

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14150 OF 2023

Solapur Mahanagarpalika

.. Petitioner

Versus

Yogesh Nagnath Mane & Ors.

.. Respondents

-
- Mr. Milind Deshpande for Petitioner
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 04, 2023

ORAL JUDGMENT:

- 1.** Heard Mr. Deshpande, learned Advocate for Petitioner.
- 2.** This Writ Petition is filed under Articles 226 and 227 of the Constitution of India to challenge the Judgement & Order dated 17.04.2023 passed by the learned Industrial Court in Complaint (ULP) No. 7 of 2014 which is appended at Exh. "E", Page Nos. 68-89 of the Writ Petition.
- 3.** Briefly stated, 14 original Complainants / workers are admittedly working as Malaria Field Workers with Petitioner Corporation since 1997-98. They filed original Complaint (ULP) No. 7 of 2014 contending that they were employed pursuant to issuance of advertisement published in newspapers, followed by their selection, interviews and wait-listing and came to be employed by following the due process of law. It was stated in the Complaint that initially for one year, they were paid a meager salary of Rs. 5000/- per month but

thereafter they were paid salary on a daily wage basis. It was contended that Petitioner Corporation had specific vacant posts of Field Workers in order to cater to the entire area of Solapur City being extended upto 179.38 sq. kms. requiring 3 Field Workers for one Sector having an area 2.56 sq. kms. and as such 180 Malaria Field Workers were required. It was contended that as far back as on 24.11.2010, Petitioner Corporation had passed a resolution resolving to approach the State Government with a proposal for sanctioning more posts of Malaria Field Workers and to make the existing Malaria Field Workers permanent.

4. Perusal of the impugned judgement dated 17.04.2023 and the annexures / exhibits to the Petition reveal that admittedly appointment of these 14 workers who are the original Complainants was made by following the due process of law. It is also an admitted position that these 14 workers have been working continuously from 1997-98 with the Petitioner and in terms of the Model Standing Orders as also the letter dated 17.04.2013 issued by the Joint Director, Health Department Pune are required to be made permanent but the Petitioner Corporation has deliberately avoided giving them the benefit of permanency till date. Though it has been stated by the Petitioner Corporation before the Industrial Court in reply to the original Complaint that these workers were given artificial breaks, it

has come on record that the said 14 workers have in fact worked with the Petitioner Corporation even during these artificial breaks. It has also come on record that by letter dated 26.07.2002, State Government had given sanction for creating 30 posts of Field Workers but the said benefit has not been extended to these 14 original Complainants / workers.

5. It is further seen that as a matter of parity, Petitioner Corporation has given benefit of permanency to around 2500 similarly placed field workers who were employed on daily wages after the year 1997 but the present Respondents have been left out. Though it is contended by Mr. Deshpande, learned Advocate for Petitioner that 30 posts of Malaria Field Workers did exist with the Corporation, but as on date they have been filled and are already occupied, hence it would not be possible for these 14 workers to be extended the benefit of permanency at present. It is further argued that in the event if benefit of permanency is to be accorded to these 14 workers, enormous expenses on the administrative side to the extent of more than 35% of the designated revenue shall be incurred by the Corporation and that would make it impossible for the Petitioner Corporation to function smoothly since there is acute inadequacy and unavailability of funds with the Corporation.

6. The learned Industrial Court considered all submissions and

arguments of the Petitioner Corporation as also the workers before it and framed the following issues for determination and gave reasoned findings thereon:-

Sr. No.	Issues	Findings given by Ld. Industrial Court
1	Do the Complainants prove that the Respondent Corporation has committed the unfair labour practice under Schedule-IV Item No. 5 of the MRTU & PULP Act, 1971?	Yes
2	Do the Complainants prove that the Respondent Corporation has committed the unfair labour practice under Schedule-IV, Item No. 6 of the MRTU & PULP Act, 1971?	Yes
3	Do the Complainants prove that the Respondent Corporation has committed the unfair labour practice under Schedule-IV Item No. 9 of the MRTU & PULP Act, 1971?	Yes
4	Do the Complainants prove that the Respondent Corporation has committed the unfair labour practice under Schedule-IV, Item No. 10 of the MRTU & PULP Act, 1971?	Yes
5	Whether the Complainants are entitled to the reliefs as prayed for?	Partly in affirmative.
6	What order?	As per final order.

6.1. While answering the above issues, the learned Industrial Court considered the evidence produced on record i.e. witnesses who were examined on behalf of the original 14 Complainants. Deposition of these witnesses reveal that these 14 workers were appointed pursuant to the newspaper advertisement published in the newspaper 'Daily Sanchar' and 'Lokmat' on 04.08.1997, that they applied to the

Petitioner Corporation in response thereto, and were selected thereafter after undergoing the process of interview. They were initially appointed for a period of six months which period was extended from time to time till date. It is seen that the evidence led by the workers was not denied by the Petitioner Corporation during their cross-examination nor it is denied by the Corporation that appointment of these 14 workers was by way of any back door entry. This is itself is a very strong circumstance. Learned Industrial Court has returned a categorical finding that evidence on record showed that appointment of these 14 workers was made by inviting applications by newspaper publications, undergoing the interview process thereafter and placing their names on the wait-list thereafter. In the absence of any contradictory evidence from the Petitioner Corporation, the aforesaid selection process cannot be faulted with or ignored and hence their appointment is by way of recruitment process and this categorical finding is returned by the learned Industrial Court in paragraph No. 21 of the impugned Judgment.

7. Next it is seen that these 14 original Complainants / workers have been in continuous service for years together and the burden of proving the same has been adequately discharged by them. One of the contention raised by the Corporation is that these 14 workers had not completed 240 days of service in each calendar year after their

appointments. However, this contention has been categorically rejected and dismissed by the learned Industrial Court by returning a finding that the evidence available on record was sufficient for accepting that these 14 Complainants / Workers had worked for more than 240 days with the Petitioner Corporation during the period of the preceding 12 calendar months of filing the original Complaint. No evidence in rebuttal was presented by the Petitioner Corporation except for mere denial on Affidavit. It is further seen that during pendency of the Complaint before the Industrial Court, by Government Resolution dated 28.12.2001 exhibited at Exh. "U-48", the State Government had created / sanctioned 70 new posts of Field Workers and as such the total number of sanctioned posts with the Petitioner Corporation of Malaria Field Workers was increased to 100. This fact has been taken cognizance of by the learned Industrial Court to return a finding that in that view of the matter, it could be argued by the Corporation that vacant posts were not available for absorption of these 14 Complainants / workers. In answer to Issue No. 5 alluded to herein above, learned Industrial Court returned findings in paragraph Nos. 37 and 38 of the impugned Judgment which read thus:-

"37. While deciding Issue Nos.(1) to (4), it is held that respondent is indulged in unfair labour practices due to which, complainants are entitled for relief of declaration in that regard. Likewise, it is necessary to direct the respondent to cease and desist from continuing those unfair labour practices. Complainants have claimed relief of permanency from the date on which they have completed 240 days for the first time in the

*service of the respondent. The evidence on record shows that all the complainants are in continuous service of the respondent since year 1997-98 and all of them have worked with the respondent for more than 240 days in each year for more than 10 years before filing of the present complaint. No doubt, the material available on record shows that there is considerable delay on the part of the complainants in approaching this court for seeking the relief of permanency however, as is laid down by Hon'ble Apex Court in a case of **Pandurang Sitaram Jadhav Vs. The State of Maharashtra** cited above, mere delay in approaching the Court is not sufficient to deny the claim of permanency if it is established that the employer is indulged in unfair labour practices under Item-6 of Schedule-IV of MRTU & PULP Act. Hon'ble Supreme Court has observed in para-12 of the said Judgment as under:-*

12. In view of the aforesaid facts as also the legal pronouncements made subsequently, we have no doubt that these appellants before us would be entitled to the benefit of regularization and mere delay in preferring the claim would not come in their way except that the benefit of regularization would arise from the date the complaints were filed.

38. Having regards to the said legal position, this Court is of the opinion that all the complainants are entitled for the relief of permanency from the date of filing of the complaint. For all these reasons, I recorded my finding on Issue No.(5) accordingly.:

8. In view of the above, it is seen that the entire evidence on record clearly proves that all 14 original Complainants / workmen i.e. Respondents herein were in continuous service of the Petitioner Corporation since 1997-98 and all of them have worked with the Petitioner Corporation for more than 240 days in each year for more than 10 years even before filing of the present Complaint and are continuing to do so for the past 25 years.

9. Mr. Deshpande has drawn my attention to additional affidavit dated 01.12.2023, *inter alia*, attempting to place on record

certain communication dated 19.07.2011 addressed by the State Government to the Petitioner Corporation followed by a further letter dated 13.03.2023 which are in my respectful submissions are not germane to the issue at hand which is squarely decided by the learned Industrial Court on the basis of evidence. In fact, in the additional affidavit in paragraph No. 8, it has been stated by the Petitioner Corporation as under:-

“8. I say and submit that Mahanagarpalika has filed Affidavit in this Hon'ble High Court in the year 1995 and as per said Affidavit Mahanagarpalika regularizing the services of the employees are regularized. I further say and submit that in the year 2001 Mahanagarpalika has regularized the services of 572 of the employees in 2003 Mahanagarpalika has regularized 572 employees and in the year 2008 Mahanagarpalika regularized services of 864 employees. I further say and submit that the Mahanagarpalika has time to time given the proposal to the State Government for regularization of employees and said are pending with the State Government.”

10. It is the Petitioner Corporation's own case that Petitioner Corporation has indulged in regularization of employees employed on daily wages on regular basis since 2005 onwards. Certain facts and figures have been stated which go to show that Petitioner Corporation has regularized services of 572 employees in the year 2001, 572 employees in the year 2003 and 864 employees in the year 2008 which are cases of similarly placed workmen / employees as that of the 14 Complainants / Respondents before me.

11. Hence, in view of the above observations and the findings returned by the learned Industrial Court, no interference whatsoever is called for in the impugned judgement & order dated 17.04.2023 passed by the learned Industrial Court while deciding Complaint (ULP) No. 7 of 2014. The Judgement & Order dated 17.04.2023 is sustained and confirmed.

12. Writ Petition is dismissed.

Amberkar

[MILIND N. JADHAV, J.]

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