



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 WRIT PETITION NO. 379 OF 2024

VILAS AGAJI PAWAR AND OTHERS

VERSUS

THE UNION OF INDIA ADDITIONAL SOLICITOR
GENERAL AND OTHERS

...

Advocate for the Petitioner : Mr. Pawar Hemantkumar F.
Standing Counsel for Respondent 1/ UoI : S.W. Munde
Advocate for Respondents 2 to 4/ Bank : Mr. Kedar S. Warad
i/by Mr. Sunil V. Warad

...

CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.

DATE :- 12th January, 2024

ORAL ORDER (Per Ravindra V. Ghuge, J.) :-

1. This matter was heard extensively on 09.01.2024
and 10.01.2024.

2. On 10.01.2024, we passed the following order:-

- “1. This matter was heard extensively yesterday, and was granted an overnight pass over. Today, the learned Advocate representing Respondent Nos.2 to 4/Central Bank of India, submits that the time for filing the applications is extended upto 16/01/2024.
2. There are several issues that have cropped up in this proceeding, primarily, the language in which the Advertisement is available on the website, which is in purely English and the posts to be filled in are of 'Safai Karmachari

Cum Sub-Staff.

3. *The learned Advocate for the Respondents/ Bank desires to take further instructions.*
4. *Stand over to Tomorrow i.e. on 11/01/2024 in the same category.*
5. *In the meanwhile, the Petitioners are at liberty to proceed to tender their application forms.”*

3. Extensive arguments were advanced by the litigating parties on 11.01.2024 and today.

4. The Petitioners have put forth prayer clauses B, C and D as under:-

“B) *By issuing a writ of mandamus or any other appropriate writ, order or direction in the like nature, quash and set aside the impugned recruitment notification issued by the respondent Bank for the post of Safai Karmachari-cum- Sub-Staff and/or Sub-Staff.*

C) *By issuing a writ of mandamus or any other appropriate writ, order or direction in the like nature, the respondents be directed to immediately initiate the selection process for filling the post of impugned recruitment notification issued by the respondent Bank for the posts of Safai Karmachari-cum-Sub-Staff and/or Sub-Staff as per the Memorandum of Settlement in respect of the present petitioners those who have worked as temporary and casual workers as per the Memorandum of Settlement.*

D) *During the pendency and final decision of this Writ Petition, the further process of pursuant to the impugned recruitment notification issued by the respondent Bank for the post of Safai*

*Karmachari-cum-Sub-Staff and/or Sub- Staff
may kindly be stayed.”*

BACKGROUND OF THE MATTER

5. The Petitioners before us are around 18 persons, who have been working as Safai Karmacharis/ Kamgars (casual workers) from prior to 2012. Some of them are working since 2015. Identically placed employees, as like the Petitioners, were working as Peons and Sweepers from January, 2011. On 09.08.2012, Respondent Nos.2 to 4/ Central Bank of India (hereinafter referred to as “the Respondent Bank”), entered into the Memorandum of Settlement with the All India Central Bank of India Employees Federation, admittedly a recognized Union (hereinafter “the Recognized Union”), by which, it was agreed that temporaries/ casual workers engaged in various branches of the Respondent Bank all over India would be allowed to participate in the recruitment process to be initiated in the immediate future, but not in the subsequent process for selection to the posts of Safai Karmachari- cum- Sub Staff and Sub Staff on full time basis along with fresh candidates.

6. Thereafter, the selection process was commenced by

the advertisement dated 12.01.2013. However, on 04.07.2014, the Corporate Office of the Respondent Bank stayed the process of selection initiated and subsequently, cancelled the selection process. Employees of the Regional Offices from Barpeta Road, Arunachal Pradesh and Assam challenged the cancellation of selection process 2012-2013 in the High Court of Gauhati. By the judgment dated 14.03.2016, the petition was allowed and the Respondent Bank was directed to notify the results. The Respondent Bank preferred a Petition before the Division Bench, which was dismissed. It then approached the Honourable Supreme Court and by order dated 27.10.2017, the Special Leave Petition was dismissed and the order of the learned Single Judge of the Gauhati High Court was confirmed. In January, 2018, the results were notified in the Upper Assam Region in the regional office as well as in the Gauhati office and successful candidates who could be similar as the Petitioners, are learnt to have been absorbed by the Respondent Bank and are working on regular basis. As such, comparable daily wagers vis-a-vis the Petitioners, were absorbed in service.

7. The contention of these Petitioners is that over a period of time from 2012 till today, most of them have worked

for more than a decade and some of them have been working from 2015 onwards. They preferred Writ Petition No.14281/2019 (*Vilas Agaji Pawar and others vs. Union of India and others*) before this Court at the Aurangabad Bench. By the order dated 30.08.2023, this Court disposed off the petition with certain directions. It would be apposite to reproduce the order dated 30.08.2023, passed by this Court, hereunder:-

1. *The Petitioners have put forth prayer clauses (B), (C) and (D), as under :-*
 - “B] By issue of writ of Mandamus or any other writ or direction in the like nature, respondent No 2 to 4 and may kindly be directed to absorb the petitioners in the employment of respondent Bank as permanent employees on the post of peon.*
 - C] Pending the hearing and final disposal of the writ petition, respondent No 2 to 4 and may kindly be directed to absorb the petitioners in the employment of respondent Bank as permanent employees on the post of peon.*
 - D] Pending the hearing and final disposal of this writ petition, the respondents bank shall be restrained from discontinuing the petitioners from the respective post.”*
2. *Notice in this matter was issued on 27/11/2019. On 18/02/2020, this Court had passed the following order :-*

“The learned counsel for the petitioners relies on the judgment of the Division Bench of this Court at Nagpur in Writ Petition No. 8275 of 2018 decided on 08.07.2019. The Division Bench of this Court at Nagpur has pass the

following order.

- i. The writ petition is partly allowed.*
- ii. We direct to the respondent bank to fulfill its obligation under the Memorandum of Settlement dated 9th August, 2012 imposing a duty to initiate the recruitment process only as one time measure for selecting, from amongst casual and temporary workers, "Safai Karmachari cum Sub Staff" on full time basis within a period of six months from the date of the receipt of order.*
- iii. By issuing such directions, we have not taken away discretion of the bank to determine the availability of the vacancies and to adopt a particular procedure for making recruitments or select or reject candidates on the basis of performance and on merit and other similar factors.*
- iv. Rule is made absolute in these terms. No order as to costs.*

- 2. The respondents rely on the order passed by the Division Bench at Principal Seat at Bombay in Writ Petition No. 7559 of 2014 dated 20.03.2015 to contend that the action of the respondent bank in disbanding the recruitment process need not be interfered with. According to the respondents, the said judgment is confirmed by the Apex Court in the Special Leave Petition.*
- 3. Mr. Warad, learned counsel for respondent No. 4 submits that the respondent No. 4 has filed application for review of the order dated 08.07.2019 before the Nagpur Bench.*
- 4. The respondents shall give the status of the review application and the steps taken for the disposal of the review application by the next date.*
- 5. Stand over to 17.03.2020."*
- 3. We are informed that the Review Petition*

challenging the judgment of the Nagpur Bench of this Court, dated 08/07/2019 in Writ Petition No.8275/2018 (Sandip Pralhad Ingole and others Vs. Central Bank of India and others), has been dismissed.

4. *The learned Advocate Shri. Warad appearing for Respondent No.4 has placed reliance upon the judgment dated 20/03/2015, delivered at the Principal Seat of this Court in Writ Petition No.7559/2014 (Vishal Nandkumar Dhadvad and others Vs. Central Bank of India and others), to contend that, a similar relief sought before the Principal Seat, has been refused and the petition has been dismissed.*
5. *What we find in the judgment delivered at the Principal Seat in Vishal Nandkumar Dhadvad (supra), is as regards selection of the candidates through a recruitment process pursuant to an advertisement, which recruitment process was subsequently aborted. The Court concluded that, it was within the domain of the Employer to abort the recruitment process and selection does not give any right to the Petitioners. This is a crystallized position of law standing for more than 40 years.*
6. *Before the Nagpur Bench in Sandip Pralhad Ingole (supra), the issue was as regards a Memorandum of Settlement dated 09/08/2012, which casts duty on the Central Bank of India, to initiate a recruitment process only as a one time measure for selecting 'Safai Karmachari cum Sub Staff' from amongst the casual and temporary workers, so as to take them on full time basis. This Court, therefore, directed that, the Bank has the discretion to determine the availability of the vacancies and to adopt a particular procedure for making recruitments or for selecting/rejecting the candidates on the basis of their performances and merit. This is a part of the Settlement between the Management of the Central Bank of India and*

the All India Central Bank of India Employees Federation (AICBIEF), which is a recognized majority Union for the Award Staff.

7. *In view of the above, this petition is disposed off in the light of the directions of the Nagpur Bench of this Court in Sandip Pralhad Ingole (supra), which judgment has been sustained by the Hon'ble Supreme Court by the order dated 13/07/2023, delivered in Civil Appeal Nos. 2760-2761/2023 (Central Bank of India and Others Vs. Sandip Pralhad Ingole and Others.). The Respondent/Bank will, therefore, have to adopt the same procedure. Needless to state, if the terms of the Memorandum of Settlement between the recognized Union and the Bank, have undergone any modification, more specifically in connection to cause taken up by the Petitioners, which was considered by the Nagpur Bench in Sandip Pralhad Ingole (supra), the said terms and conditions of the Settlement would prevail.*
8. *Pending Civil Application does not survive and stands disposed off.”*

8. Similarly situated Petitioners (79 persons), had approached this Court at the Nagpur Bench vide Writ Petition No.8275/2018 (***Sandip Pralhad Ingole and others vs. Central Bank of India and others***). By judgment dated 08.07.2019, the Nagpur Bench partly allowed the Writ Petition. It would be apposite to reproduce paragraphs 3 to 7(i) to (iv) of the judgment delivered at Nagpur, hereunder:-

- “3. *In order to fulfill the obligation under the said Memorandum of Settlement, the bank indeed*

initiated recruitment process for selection of “Safai Kamgar cum Sub Staff”. But it appears, midway through, the process was cancelled. All the petitioners received individually a communication dated 4th July, 2014 informing them that the recruitment process has been cancelled.

4. *Ordinarily, it was expected that all aggrieved persons like the petitioners would have approached this Court without any delay. After all, the communication dated 4th July, 2014 had affected their right substantially. The petitioners, however, did not approach this Court and when they approached this Court, month of December, 2014 had arrived and thus there was inordinate delay. Unfortunately, the petitioners have not given any explanation for the delay. It is orally submitted on behalf of the petitioners that petitioners were awaiting for the result of one writ petition pending before the Gauhati High Court involving similar facts and issues and when they learnt about the decision having been rendered by the Gauhati High Court against the management and in favour of some of the petitioners therein, the petitioners approached this Court. We are of the view that this could hardly be the explanation, much less reasonable explanation for the inordinate delay which has occurred in the present case, as this petition has got nothing to do with that case.*

5. *If there was delay on the part of the petitioners and no explanation has been given by the petitioners for the same, we feel, it has nevertheless not substantially affected the standing of the petitioners before this Court. The reason for taking such a view is that even the respondent bank has maintained its complete silence as regards what it did towards fulfillment of its obligation under the Memorandum of Settlement dated 9th*

August, 2012. This is a fact which when brought on record would significantly impact the whole case and the answer is still not available to us. When there was a settlement between the bank and the majority recognized union which obligated the bank to initiate the recruitment process as one time measure for giving opportunity of providing regular employment to the persons like the petitioners, the obligation was required to be fulfilled by the bank. The respondent bank is a public sector bank and is enjoined with a duty to act reasonably, legally and in fulfillment of its commitments given under the industrial agreement. Therefore, it was necessary for the respondent bank to have honoured its commitment given under the Memorandum of Settlement dated 9th August, 2012. It appears that the bank is yet to fulfill its obligation.

6. *It is these facts which would entitle the petitioner to have an immediate relief from this Court in the present matter, irrespective of the delay on their part. We would have ordinarily refused even a smallest of reliefs to the petitioners, had it been the case that respondent bank, a public sector undertaking, was never in the wrong box and that not being the case, we have made our conclusion and we have put it into words just now.*

7. *In the present case, by the communication dated 4th July, 2014 the recruitment process initiated in terms of the Memorandum of Understanding has been cancelled. Then, the new recruitment process which was required to be started in order to fulfill the obligation under the said settlement, was never commenced by the respondent bank. The grievance would not arise from cancellation of a recruitment process but it would certainly arise when after the cancellation of the recruitment process, no new recruitment process is initiated, in spite of the*

obligation imposed upon the bank in terms of the settlement dated 9th August, 2012. That is how, to this extent only, in our view the petitioners would be entitled to a relief in law. In the result, we allow the writ petition partly.

ORDER

- i. The writ petition is partly allowed.*
- ii. We direct to the respondent bank to fulfill its obligation under the Memorandum of Settlement dated 9th August, 2012 imposing a duty to initiate the recruitment process only as one time measure for selecting, from amongst casual and temporary workers, “Safai Karmachari cum Sub Staff” on full time basis within a period of six months from the date of the receipt of order.*
- iii. By issuing such directions, we have not taken away discretion of the bank to determine the availability of the vacancies and to adopt a particular procedure for making recruitments or select or reject candidates on the basis of performance and on merit and other similar factors.*
- iv. Rule is made absolute in these terms. No order as to costs.”*

9. It is, thus, obvious that the issue before this Court and as was the issue before the Nagpur Bench, is as regards the fate of these workers, who have been working for years together and have been shown to be casual workers as Safai Karmacharis/Kamgars. While dealing with this issue, the case turns upon the clauses of the Memorandum of Settlement dated 09.08.2012 (hereinafter referred to as the “MoS”) between the Respondent

Bank and the recognized Union. As a background to the MoS, it needs mention that the Respondent Bank had decided to recruit subordinate staff with nomenclature as Safai Karmachari-cum-Sub Staff and/or Sub Staff. It is an admitted position that this Bank has been engaging temporaries and casual workers as Safai Karmacharis for decades together and at various branches all over India.

10. The recognized Union raised this issue on behalf of such employees and it was agreed between the parties vide the MoS that the Bank should initiate a “One Time Measure” (hereinafter referred to as the “OTM”) for considering these workers for regularization. It is an admitted position, as set out in the MoS, that the Bank decided to adopt a “Pro Employee Initiative” and converted the Permanent Part Time Safai Karmacharis (PTSKs) into full time workers with the designation Safai Karmachari-cum- Sub Staff w.e.f. 01.04.2011. This was the mode adopted with regard to those temporaries, who were earlier working for decades and thereafter, their nomenclature was changed to Permanent Part Time Safai Karmacharis (PTSKs). We have every reason to be astonished by this definition since no provision under the Industrial Disputes

Act, 1947 and presently, the Industrial Relations Code, 2020, has created any new category of workers as Permanent Part Time Safai Karmacharis.

11. The MoS indicates that the Bank decided to recruit Safai Kamgars by following the due process as a 'One Time Measure'. The recognized Union persuaded the Bank to adopt a humane approach and provide an opportunity to such temporaries/ casual workers to settle their grievances/ disputes / demands through an out of court mechanism. Keeping this in focus, the recognized Union and the Respondent Bank agreed on the following modalities:-

“WHEREAS after a series of discussions, it has since been agreed by and between the Management and All India Central Bank Employees' Federation (AICBEF) (Recognised Majority Union for Award Staff) that as a one time measure such temporary/casual workers so engaged by various branches within the guidelines of Central Office Management will be allowed to participate in the Recruitment Process which will be Initiated In the Immediate future (but not in the subsequent processes, if any) for selection to the post of sub-ordinate staff with the designation 'Safai Karmachari-cum- sub-staff' and/or 'Sub-staff', on Full-Time basis (as per the eligibility criteria) alongwith fresh candidates, subject to fulfilling all the following conditions:

- (i) Such temporary/casual worker should have been engaged in sub-ordinate cadre (including*

as Safai Karmachari) and have put in a minimum 45 days service during a continuous period of 12 months:

- (ii) The age of the candidate should have been between 18 to 26 (relaxable in eligible categories as per rules) when they were initially engaged as temporary/casual worker.*
- (iii) The age of the candidate as on the date of this Settlement should not have been more than 45 years, Irrespective of category (le., SC/ST/OBC/GEN).)*
- (iv) The candidate should produce satisfactory proof acceptable to the Bank in support of his/her claim of having worked with the bank on temporary/casual basis for a minimum 45 days in a continuous period of 12 months.*
- (v) The Registration for employment with Employment Exchange by the candidate is preferred, but not essential. Accordingly, the candidates having valid Registration with Employment Exchanges should attach the duly attested cards/proof to this effect, at the time of applying for the post in terms of this Settlement.*
- (vi) In case of the candidate had hitherto filled cases in Courts/ALC 'RLC/CGIT etc seeking absorption in permanent employment in the Bank and such cases are still pending for final disposal, such candidates should willingly and unconditionally withdraw such cases filed by them before different fora prior to applying for participating in the Recruitment Process in which they are so allowed to participate in terms of this Settlement for the post of Safai Karmachari-cum-sub-staff' and/or 'Sub-staff', subject to otherwise being eligible as per the eligibility criteria prescribed for respective post, and @ declaration to this effect should be Given along with an undertaking that he/she would abide by the results of the recruitment process.*

- (vii) *Notwithstanding what is stated above, where there are Awards/ judgments of any Tribunal / Courts directing the Bank to include and consider any candidate! while conducting future process, such candidates would be considered and allowed to appear in the interview process initiated in pursuance of this Settlement irrespective of the age and other eligibility criteria provided under this Settlement subject however that in any case the age at the time of interview should not be above 60 years.*
- (viii) *The Recruitment for the post of 'Safai Karmachari-cum-sub'staff' end 'Sub- staff' under this dispensation (i.e., for fresh candidates and also the candidates hitherto worked as temporary/causal worker and being eligible to apply for the same under this Settlement), shall be done through personal Interview of the eligible candidates by Committee/s to be constituted by the Management.*

It is also agreed mutually that out of the vacancies of 'Sub-staff' so identified to be filled in through the Recruitment Process that will be initiated in immediate future, the existing 'Safai Karmachari cum-sub-staff' will be considered for conversion as 'Sub-staff' (Peon) (after following the due Process of conversion) to the extent of 25% of vacancies of 'Sub- staff' (as per the relevant guidelines of Government of India) under this Recruitment process only.

It is mutually understood and agreed that allowing the temporary/casual workers (being otherwise eligible to participate under this Settlement) alongwith the immediate Recruitment Process which will be conducted for selection of 'Safai Karmachari-cum-sub staff' and/or 'Sub-staff', is a one-time measure applicable only for this process under this

Settlement and shall not be quoted as a precedent, in future. Further, such temporary/casual workers who do not apply for the process under this dispensation (being otherwise eligible to participate under this Settlement) for the reasons what-so-ever and/or those who, having participated in the process but could not be selected therein, have no right/claim what-so-ever to be called again for such process in succession or in future.

It is understood and agreed that the provisions of this settlement shall supercede the provisions of all previous settlements, if any, In this regard.”

12. Shri Warad, the learned Advocate for the Respondent Bank, has strenuously tried to persuade us that the Bank does not have any desire of committing any unfair labour practice. The Bank has a design to ensure that employees like the Petitioners get an opportunity to be absorbed in employment. Since an All India Recruitment Process has been initiated, these Petitioners and similarly situated temporaries/ casuals will have to compete with fresh candidates.

ONE TIME MEASURE- LEGAL PROCESS

13. It does not call for any debate that the judgment delivered by the Honourable Supreme Court (five Judges Bench)

in *Secretary, State of Karnataka and others vs. Umadevi and others, (2006) 4 SCC 1*, paved the way for regularization of long working temporaries/ casuals by introducing the principle of ‘One Time Measure’ (OTM). By the said judgment, the Honourable Supreme Court concluded that such OTM would be for those persons, who have been working regularly, though appointed irregularly. It has been clarified that distinction between “irregular appointments” and “illegal appointments” would be that irregular appointments are of those category of employees, who are not selected through a regular selection process, but are otherwise legally eligible to be appointed. Illegal appointments would include those persons, who may have been appointed through the regular process, but were inherently ineligible to be appointed. The Honourable Supreme Court also dealt with the aspect of legitimate expectation of long standing temporaries/ casual workers. It was then concluded that OTM shall be adopted by the concerned Authority to ensure that such appointments are regularized.

14. There is no dispute that the Respondent Bank and the recognized Union arrived at the MoS for introducing OTM for temporaries/ casuals. The learned Advocate for the

Respondent Bank has tendered Written Notes of Submissions, which are reproduced (verbatim) hereunder:-

- “1) *The recruitment notification 2024-2025 is nation-wide and is in consonance with the terms of the Memorandum of Settlement dt. 09-08-2012 entered into between the Management (Bank) and the All India Central Bank Employees Federation (AICBEF) and is in adherence to the order dt. 08-07-2019 passed in WP No. 8275/2018 by the Hon’ble High Court at Nagpur and is also in adherence to the order dt. 30-08-2023 passed by this Hon’ble court in writ petition bearing WP No. 14281/2019.*
- 2) *As per the terms of the Memorandum of Settlement dt. 09-08-2012 (The typed copy of which is placed on record), the respondent-Bank was to initiate the recruitment process for selection to the post of sub-ordinate staff with the designation ‘Safai- Karmachari-cum-sub-staff’ and/or sub-staff.*
- 3) *The relevant term (Page 107) of the Memorandum of Settlement dt. 09-08-2012 reads as :*

“WHEREAS after a series of discussions, it has since been agreed by and between the management and the All India Central Bank Employees Federation (AICBEF) (Recognised Majority Union for Award Staff) as a one-time measure such temporary/casual workers so engaged by various branches within the guidelines of central office management will be allowed to participate in the recruitment process which will be initiated in the future (but not in the subsequent processes if any), for selection to the post of subordinate staff with the designation ‘Safai-Karmachari-cum-sub-staff’ and/or sub-staff on full-time basis (as per the eligibility criteria) along with fresh

candidates, subject to fulfilling all the following conditions :”

- 4) *Thus, it was explicitly agreed between the Bank and the Union that fresh candidates would also be entitled to apply in the recruitment process. As regards the above quoted term is concerned, the Hon'ble High Court at Nagpur in Para No. 5 (Pg. 246) of its judgment and order dt. 08-07-2019 passed in WP No. 8275/2018 has categorically held as follows :*

“... When there was a settlement between the bank and the majority recognised union which obligated the bank to initiate the recruitment process as one time measure for giving opportunity of providing regular employment to the persons like the petitioners, the obligation was required to be fulfilled by the bank...”

- 5) *The Hon'ble High Court at Nagpur, by referring to the Memorandum of Settlement, has held as above that even persons like the petitioners who could not approach any court of law are entitled to apply in the recruitment process along with the petitioners.*
- 6) *It is submitted that the above phrases used in the Memorandum of Settlement and also in the order passed by the Hon'ble High Court at Nagpur vis-a-vis “Fresh Candidates” and “Persons like the petitioners”, if read conjointly, would simply connote that every person who qualifies the minimum requisite criteria would be entitled to apply in the recruitment process.*
- 7) *The petitioners initially sought absorption in service who are casual and temporary workers which was not granted earlier. The prayer put-forth by the petitioners in prayer clause ‘c’ of the present petition for seeking initiation of the selection process for filling the post of the*

impugned recruitment notification issued by the respondent Bank for the posts of Safai-Karmachari-cum-sub-staff and/or sub-staff as per the Memorandum of Settlement in respect of the present petitioners those who have worked as temporary and casual workers as per the Memorandum of Settlement has already been paid heed to by the respondent Bank itself by initiating the recruitment process.

More particularly, the time limit for filling up applications has also been extended from 9-01-2024 to 16-01-2024.

- 8) The petitioners do not want to compete with fresh candidates despite making it clear in the Memorandum of Settlement for reasons best known to them.*
- 9) The petitioners and persons like petitioners who have rendered casual/temporary services to the Bank have offered intermittent services with gaps in between as the words 'casual' and 'temporary' themselves convey.*
- 10) Thus, a casual worker who has genuinely rendered casual service may not be possessed with relevant documents to establish that he is not a fresh candidate. Likewise, a fresh candidate who still wants to participate in the recruitment process may acclaim himself to have worked with the Bank as a casual and temporary worker to which the Bank would have no answer.*
- 11) I submit that, to let only those persons who have rendered casual and temporary services to the Bank and not any other person, despite the Memorandum of Settlement and judgment and order passed by the Hon'ble High Court at Nagpur (Page 246), would rather invite dubious and false claims from persons who have not worked with the Bank and the same, in turn, would affect the cases of those who have genuinely worked. Resultantly, the*

said exercise of recruitment would turn futile and would also invite multiplicity of the proceedings throughout the country.

- 12) *Lastly, I humbly submit that the petitioners are very much entitled to apply as they claim to have requisite criteria. The petitioners may apply for the recruitment process as the Bank has now even extended the time for applying which now is 16-01-2024.*
- 13) *The present writ petition may kindly be dismissed as it does not call for interference.”*

15. Before the Nagpur Bench, in ***Sandip Pralhad Ingole (supra)***, it was concluded that the Bank is a public sector undertaking and is obliged to perform a duty to act legally, reasonably and ensure fulfillment of its commitments under the industrial agreement. It is beyond debate that the settlement with a recognized union assumes a character of a supreme document and that binds not only the signatories to the settlement, but the entire establishment. The Nagpur Bench concluded that the Bank was under a commitment to honour the MoS. Earlier recruitment drive was cancelled/ aborted by the communication dated 04.07.2014. Since then, this is the first recruitment process vide the impugned advertisement published on the website of the Respondent Bank titled as “Recruitment of Safai Karmachari-cum- Sub-Staff and/or Sub Staff 2024-2025”. Insofar as the

Petitioners and similarly placed persons in the State of Maharashtra are concerned, the Bank published a notice in daily Marathi "Loksatta". It is, thus, apparent that after more than 11 years, the Respondent Bank has decided to adopt OTM for recruiting Safai Karmacharis and Sub Staff.

16. It is strenuously canvassed on behalf of the Respondent Bank that none of these candidates have completed 240 days in continuous employment. Each one of them used to work for various spells over a period of two months, three months or more and were replaced by a different batch of Safai Karmacharis. Naturally, this raises a question as to whether, the work of Safai Karmacharis was a seasonal employment with the Respondent Bank. This defies logic. It cannot be disputed that sweeping and cleaning the establishments and branches of the Respondent Bank is a continuous nature of work having a perennial character. By no stretch of imagination can it be termed or even attempted to be branded as seasonal employment. If the work of cleaning and sweeping the establishments and branches is of a perennial character, any argument contending that one batch of Safai Karmacharis worked for a particular duration to be replaced by another batch of Safai Karmacharis for another spell/

duration, has to be rejected outright keeping in view the law laid down by the Honourable Supreme Court in *H.D. Singh vs. Reserve Bank of India and others*, (1985) 4 SCC 201, *State of Haryana and others vs. Piara Singh and others*, (1992) 4 SCC 118 and *Bajaj Auto Ltd. vs. Bhojane Gopinath D.*, 2004 I CLR 502.

17. The judgment of the Nagpur Bench in *Sandip Pralhad Ingole (supra)* was sought to be reviewed and there is no dispute that the Review Application was dismissed vide the order dated 08.02.2021. The judgment was carried to the Honourable Supreme Court by the Respondent Bank in Civil Appeal Nos.2760-2761/2023 and by order dated 13.07.2023, the Civil Appeals preferred by the Respondent Bank were dismissed with a reasoned order, which reads thus:-

“These appeals arise out of the orders dated 08.07.2019 and 08.02.2021 passed by the High Court of Judicature at Bombay, Nagpur Bench, in W.P. No. 8275 of 2018 and MCAST No. 19326 of 2019 respectively. The High Court, while allowing the writ petition, issued certain directions relying upon the Memorandum of Settlement dated 09.08.2012 entered into between the Management- Bank and the Employees’ Federation which prompted/culminated into the Management-Bank issuing a Circular Letter No. CO:HRD:IRP:2012:13:17 dated 14.08.2012.

The directions read as follows:-

- “i. The writ petition is partly allowed.*
- ii. We direct to the respondent bank to fulfil its obligation under the Memorandum of Settlement dated 9th August, 2012 imposing a duty to initiate the recruitment process only as one time measure for selecting, from amongst casual and temporary workers, “Safai Karmachari cum Sub Staff” on full time basis within a period of six months from the date of the receipt of order.*
- iii. By issuing such directions, we have not taken away discretion of the bank to determine the availability of the vacancies and to adopt a particular procedure for making recruitments or select or reject candidates on the basis of performance and on merit and other similar factors.*
- iv. Rule is made absolute in these terms. No order as to costs.”*

As per the said Memorandum of Settlement, it was agreed that the temporary and casual workers engaged in the Bank and who have put in a minimum 45 days’ service during a continuous period of 12 months may be permitted to participate in the ensuing recruitment process for the selection of “Safai Karmachari-cum-sub-staff” and/or ‘Sub- Staff’ as a one-time measure.

Considering the said Memorandum of Settlement, the High Court found that though there was some delay in moving the writ petition, but looking to the obligation of the Bank, as agreed, which has not been discharged in its right perspective, the above directions were issued. In fact, the High Court found that to fulfil the obligations under the Memorandum of Settlement, the Bank had indeed initiated recruitment process for selection of “Safai Karmachari-cum-sub-staff”, but midway

through, the process of recruitment was cancelled for some of the regions.

In the said context, while allowing the writ petition, it was directed that the Bank shall fulfil its obligations under the Memorandum of Settlement dated 09.08.2012 and initiate the recruitment process only as a one-time measure for selecting from amongst the casual/temporary workers, 'Safai Karmachari-cum-sub-staff' on full time basis within a period of six months from the receipt of the order.

The High Court has further observed that, while issuing such a direction, the right of the Bank to determine the availability of the vacancies and to adopt a particular procedure for making recruitments or select or reject candidates on the basis of performance and on merit and other similar factors, has not been taken away.

After hearing Shri Dhruv Mehta, learned senior counsel for the appellant-Bank and Mr. Rituraj Biswas, learned counsel for the respondents, and considering the contents of the Memorandum of Settlement and the obligation, which is required to be discharged by the Bank, we are of the opinion that the Management Bank has not honoured its commitment given under the Memorandum of Settlement. In fact, the Bank had taken steps to initiate the recruitment process in furtherance of the Settlement and by a subsequent communication cancelled the process selectively for some of the regions. The High Court, while allowing the petition, directed the Bank to fulfil its obligation within the time stipulated therein by the impugned order(s). In our view, the High Court has not committed any error, while dealing with the terms of the Memorandum of Settlement in passing the impugned order(s).

In view of the foregoing, we are not

inclined to interfere with the order(s) impugned. The appeals are, accordingly, dismissed. However, the process of selection, as directed by the High Court, may now be completed within a period of six months from today.

Pending interlocutory application(s), if any, is/are disposed of.”

18. In view of the above, it is apparent that the Honourable Supreme Court concluded, in its above reproduced order dated 13.07.2023, that “*In the said context, while allowing the writ petition, it was directed that the Bank shall fulfil its obligations under the Memorandum of Settlement dated 09.08.2012 and initiate the recruitment process only as a one-time measure for selecting from amongst the casual/ temporary workers, ‘Safai Karmachari-cum-sub-staff’ on full time basis within a period of six months from the receipt of the order.*” It was further noted that the High Court had permitted the Bank to adopt a particular procedure for selecting or rejecting candidates on the basis of the performance and merit. The Honourable Supreme Court, thereafter, recorded that “*we are of the opinion that the Management Bank has not honoured its commitment given under the Memorandum of Settlement. In fact, the Bank had taken steps to initiate the recruitment process in furtherance*

of the Settlement and by a subsequent communication cancelled the process selectively for some of the regions. The High Court, while allowing the petition, directed the Bank to fulfil its obligation within the time stipulated therein by the impugned order(s). In our view, the High Court has not committed any error, while dealing with the terms of the Memorandum of Settlement in passing the impugned order(s)”.

19. It is, thus, crystal clear that the OTM was meant only for those Safai Karmacharis or Sub-Staff, who were already working with the Bank. These directions of the Honourable Supreme Court read with the law laid down in *Umadevi* (supra), lead to a *sine-qua-non* that the only option available for the Bank was to ensure that the long serving employees as like the Petitioners at it's various establishments and branches in India, were considered for the OTM.

FALLACY IN THE ADVERTISEMENT

20. We are surprised that the Bank has not published the advertisement in any of the regional languages in any of the regional newspapers, which are largely circulated in the respective regions. In this case, in the State of Maharashtra, a

small notice is published in the local Marathi newspaper that the recruitment drive is taken up by the Bank and those who are interested, should go through the website of the Bank and read the advertisement. The last date for filling in the forms was 09.01.2024. The Petitioners have canvassed that those who could read a Hindi notice published in the local newspaper, visited the website of the Bank and found that the advertisement was in 35 pages along with annexures comprising of 20 more pages. In all, the advertisement was of 55 pages. Each word of the advertisement was in English. The Petitioners are candidates, who have passed their 10th standard examination. They are not conversant with English language. We have perused the advertisement and we find that though it is articulately scripted, it would certainly be very difficult for such candidates, who are working as Class-IV labourers/ Safai Karmacharis, to read or barely attempt to read the advertisement.

21. We appreciate the efforts of the learned Advocate Shri Warad, who has graciously accepted our request to have the advertisement translated in local languages and could convince the Respondent Bank, firstly, to extend the date for filling in the forms till 16.01.2024 and secondly, for publishing the translated

version of the advertisement in Hindi. With the aid of his efforts, the Petitioners have been able to fill in their forms/ are in process of filling in their forms. Notice was also published in the newspapers indicating that the advertisement was translated in Hindi and was available on website.

22. There is no dispute that the design of the Bank, as emerging from the advertisement, is that all these existing Safai Karmacharis, who are already working as temporaries/ casuals in various establishments and branches of the Bank, will have to compete with freshers from the open market. An online examination is scheduled for the following subjects :-

Subject	Medium of Exam	Total Marks	Duration
English Language Knowledge	English	10	90 Minutes
General Awareness	*	20	
Elementary Arithmetic	*	20	
Psychometric Test- (Reasoning)	*	20	
Total		70	

23. As such, each of these candidates would be required to appear for the examination of each subject. “English Language Knowledge” subject is of 10 marks to assess their knowledge of

the language. Subjects like General Awareness, Elementary Arithmetic and Psychometric Test (Reasoning) are for 20 marks each and the medium of examination for these three subjects is as per the Star/asterisk and for the State of Maharashtra, it is English, Hindi, Marathi and Konkani.

24. In these circumstances, we do appreciate the predicament of these Petitioners, on whose behalf it is canvassed before us that these daily wagers, who have been working for more than a decade and who are in their early forties or late thirties, would be all at “sea” while appearing for such tests. According to the learned Advocate for the Petitioners, their fate in the examination is sealed even before appearing for the same since they would find it very difficult to express their English knowledge, elementary arithmetic and psychometric test.

25. In view of the above, we are left to ponder as to whether, the purpose of this recruitment drive, in the light of *Sandip Pralhad Ingole (supra)*, as well as the order delivered at the Aurangabad Bench dated 30.08.2023 in *Vilas Agaji Pawar (supra)* and more specifically in the light of the directions of the Honourable Supreme Court vide its order dated 13.07.2023 in *Central Bank of India vs. Sandip Pralhad Ingole*, was to absorb

long serving employees under the OTM or whether, the examinations are meant for eliminating such candidates, who are barely educated and semi-literate, paving the way for recruiting fresh hands since the Respondent Bank has declared in the advertisement that the existing temporaries/ casuals will have to compete with freshers. The very purpose of the OTM is lost if freshers are permitted to compete with the existing long serving employees like the Petitioners.

26. Further pitfall in the advertisement is that if the candidates fail in the examination, they would be eliminated even for the next local language test of 30 marks. Freshers would gain a “walkover” over these Petitioners. The very purpose of the OTM would, therefore, be lost and we have reason to believe the submissions of the Petitioners that after they fail the examination and are eliminated and freshers are recruited on the available vacancies, they would be disengaged/ terminated on the ground that they have failed the examination. The reason for such contention of the Petitioners is that after some of the Petitioners approached this Court at the Aurangabad Bench in Writ Petition No.14281/2019 (supra), they were terminated by the Respondent Bank unceremoniously only as a backlash to their approaching

the High Court. Those terminated employees are now on the streets and will first have to canvass their cases for reinstatement by litigating with the Bank, after apparently having lost this opportunity of recruitment.

CONCLUSIONS

27. To conclude, we find that the impugned advertisement is arbitrary and deserves to be quashed and set aside. Time and again, the employees like the Petitioners have engaged in legal battle with the Respondent Bank. Valuable 12 years have been lost ever since the last advertisement published in 2012, which recruitment process was unilaterally aborted in 2013. Children of these Petitioners must have surely grown in the last 12 years. Many of them must be of marriageable age and must be taking higher education at senior levels. To keep the mind, body and soul together, the Petitioners have to earn regularization/absorption with certain service benefits/ monetary benefits and the job security is the only way by which these Petitioners can sustain themselves and hope for a brighter future for their children. These hopes are dashed by the approach of the Respondent Bank.

28. Considering the view expressed by this Court at Aurangabad in the order dated 30.08.2023 (supra), the order of the Nagpur Bench dated 08.07.2019 (supra) and the observations of the Honourable Supreme Court in the order dated 13.07.2023 reproduced above, we deem it appropriate to direct the Respondent Bank to lend a literal meaning to the term “One Time Measure” and initiate the recruitment process for those employees, who are working as Safai Karmacharis/ temporaries/ casuals in the Safai Karmachari cadre and Sub- Staff cadre in view of the MoS. It is also mentioned in the MoS (reproduced above) that after such OTM, these candidates would not be allowed to participate in the recruitment process which would be initiated by the Respondent Bank subsequently.

29. In view of the above, **this Writ Petition is allowed.** The impugned advertisement is quashed and set aside. We direct the Respondent Bank to follow the above directions and the observations of the Honourable Supreme Court in paragraphs 3 and 4 of the order dated 13.07.2023 (supra) and publish an advertisement in English language as well as local languages in the various States where the employees like these Petitioners are working as Safai Karmacharis/ casuals/ temporaries and copies

of such advertisements in local languages shall be published at conspicuous places and notice boards of each establishment and branch of the Respondent Bank, pan India. We expect the Respondent Bank to complete this exercise of publishing the advertisement and for commencing the recruitment process, within a period of 60 days.

kps (Y. G. KHOBRADE, J.) (RAVINDRA V. GHUGE, J.)