



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5262 OF 2022

1. Vasant Rao Naik Krishi Vidyapeeth
(Vasant Rao Naik Agriculture University)
Kulsachiv (Registrar), Krishi Vidyapeeth,
Parbhani

2. Kapus Vishshdnya (Cotton Specialist)
Kapus Sanshodhan Kendra, Deglur Road,
At Post Tal-Deglur,
Dist. Nanded.

...PETITIONERS

Versus

Narayan Dhondiba Suryawanshi

...RESPONDENT

Mr. M. N. Navandar, Advocate for Petitioners
Mr. U. V. Khonde, Advocate for Respondent

CORAM : R.M. JOSHI, J.
DATE : DECEMBER 10, 2024

PER COURT:

1. This Petition takes exception to judgment and order dated 23.11.2021 passed in Complaint ULP No. 295/2016 by Industrial Court, Jalna whereby Respondent/Original Complainant was granted gratuity, wage difference and pensionary benefits at par with permanent employees.

2. Parties are referred to as University and Workman for the sake of brevity.

3. Petitioner is a deemed University established and governed under the provisions of The Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983 (for short '**the Act**') and Maharashtra Agricultural Universities (Krishi Vidyapeeths) Statutes, 1990. It is claimed that Maharashtra Civil Services Rules are applicable mutatis mutandis to the employees of the university, affiliated colleges and recognized institutions. University is required to undertake recruitment for various posts as per the rules and statutory provisions made in this regard by the State Government.

4. Workman filed complaint being Complaint ULP No. 295/2016 before Industrial Court, Jalna on 16.09.2016 contending that he was appointed as labour on clear vacant post in the year 1978 and he continued to work for more than 240 days till date of filing of the complaint. He however made grievance that he is not paid minimum wages and has not been granted regularization after satisfactory completion of one year of his service. It is alleged that though there are permanent vacant post available with the

University, with a view to deny privilege of permanent employees, complainant and other workmen were kept temporary for years together and hence, this amounts to unfair labour practice. With these amongst other contentions, Workman had sought benefits of regular employees on completion of 240 days of service so also retiral benefits including gratuity.

5. University appeared before the Industrial Court and resisted complaint by filing written statement. It is denied that Workman joined service in the year 1979 and worked continuously till 2001. It is contended that the Workmen were engaged as daily wager for temporary/seasonal work and were paid minimum wages from time to time. It is claimed that under Government Resolution No. 9/2000 a decision was taken by the State Government for compulsory retrenchment of 7444 daily rated labours from agriculture university in State of Maharashtra under Section 25(f) of the Industrial Disputes Act. Accordingly, they were retrenched by paying compensation. It is contended that at no point of time workman came to be appointed at any sanctioned post by following due procedure of law. As such, no

vested/legal right can be claimed by the workman including benefit fo permanency and other benefits at par with permanent employees.

6. Both parties led evidence before the Industrial Court. Learned Industrial Court by passing impugned judgment and order allowed complaint, however, since the workman had already attended age of superannuation, he was not reinstated but he was directed to be paid all monetary benefits and post retiral benefits including gratuity at par with permanent employees.

7. Learned Counsel for the University submits that since the University is governed by the Act, it is not open for the University to create the post and State Government only could create/sanction post to be filled in the establishment of the University. It is his contention that the leaned Industrial Court has committed error in applying provisions of Industrial Employment (Standing Orders) Act and Section 4(c) of the model standing orders framed thereunder for granting status of permanent and benefits thereof to the workman. He drew attention of the Court to the

judgment of the Division Bench of this Court in case of Municipal Council, Tirora and Another vs. Tulsidas Baliram Bindhade, 2017 (4) All MR 166 wherein it is held that Section 4(c) of the model standing orders has no application to the Government or its instrumentalities. It is his further submission that not only the present workman but other workmen had filed complaint before the Industrial Court with similar contention and prayers. The said orders passed by the Industrial Court were challenged by University in Writ Petition No. 13314/2022 and other connected Petitions before this Court. This Court by passing judgment dated 25.01.2023 has allowed the Petitions and dismissed the complaints. Thus, it is his submission that since there is already a decision made by this Court in respect of similarly placed workmen, there is no question of taking any different view in this Petition.

8. Learned Counsel for the Workman opposed the Petition on the ground that all complaints were filed and decided independently and as such, there is no question of the judgment passed in case of the other

Workmen to have application to the present case. It is his submission that in any case this Court while passing judgment in Writ Petition No. 13314/2022 has not taken into consideration the judgment of the Hon'ble Supreme Court in case of *State of Punjab and Others vs. Jagjit Singh and Others, 2016 AIR (SCW) 5176*. It is his submission that in the said judgment it is clearly held by the Hon'ble Supreme Court that the principle of equal pay for equal work is application to all temporary employees and right is vested in them to claim wages at par with the minimum pay scale of the regularly engaged Government employees. He further submits that in view of the judgment of the Hon'ble Supreme Court in case of *Sabha Shanker Dube vs. Divisional Forest Officer and Others, Civil Appeal No. 10956/2018*, such temporary employees are entitled to draw wages at the minimum of pay scale. He placed reliance on the judgment of this Court in case of *Carona Limited vs. Sitaram Atmaram Ghag and Others, 2000 (3) Bom.C.R. 608* in order to contend that it is open for the Industrial Court to decide the issue as to whether non payment of gratuity amounts to unfair labour practice. It is his submission that under the

Payment of Gratuity Act, the competent authority is entitled to only compute the amount of gratuity, if in dispute. Thus, it is his submission that the order passed by the learned Industrial Court of direction to pay gratuity to the workman does not deserve interference. With regard to the submissions of the learned Counsel for the Petitioner, relying upon the judgment of Division Bench of this Court in case of *Municipal Council, Tirora* (supra), it is submitted that herein this case no regularization/permanency has been granted by the learned Industrial Court and as such, said judgment has no application to the facts of the present case.

9. At the outset, it needs to be recorded that admittedly similarly placed workmen as the workman herein had filed complaints before the Industrial Court seeking benefits of the employment including difference of wages, gratuity at par with the permanent employees. The said judgments were challenged before this Court in above quoted Writ Petition. Perusal of the first paragraph of the said judgment dated 25.01.2023 passed by this Court itself clearly indicates that even in

those complaints University was directed to grant benefits at par with permanent employees. Thus, no distinction can be made with regard to the complaints filed by the other workmen and the present workman and relief sought therein. This Court, therefore, finds no substance in the said contention of the learned Counsel for Workman that the judgment of this Court in above Writ Petitions would not apply to the present case.

10. The question arises before this Court is as to whether it is open for this Court to take different view than the view taken by the Coordinate Bench of this Court in case of similarly placed workmen. Having regard to the similarity of the facts as well as the law applicable to the facts of both case, this Court finds no reason to take any different view than the one taken by the Coordinate Bench of this Court.

11. With regard to the submissions of the learned Counsel for the Workman that this is not the case of permanency/regularization is not supported by the material on record. In the impugned judgment, the learned Industrial Court has observed that merely because the workman has completed more than 65 years of

age i.e., age of superannuation and, therefore, reinstatement is not granted. However, observations made therein clearly indicates that the Industrial Court has held that Workman is not entitled for benefits of permanent employee including retiral benefits. Industrial Court has further recorded findings in paragraphs 9 and 10 of the judgment, which reads thus:

"9) Admittedly the respondents have retrenched the complainant as per the provisions of the Central Act. The respondents have not produced on record any rules and regulations consistent with the Bombay Model Standing Orders. The Order 4-C of the Bombay Industrial (Employment) Rules, 1959 reads as under.

4-C) A badli workman or temporary workman who has put in 190 day's uninterrupted service in the aggregate in any establishment of seasonal nature or 240 days "uninterrupted service" in the aggregate in any other establishment, during a period of preceding twelve calender months, shall be made permanent in that establishment by order in writing signed by the Manager, or any person authorized in

that behalf by the manager, irrespective of whether or not his name is on the muster roll of the establishment, through out the period of said twelve calender months.

10) From the bare reading of this provision, it is abundantly clear that it is boundent duty of the employer to issue the order of permanency to the employee, who continuously worked for more than 240 days in preceding 12 months irrespective of whether his name appeared on the muster roll or not. Admittedly such type of order is not being issued tot he complainant."

12. The aforestated observations of the Industrial Court clearly shows that it is held that Section 4(C) of the Bombay Industrial Employment (Standing Orders) Act, 1959 and model standing orders issued thereunder apply to the University. There is no dispute about the fact that the University is governed by the Act and is fully controlled by the State Government. There is further no dispute about the fact that the University cannot create post and the creation of the post and approval of the appointment is within sole discretion of the State Government. In such circumstances,

judgment in case of Municipal Council, Tirora (supra) squarely applies to the present case. It is held therein that Section 4(c) of the model standing orders framed under the Industrial Employment Standing Order Act has no application to the Government or its instrumentalities. Thus, judgment of the Industrial Court being contrary to the law laid down by Division Bench of this Court cannot sustain.

13. However, there cannot be any dispute made with regard to the position of law that in case where there is denial of payment of gratuity and issue arises as to whether the workman would be entitled for the gratuity, the item 9 of Schedule 4 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labor Laws Practices Act, 1971 could be invoked. Now question arises herein is that whether it is justified for the Industrial Court to pass an order of payment of gratuity when in view of the provisions of law no permanency/regularization could have been granted to the Workman and answer thereto is in negative.

14. Learned Counsel for the Workman submits that if this Court is inclined to cause interference in the

impugned judgment, it be clarified that allowing of this Petition and setting aside order of the Industrial Court would not come in way of the Workman to independently agitate his claim for gratuity, as per law.

15. Since issue before the Industrial Court was about the right of the Workman to permanency and benefits at par with permanent workmen, the issue of entitlement of the gratuity was neither agitated nor decided. Hence, though order impugned is interfered with, the same shall not preclude the Workman to agitate his claim in respect of gratuity in accordance with law.

16. In view of above, Petition stands allowed. Judgment and order passed by the learned Industrial Court in Complaint (ULP) No. 295/2016 dated 23.11.2021 is set aside. Complaint (ULP) No. 295/2016 stands dismissed.

(R. M. JOSHI, J.)