



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 427 OF 2004 WITH
CIVIL APPLICATION NO. 2888 OF 2010
IN WP/427/2004

State Of Maharashtra and Ors
VERSUS
Ahmednagar Zilla Shetmajoor Union

WITH
WRIT PETITION NO. 419 OF 2004 WITH
CIVIL APPLICATION NO. 2893 OF 2010
IN WP/419/2004

State Of Maharashtra and Ors
VERSUS
Ahmednagar Zilla Shetmajoor Union

WITH
WRIT PETITION NO. 945 OF 2004 WITH
CIVIL APPLICATION NO. 2889 OF 2010
IN WP/945/2004

State Of Maharashtra and Ors
VERSUS
Ahmednagar Zilla Shetmajoor Union

WITH
WRIT PETITION NO. 951 OF 2004

State Of Maharashtra and Ors
VERSUS
Shantabai Ashok Dethe

WITH
WRIT PETITION NO. 982 OF 2003

Ahmednagar Zilla Shet Majoor Union
VERSUS
Government Of Maharashtra And Ors

WITH
WRIT PETITION NO. 987 OF 2003

Ahmednagar Zilla Shet Majoor Union

VERSUS

Government Of Maharashtra And Ors

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Mr. B. A. Shinde, Advocate for the Petitioners in WP Nos.427/2004, 419/2004, 945/2004 & 951/2004 & for Respondents in WP Nos. 982/2003 & 987/2003

Mr. S. T. Shelke, Advocate for Petitioners in WP Nos. 982/2003 & 987/2003 and for Respondents in WP Nos.427/2004, 419/2004, 945/2004 & 951/2004

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CORAM : R.M. JOSHI, J
DATE : NOVEMBER 21, 2024

COMMON ORDER :

1. These Petitions take exception to judgment and order dated 27.11.2002 passed in Complaint ULP Nos. 112/1992, 322/1993, 208/1996, 244/1992, 314/1994 to 320/1994 & 350/1994 (129/1998) and Review Applications. The Industrial Court by impugned order dated 27.11.23002 has held that the Petitioners have committed unfair labour practice and directed to cease and desist from the same. A further direction was issued that the workmen, who are members of the Complainant/Union, be made permanent in the service. Being aggrieved by this judgment and order, these Petitions are filed.

2. Parties are referred to as Union, Workmen and

Horticulture Department for the sake of brevity.

3. Union filed above Complaints on behalf of their member workmen alleging unfair labour practice against Horticulture Department under items 5 and 6 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labor Laws Practices Act, 1971 (for short "**Act of 1971**") before the Industrial Court, Ahmednagar. It is the case of the Union that the workmen concerned are working with the Horticulture Department on daily wages on pay of Rs. 19 per day. It is also claimed that these workmen have rendered uninterrupted and continuous employment for more than 7 to 8 years. It is alleged that though these workmen are performing the permanent nature of work, they are denied permanency and benefits of permanency. It is claimed that on account of the same, workmen are sustained financial losses of Rs. 700 per month and other incidental benefits. It is thus claimed that in spite of workmen performing continuous work for more than 7 to 8 years, they denied permanency and hence, same amounts to unfair labour practice. With these averments, relief of deemed permanency is sought.

4. Horticulture Department filed written statement and denied contentions of the Union. It is specifically denied that the workmen concerned are daily wagers and they are continuously working on a permanent nature of work for 7 to 8 years as alleged. It is claimed that as and when the work is available the daily wagers are provided the work and are paid wages as per the Minimum Wages Act. It is denied that deliberately they are deprived of status of permanency and benefits thereof. It is also claimed that the complaint is belated and hence, deserves dismissal.

5. Learned Industrial Court framed issues whereby initial burden was placed on the Union to prove that the concerned workmen are deprived of benefits of permanency and that the same amounts to unfair labour practice. Issue was also framed as to whether the Union proves that the workmen are entitled for permanent status and benefits thereof. The Union in support of its case examined witnesses so also Department led oral and documentary evidence in support of its defence.

6. Learned Industrial Court while passing

impugned judgment has held that the nature of work carried out by the workmen is available for 12 months every year and that it is a permanent nature of work and the employees are deployed on daily wages for years together but status of permanency has not been given to these employees. It is also held that in view of Standing Order 4C, the workmen are entitled for deemed permanency. It is, therefore, held that this amounts to unfair labour practice. Consequently, direction was issued for deemed permanency of these workmen.

7. Learned AGP appearing on behalf of Department submitted that learned Industrial Court has committed error in granting permanency to the workmen contrary to the law settled by this Court. It is his submission that the law is fairly settled to say that the concept of deemed permanency under Standing Order 4C has no application to the State and its instrumentalities. To support his submissions, he placed reliance on judgment and order of Coordinate Bench of this Court in cases of *The State of Maharashtra and Others vs. The Shetkari Shetmajoor Panchayat Maharashtra and Ors, (Writ Petition No. 15221/2017, decided on 04.07.2019)* &

Government of Maharashtra and Others vs. Mohanrao Dhondiba Sonawane (Writ Petition No. 1581/2004, decided on 20.03.2018).

8. Learned Counsel for Respondent/Union vehemently supported the impugned judgment. It is his submission that once the Industrial Court has recorded findings of the fact that the workmen concerned are performing permanent nature of work for years together and as such, no fault can be found with the direction issued by the Industrial Court granting deemed permanency to them.

9. The findings recorded by the learned Industrial Court in respect of nature of work performed by the workmen concerned is based on evidence led before it and as such, in exercise of writ jurisdiction, this Court is not inclined to cause any interference therein. The question arises before this Court as to whether it was open for the Industrial Court to grant permanent status and consequential benefits of permanency to the workmen concerned by taking aid of Standing Order 4C of Industrial Employment (Standing Orders) Act, 1946. In this regard,

a reference can be made to the judgment of the Division Bench of this Court bench at Nagpur in the matter of *Municipal Council, Tirora and Another vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J, 867* wherein in no uncertain terms it is held that principle of deemed permanency under Standing Order 4C and 4D would not be applicable to the State instrumentalities. In this regard, further reference can be made to the judgment of the Hon'ble Supreme Court in case of *Secretary, State of Karnataka and Others vs. Umadevi (3) and Others, (2006) 4 SCC* wherein it is held that conferring status of permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by rules, does not arise.

10. In the light of above binding precedents, it was not open for the learned Industrial Court to grant permanency even after recording the finding that the workmen are doing work of permanent nature for years together by taking aid of standing Order 4C of Industrial Employment Standing Order Act.

11. Learned AGP has placed reliance on the

judgment of the Coordinate Bench of this Court cited supra. This Court in those judgments has taken into consideration the fact that the workmen concerned are working for years together and it would be unfair to remand the matters to the Industrial Court and directions are issued to balance equities and to do justice to the parties. This Court finds no reason to take any different view than the one taken by the Coordinate Bench of this Court in judgments cited supra. Hence, Petitions are disposed of in following terms. Directions issued by the Industrial Court are replaced with following directions:

(a) The petitioner shall prepare a proposal of the complainants alongwith such other similarly situated and comparable daily-wage employees.

(b) The proposals shall include the exact duration of service of such daily-wagers, the nature of work performed by them and the last drawn wages.

(c) Such proposal shall be forwarded to the Department of Agriculture through its Secretary, Government of Maharashtra, Mantralaya, Mumbai within a period of 3

months from today.

(d) The said authority would consider the said proposals in the light of available permanent sanctioned posts and shall grant regularization to these daily-wagers strictly as per their length of service and their seniority, within 04 months.

(e) If sufficient posts are not available to accommodate all such daily-wagers, the petitioner, while following the above principle, would consider the claims of such daily-wagers in a staggered manner and as and when such position becomes available, the daily- wagers would be regularized.

(f) These daily-wagers shall not be terminated for the reason that they are working on daily-wages or because their proposals are pending.

(g) They would be continued in employment until permanent sanctioned posts become available and their turn arrives for regularization. This protection would not include cases of disciplinary action.

12. It be noted that in the event any such daily-wager who may have approached the Court, has

superannuated, his case would be considered in view of the above directions and if he is entitled to regularization with retrospective effect, he or his legal heirs, as the case may be, would be granted notional benefits alongwith all monetary benefits within the same period as directed above.

13. Pending civil applications, if any, stand disposed of.

(R. M. JOSHI, J.)