supreme Court of India. He has further submitted that these employees are working with the Respondents for years together, they must get benefits of permanency. From the evidence of witnesses of the complainant in this matter and pleading in the complaint U-1 and U-27 and the chart of the respondents at Exh.C-30, it is clear to me that the Respondents have employed the workmen mentioned in Annexure A to the complaint, who are members of the complainant Union as temporary workmen for years together. In view of the admission given by the respondent in written statement in paragraph No.6 of written statement filed in Complaint (ULP) No.25 of 2000 that continuous work was denied to them and said work was done by permanency employees working at other place. Thus, this act on the part of the respondent shows that the respondents with a view to deprive them their continuous work and deprived them the benefits of permanency, continued them for years together as temporary employees and the intention behind is to deprive them the benefits of permanency. Thus, the complainant in this matter, has proved that this action on the part of the respondents amounts to unfair labour practice within the meaning of item 6 of Sch.IV of the MRTU and PULP Act. Hence, I answer Issue No.2 and 3 in the affirmative.

17. I have already pointed out that other permanent employees are working with the respondents in Class IV category and according to the complainant, they are getting the benefits of permanency and the employees mentioned in the complaint are doing same type of work but they were deprived the benefits of permanency. This action on the part of the respondents shows the favouritism to one set of workers regardless of merits which attracts item 5 of Sch.IV of the MRTU and PULP Act. In my opinion, when these employees are working with the respondents for years together, for that purpose Chart Ex.C-30 is very important. It may be true that in some years, they have not completed 240 days of service with the respondent, but still the fact remains is that the employees mentioned in Annexure A to the Complaint are working with the respondents for years together but they are not getting the benefits of permanency and as per provisions of Model Standing Orders Act they are entitled for the benefits of permanency after completing of 240 days service with the respondents. However, as these employees through the Union have proved in this matter that the respondents have engaged in unfair labour practice within the meaning of Item 6 of Sch. IV of the MRTU and PULP Act on this background, as per service rules, I hold that these employees are entitled for the benefits of permanency like pay scale,

dearness allowance, house rent allowance increments, leave facility like other permanent employees, thereby the respondents have violated the service rules, agreement which attracts item 9 of Sch. IV of the MRTU and PULP Act and by using act of force, the respondents have continued these employees on daily wage basis for years together, thereby the respondents have engaged in unfair labour practice within the meaning of item 10 of Sch.IV of the MRTU and PULP Act.”

12. From the above, it is seen that the judgment of this Court passed in Writ Petition No.4284 of 1989 in an identical case with respect to similarly placed employees has been upheld by the Supreme Court. By that judgment, this Court has granted benefits of permanency to daily rated employees working with the Petitioners. The learned Industrial Court has returned a categorical finding that the act on the part of the Petitioners to deliberately not give continuous work to these employees and instead get the same done through the permanent employees working at other places was with a clear view to deprive these employees the benefits of permanency. The learned Industrial Court has categorically noted that services of these employees was continued by the Petitioners for years together as temporary employees only and this was with the sole intention to deprive them the benefits of permanency. In that view of the matter, the learned Industrial Court has held that the action on the part of the Petitioners amounted to unfair labour practice within the meaning of Item No. 6 of Schedule IV of the MRTU and PULP Act.

13. It would also be worthwhile in this context, to refer to

paragraph No.12 of the impugned judgment and order wherein the learned Industrial Court has taken into cognizance the nature of the work done by these employees on the basis of the pleadings and the evidence on record. In this context, paragraph No.12 is relevant and reproduced below and reads thus:-

“12. The complainant in his complaint (Ex.U-1) and (U-21) pleaded that the Respondents with the help of employees are taking the work of preparation of plants of various fruit trees and used to sell it and to maintain these plants these employees are rendering their services to give water to these plants, the respondents are taking water from two wells situated in the premises of the respondents where these employees are working, which is of 30 acres of lands. It is also contention of the complainant that the respondents have taken three borewells in the said premises and to lift the water from the wells as well as borewells, the electric motors are installed and by lifting the water with the help of electric motors, water is provided to the plants. This is the pleading of the complainant in the complaint, which is supported by evidence of the witnesses of the complainant at Exh. U-22 and U-23. It is pertinent to note that the respondents in written statement at Exh. C-23 as well as additional written statement Exh.C-20 has not denied the fact that they are lifting the water from the wells as well as borewells with the help of electric motors to supply the water to plants and trees for their growing purpose. The respondents have also not taken cross examination of the two witnesses of the complaint on this aspect. Therefore, I have no hesitation to hold that evidence of the complaint on this aspect has gone unchallenged. Therefore from the pleading of the complaint as well as affidavit evidence of the complainant, it is clear to me that the respondents, for the purpose of preparation of these fruit trees, plants engaged in a systematic activities carried on with the help of employees for the purpose of production, supply or distribution of fruit trees, plants with a view to satisfy human wants. Thus, the complainant, in this matter, has proved the triple test laid down by the Hon’ble Supreme Court of India to show that the Respondent is an ‘industry’ within the meaning of Sec.2(s) of the I.D. Act. On the background of evidence of the complainant it is clear to me that with the help of electric motors, water is lifted and the said water is supplied for the growth of the plantation. Thus, it is clear that these plants are not developed naturally, the work which is undertaken by the Respondents is not natural but there are human efforts behind it and therefore, relying on the ratio laid down by the Hon’ble Supreme Court of India, in

aforesaid case laws, I have no hesitation to hold that the provisions of the Factories Act are applicable to the work of the Respondent, simultaneously, the provisions of Industrial Employment (Standing Orders) Act, 1946 are also applicable to the services of the employees mentioned in the annexure to the complaint. The stand taken by the respondents that the work undertaken by the respondent is on 'no profit no loss' basis has no criteria to deny the benefits of the I.D Act to the employees involved in the complaint. Therefore, on the background of evidence led by the complainant, I have no hesitation to hold that the complainant has proved that the respondent establishment is an 'industry' within the meaning of definition in clause (s) of section 2 of I.D. Act. Hence, I answer issue No.1 in the affirmative."

13.1. From the above, it is seen that the learned Industrial Court has categorically analyzed the nature of work performed by these employees and has concluded that the provisions of the Factories Act was applicable to these employees, simultaneously the provisions of Industrial Employment (Standing Orders) Act, 1946 was also applicable to these employees and the stand adopted by the Petitioners that their activity is on a 'no profit no loss' basis therefore cannot be the criteria to deny benefits of permanency under the ID Act to these employees who filed the complaint. It has been also been held by the learned Industrial Court that the complainant has proved that the Petitioner establishment is an 'industry' within the meaning of definition of 'industry' under Section 2(s) of the ID Act.

14. After considering the judgment passed by the learned Industrial Court, there can be no doubt in mind that these 10 employees have worked with the Petitioners for years together since the year 1982 onwards. In the case of some of these employees, in

some years they have not completed 240 days, however there is no denial of the fact that Item No.6 of Schedule IV does not contemplate or reflect upon continuous service of 240 days. All that it contemplates is that services of the employees as badli, casuals or temporary for years together with a particular object mentioned therein.

15. As is alluded to herein above, the intention of the Petitioners to engage these employees for years together was with the sole intention to deprive them the benefit of permanency. The further arguments of the Petitioners that there are no sanctioned posts of labourers is devoid of merits and deserves to be rejected as stated in view of various rulings of this Court.

16. The Supreme Court in the case of *Workmen of Bhurkunda Colliery of Central Coalfields Ltd. Vs. Management of Bhurkunda Collinery of Central Coalfield Ltd.*⁹ has held that when such temporary or *ad-hoc* appointments are continued for a long period of time, the Court has to presume that there is a regular need for service on regular posts.

17. In view of the above observations and findings and the decisions which have been discussed herein above, no interference is called for in the judgment and order passed by the learned Industrial Court and the same is upheld. Resultantly, Writ Petition No.8115 of

9 2006 I CLR 635

2005 is dismissed and the judgment dated 11.01.2005 passed by the learned Industrial Court is confirmed.

18. In the present case, from the material on record it is clearly seen that the employees / workers had been kept as casuals / temporary workers for long years with the primary object of depriving them the status of permanent employees in as much as giving of this status would have required the employer i.e. the Petitioners to pay the workers at a rate higher than fixed in the Minimum Wages Act. It is seen that, the purpose for which the workers were employed is infact permanent in nature since permanent employees were also employed by the Petitioners to work side by side with the temporary workers. Evidence on record proves that the nature of work undertaken by these temporary workers for years together was the same work which was performed by the permanent employees of the Petitioners. In such facts and circumstances permanency is thus writ large on the face of the nature of the work performed. Needless to state that claim of casual / temporary workers seeking permanency have to be decided on merits of each case.

19. In so far as the Writ Petition No.7090 of 2006 it challenges the impugned judgment dated 23.03.2006 passed by the learned Industrial Court in Complaint (ULP) No.42 of 2000. In this case, the original complainants worked as daily wagers over years on

agricultural land belonging to the Government of Maharashtra admeasuring 56 acres for plantation work of various types of fruits and vegetables and preparation of mother plants of such fruits and seeds of various vegetables and other agricultural products.

19.1. In this Writ Petition there were 11 workers who had filed the original complaint being Complaint (ULP) No.306 of 2000. Facts are identical in so far as both the above Writ Petitions are concerned.

20. It this case the original complainants i.e. employees were working with the Respondent i.e. on the Government farm for 7 to 15 years. In this case also evidence was led on behalf of the employees and admitted by the Industrial Court. Similar and identical objections were raised by the Petitioner Government in this Writ Petition also. However, considering the decision and reasons given in the above Petition, the same reasons are clearly applicable in the facts and circumstances of the present Writ Petition and in that view of the matter, no interference is called for with the impugned judgment dated 23.03.2006 passed by the learned Industrial Court, Sangli and the same is upheld and confirmed.

21. Writ Petition No.7090 of 2006 is dismissed.

22. All other interlocutory Applications, if any, are accordingly dismissed.

Ajay

[MILIND N. JADHAV, J.]