

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3724 OF 2023

Gundu Vishnu Chandam & Ors. .. Petitioners
Versus
The Government of Maharashtra & Ors. .. Respondents

WITH
WRIT PETITION NO. 10718 OF 2016
WITH
CIVIL APPLICATION NO. 1687 OF 2019

The Government of Maharashtra & Ors. .. Petitioners
Versus
Gundu Vishnu Chandam & Ors. .. Respondents

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- Ms. Seema Sarnaik a/w Ms. Sangeeta Salvi for Workmen
 - Mr. S.H. Kankal, AGP for State
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CORAM : MILIND N. JADHAV, J.
Reserved on : OCTOBER 16, 2023
Pronounced on : NOVEMBER 28, 2023

JUDGMENT:

1. This is a bunch of two Writ Petitions. Writ Petition No. 10718 of 2016 is filed by the Government of Maharashtra through Secretary, Agriculture Department, Mantralaya, Mumbai along with Deputy Director of Agriculture – Kolhapur and the Agricultural Officer, Taluka Seed Farm Centre, Radhanagari, Kolhapur being the Petitioners to challenge the impugned judgment & order dated 24.07.2015 passed by the Industrial Court No. 1, Kolhapur in Complaint (ULP) No. 135/2008. Respondents in this Writ Petitions

are 9 persons who are the original complainants namely (1) Gundu Vishnu Chandam, (2) Droupadi Mahipati Patil (since deceased), (3) Vasanti Laxman Moraskar, (4) Baban Dinkar Sankpal, (5) Shankar Rau Kamble, (6) Maruti Pandurang Sangaonkar, (7) Kerba Hari Dhere, (8) Gunda Tukaram Davar and (9) Namdev Pandurang Patade. The impugned judgement & award is passed by the learned Industrial Court on original Complaint (ULP) No. 135/2008 filed by the 9 Respondents whose names are stated above. This Complaint was filed under Section 28 r/w Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, **“the Said Act”**) alleging unfair labour practices and seeking a direction to the Petitioners herein to continue the Respondents as daily wagers, remove disparity in payment of wages, pay equal wages as paid to permanent workmen and to pay differential amount of wages since their date of appointment.

2. Second Writ Petition is Writ Petition No. 3724 of 2023 filed by 9 Respondents in the above Writ Petition who are Petitioners therein against the State Government of Maharashtra. In this Writ Petition filed in the year 2023, Petitioners have prayed for the same reliefs which were prayed for and agitated in Complaint (ULP) No. 135/2008 filed before the Industrial Court, Kolhapur and further

seeking status of permanency since their date of appointment.

3. For the sake of convenience, the first Petition i.e. Writ Petition No. 10718 of 2016 will be considered for narration of facts and parties shall be referred as Petitioners (State Government of Maharashtra) and Respondents i.e. 9 workmen. Facts are identical in both the cases and therefore both Writ Petitions are heard together by consent of parties finally. Interim Application No. 1687 of 2019 filed in Writ Petition No. 10718 of 2016 is also decided along with the Writ Petitions.

4. Before I advert to the facts which are necessary for adjudication of the present two Writ Petitions it needs to be mentioned at the outset that Respondents (9 workmen) had filed Writ Petition Nos. 4753 of 1996, 223 of 1997 and 225 of 1997 along with other workman for the same reliefs which are prayed for by a workmen in Writ Petition No. 3724 of 2023. By common order dated 15.01.2008, this Court (Coram : B.H. Marlappalle, J.) dismissed the Writ Petitions by returning specific findings to the effect that the 9 workmen who are referred to herein as Respondents have not completed a total of 240 days in any year right from 1986-1990 since their engagement in the service of Petitioners and hence leave alone the benefit of permanency, none of them would be entitled to the benefit under Kalelkar Award or for that matter Badkas Award. This

Court has also returned specific findings in respect of the Respondents that none of them had completed a period of 240 days of service even for the period 1991 to 2007 since at no point of time, these workmen were employed for 240 days in any calendar year. This Court has held that these workmen were seasonal employees engaged on seasonal basis during the years 1986 to 2007 and there was no evidence placed before the Industrial Court that they had completed 240 days of service in every calendar year during the last 5 years before the complaint was filed. This Court categorically held that merely because the Respondents were continued for more than 5 years as seasonal employees, they did not make out a case of unfair labour practices either under Items 5, 7 or 9 of Schedule IV of the Act and therefore the findings given by the Industrial Court could not be termed to be perverse or manifestly erroneous so as to call for interference of this Court under Article 227 of the Constitution of India. This Court held that the evidence adduced by the parties did not support the findings returned by the learned Industrial Court at the then time and therefore the Petitions failed. This Court however returned a clarification that if any other Petitioner approaches an appropriate forum seeking directions for the benefits either under the Kalelkar or Badkas award, such proceedings shall be decided on their own merits and without being influenced by any observations made in the impugned judgment or in the judgment dated 15.01.2008 passed by this Court (Coram :

B.H. Marlappalle, J.). For the sake of convenience and reference, paragraph No. 7 of the said judgment is relevant and reproduced below:-

“7. In the premise, these petitions fail and the same are hereby dismissed. Rule discharged with no order as to costs. However, it is clarified that if any other petitioner approaches an appropriate forum seeking directions for the benefits either under Kalelkar or Badkas Award, such proceedings shall be decided on their own merits and without being influenced by any observations made in the impugned judgement or in this judgment.”

4.1. For a specific reason, paragraph No. 7 of the judgment dated 15.01.2008 is mentioned as it clarifies that *“if any other petitioner approaches an appropriate forum....., such proceedings shall be decided on their own merits.....”*. Reference to “any other Petitioner” means any other workmen who would otherwise be in a position to place on record evidence to the effect that he has served the Petitioners i.e. State Government for 240 days in each calendar year continuously for 5 years. The reference to *“any other Petitioner”* does not mean and give a second opportunity to the same Petitioners to once again approach this Court for the same relief.

5. In the above background, the following facts become important for consideration. Writ Petition No. 10718 of 2016 is filed by 9 Petitioners who were admittedly part of the group of Petitioners contained in the above three Writ Petitions which were dismissed by the aforesaid observations and findings in the common order dated 15.01.2008.

6. It is seen that after the order dated 15.01.2008, Respondents i.e. 9 workmen whose names are given in paragraph No. 1 above, on 27.05.2008 filed a fresh Complaint (ULP) No. 135/2008, once again seeking the same reliefs which were part of the earlier round of complaint filed by them and which was decided by the learned Industrial Court and upheld by this Court by its order dated 15.01.2008. The grounds mentioned in Complaint (ULP) No. 135/2008 were absolutely identical to the earlier complaint. It was stated in the Complaint that many workers who could prove the completion of 240 days service during the span of one year were granted permanency but these 9 workmen were left out as they could not prove that they had completed 240 days of service. This Complaint was not appended by any material evidence to show that these 9 workmen had completed 240 days of service. It is pertinent to note that on 15.01.2008, this Court has categorically held that these 9 workmen did not have the requisite number of days until 2007. Hence it was not open for these workmen to re-agitate the same issue on the same grounds for the same cause of action once again as this Court has rejected their case and only permitted any other person to approach this Court. Complaint (ULP) No. 135/2008 has been decided by the impugned judgment dated 24.07.2015 which is the subject matter of Writ Petition No. 10718 of 2016. Learned Industrial Court in 2015 has stated that though admittedly these 9 workmen

were working for the last 20 years and has also referred to the judgement dated 03.01.2008 passed by this Court rejecting the right and claim of permanency of some of these workers, however, held that these 9 workmen were working with Petitioners as daily wagers since 1988 for the last 20 years and in that view of the matter, since Petitioners had admitted in evidence that they were working for the last 20 years and some of them for 27 years, their work cannot be stated to be casual or temporary even though if it was performed during Kharif and Rabbi seasons. Learned Industrial Court held that in the case of seasonal employment even if these workers had completed 120 days, then considering that they were employed for years together they should be treated as being in continuous service and therefore should be entitled to permanency. Learned Industrial Court held that these 9 workmen were kept as temporary workers on daily wages only to deprive them the status of being a permanent employee and this amounted to unfair labour practice under Item 6 of Schedule IV of the said Act.

7. It is seen that the earlier Complaint was filed by the Union on behalf of the workmen including the 9 workmen and these very 9 workmen have now approached this Court individually by way of Writ Petition.

8. In so far as Complaint (ULP) No. 135/2008 is concerned, it is filed individually by the 9 workmen. On the basis of the above observations and findings, learned Industrial Court partly allowed the Complaint and declared that Petitioners had engaged in unfair labour practices under Item 9 of Schedule IV and directed the Petitioners to give status and privilege of permanent seasonal employee to the 9 workmen from the date of filing of the Complaint i.e. 2008 along with difference of wages.

9. In the above facts and background, Mr. Kankal, learned AGP would argue that in view of the decision of this Court dated 15.01.2008, it was not open for the Respondents (9 workmen) to have once again agitated the same Complaint before the learned Industrial Court as this Court had categorically held that these Respondents were entitled to the benefit of the status of permanency since none of them had completed 240 days of continuous service for a continuous period of 5 years before the Complaint was filed. Mr. Kankal would argue that this Court has categorically held that no case was made out of any unfair labour practice either under Item Nos. 5, 6 or 9 of Schedule IV of the said Act. He would therefore submit that the impugned Judgment dated 24.07.2015 is passed without considering the judgement and order dated 15.01.2008 passed by this Court in the Writ Petitions filed by the Union on behalf of the 9 workmen i.e. the

same set of workers and is therefore contradictory to the decision of this Court.

10. *PER CONTRA*, Ms. Sarnaik, learned Advocate for workmen would submit that the 9 workmen are entitled to all benefits under the Kalelkar Award considering that they have completed 240 days continuous service in each calendar year on account of their engagement as seasonal employees. She would submit that Petitioners have employed permanent workers on permanent basis and these 9 Respondents workmen in fact performed the same amount of service and duty like the permanent workmen and therefore they cannot be deprived of their legitimate right. She would submit that these 9 Respondents are employed by Petitioners throughout the year and therefore, they have completed 240 days of service in each calendar year and are required to be treated as permanent employee. She would submit that in the judgement and order dated 15.01.2008, this Court has categorically held that many similar placed workmen have succeeded in getting the relief of permanency who could prove the completion of 240 days of service during the span of one year. However, submissions made by Ms. Sarnaik needs one correction. Merely completing 240 days of service in one year is not sufficient. For getting the benefit of Kalelkar and Badkas Award, completion of 240 days per year should be for a continuous period of 5 years. Ms.

Sarnaik in her submissions has painstakingly stated that the 9 workmen before the Court are engaged as agricultural labourers and on the basis of the impugned judgement passed by the Industrial Court, they deserve to be given the status and privilege of permanent seasonal employees. She would submit that due to the stay which has been granted by this Court on the impugned judgment dated 24.07.2015 passed by the Industrial Court, these workers are being continued to be employed as seasonal workers on daily wages. However, she has very fairly submitted that these 9 Respondents have not been allowed to complete 240 days in a year and have been given partial breaks by Petitioners. However, she would submit that the nature of work performed by these 9 workmen is identical to the work performed by permanent workers such as ploughing, sowing, removing weeds and watering grass which are agricultural operations. She would submit that there is disparity in the wages received by these workmen to the extent that on the basis of daily wages, these workers are paid Rs. 180/- per day amounting to Rs. 5400/- per month whereas permanent employees are being paid Rs. 30,000/- per month approximately. She has also fairly admitted that it is part of the Kalelkar Award that the daily wagers who have put in 5 years in continuous employment with such establishments, are required to be taken on Converted Regular Temporary Establishments (CRTE) and thereafter they are to be absorbed on permanent basis in the said

establishment. She would submit that Kalelkar Award / Settlement is applicable to these workers considering the fact that they have completed 240 days in a year.

10.1. In support of her submissions, Ms. Sarnaik has referred to and relied upon the decision of this Court in the case of **The State of Maharashtra Vs. M.V. Ghalge & Anr¹** and drawn my attention to paragraph 9 which reads thus:-

"9. Turning next to the merits of the case, I find it difficult to accede to the argument made by the Petitioners. The claim of the two workmen was based on clause 28 of the Rules applicable to the daily rated, work charged and converted permanent/temporary establishment workmen of the Public Works and Housing Department. These Rules appear to have been arrived at by agreement between the Government of Maharashtra and the Union representing such workmen. The agreement, I am told, was arrived at on the lines of an Award of one Kalelkar and therefore the parties popularly refer to these Rules as Kalelkar Award. I shall also use the same terminology hereinafter. Clause 28 of Kalelkar Award deals with the benefit available to the daily rated workmen. The Rule, when freely translated into English, would read as under :

"28. The benefits available to the daily rated employees under the Kalelkar Agreement (regarding availability of definite appointments on definite establishments) :- Such of the workmen on daily wages who have been working continuously for five years on such establishment shall be entitled, upon completion of five years, to have the posts held by them converted into posts on temporary establishment and such daily rated workmen shall be appointed on such converted posts. The post created on the converted establishment shall be personal to the incumbent and if the incumbent, for any reason leaves service, such post shall come to an end. Upon appointment on the converted temporary establishment, the workmen shall be covered by the Bombay Civil Service Rules."

11. Next she has referred to and relied upon the decision in the case of **Workmen of American Express Vs. Management of American Express²**, a decision of the Supreme Court wherein it has been held

1 1992 LAB. I.C. 748

2 AIR 1986 SC 458

that Saturdays and Sundays are required to be counted for computation of 240 days of service by a temporary employee. She has also placed on record the extract of Kalelkar Award and namely Clause Nos. 25, 26, 27 and 28 thereof and emphasized upon clause 26(4) read with clause 28 thereof which refer to completion of 240 days of continuous service in one calendar year and for a minimum of 5 years in continuity.

12. I have considered the submissions made by Mr. Kankal, learned AGP appearing for Petitioners and Ms. Sarnaik, learned Advocate for Respondents and with their able assistance, perused record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of this Court.

13. At the outset, it is seen that in the decision of this Court dated 15.01.2018 in respect of the same set of Respondents namely 9 workmen before me in Writ Petition No. 10718 of 2016, this Court has categorically returned a finding in paragraph No. 5 that these workmen have not completed 240 days in any year right from 1986 to 1990. Thereafter, a further finding has been returned by this Court in respect of these very workers in paragraph No. 5 that these workers have not completed 240 days of service continuously during the period from 1991 to 2007. In paragraph No. 6, this Court has categorically held that no case was made out by these 9 workmen and others along

with them of any unfair labour practice cited under Items 5, 6 or 9 of Schedule IV of the said Act. In this background, Complaint (ULP) No. 135/2008 once again agitates the same unfair labour practice under the same provisions.

14. The sum and substance of the present case is whether these 9 Respondents workmen have completed 240 days of service in each calendar year and for a continuous period of 5 years for entitlement of permanency. In Complaint (ULP) No. 135/2008, once again these very 9 workmen have merely agitated their grievance on paper without producing any material whatsoever. It is clearly seen that until 2007, this Court had categorically concluded that these very 9 workmen had not completed 240 days of service in any calendar year nor for a continuous period of 5 years. It has been fairly admitted by the 9 Respondents - workmen that they have not been allowed to complete 240 days of service from 2008 onwards by giving them partial breaks. In that view of the matter, the provisions of Kalelkar Award namely clause 26(4) read with clause 28 cannot be made applicable to these 9 workmen. Learned Industrial Court while passing the impugned judgment dated 24.07.2015 ought to have considered the decision of this Court dated 15.01.2008 which was in respect of these very workmen. A complete erroneous and perverse finding has been returned by the learned Industrial Court in paragraph No. 8 of

the impugned judgment stating that the act of Petitioners amounts to unfair labour practice under Item 9 of Schedule IV of the said Act. There is no provision whereby if the workman who is employed on a seasonal basis is continued for years together but has never completed 240 days in any given calendar year and that too continuously for 5 years can be given the benefit of permanency. Permanency can only be granted on fulfillment of the aforesaid two conditions under the Kalelkar Award. Such is not the case in respect of the 9 Respondents-Workmen before me.

15. In view of the above observations and findings, the impugned Judgment dated 24.07.2015 therefore needs to be interfered with. The said Judgment is passed contrary to the decision of this Court in respect of the 9 Respondents-workmen before me. The Complaint (ULP) No. 135/2008 was itself not maintainable and ought to have been dismissed at the threshold. Merely by being employed on seasonal basis even thereafter cannot give any right to these 9 workmen to reagitate the same issue on the same cause of action. The judgement dated 15.01.2008 would otherwise be rendered futile. Further the learned Industrial Court has allowed the said Complaint partially and given necessary directions which are contrary to the decision of this Court in the order dated 15.01.2008. I have called from the Office Papers of Writ Petition Nos. 223 of 1997,

225 of 1996 and 4753 of 1996, out of which I received papers in Writ Petition Nos. 223 of 1996 and 225 of 1996 only and I find that the 9 Respondents workmen before me in Writ Petition No. 10718 of 2016 were all Petitioners before this Court in the above 3 Writ Petitions. There is no change in circumstances. I have confirmed that fact personally by perusing the disposed off Writ Petitions and the pleadings contained therein.

16. In view of the above observations and findings, the impugned Judgment dated 24.07.2015 passed by the learned Industrial Court No. 1 at Kolhapur in Complaint (ULP) No. 135 of 2008 is quashed and set aside. Resultantly, Complaint (ULP) No. 135 of 2008 is dismissed.

17. Writ Petition No. 3724 of 2023 filed by the 9 workmen as Petitioners is dismissed.

18. In view of the above, Writ Petition No. 10718 of 2016 stands allowed. Civil Application No. 1687 of 2019 accordingly stands dismissed.

Amberkar

[MILIND N. JADHAV, J.]

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by RAVINDRA
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AMBERKAR
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