



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
**CIVIL APPLICATION NO. 8707 OF 2023 IN
PUBLIC INTEREST LITIGATION NO. 98 OF 2021
WITH
WRIT PETITION No. 6611 OF 2021**

Shri Saibaba Sansthan Shirdi .. Applicant

versus

The State of Maharashtra .. Respondent

Mr. A. S. Bajaj, Advocate for the Applicant.

Mr. A. B. Girase, GP for the State.

Mr. S. V. Dixit, Mr. A. S. Sawant, Mr. A. S. Gandhi, Mr. S. S. Thombre, Mr. R. R. Karpe, Mr. Parag Barde, Advocates for intervenors.

Mr. A. S. Deshmukh, Advocate for Petitioner in Writ Petition No. 6611/2021.

Mr. V. D. Hon, Senior Advocate instructed by Mr. A. V. Hon, Advocate for Respondent No. 14 in PIL.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

RESERVED ON : 28th MARCH, 2024.

PRONOUNCED ON : 09th MAY, 2024

PER COURT : (Per Ravindra V. Ghuge, J.)

1. This Civil Application is filed by the Shri Sai Baba Sansthan, Shirdi (in short “the Sansthan”), *inter alia* seeking permission to implement Resolution No. 274, dated 12.04.2023, read with the order dated 20.05.2023, passed by the Adhoc Committee and to conduct an entrance examination of the 598 employees and regularise the services of the eligible persons and to continue those

employees who did not qualify, on consolidated salary. A direction is also sought to forward the proposal to that effect to the Government for its approval.

2. For the sake of brevity, the prayers put forth in this Civil Application read thus:-

A) The Civil Application may kindly be allowed.

B) The Applicant may kindly be permitted to implement Resolution No. 274 passed by Ld. Ad-hoc Committee in its meeting held on 12.4.2023 r/w order dated 20.05.2023 passed by Ld. Ad-hoc Committee pursuant to which the applicant is directed to take permission of managing committee and take entrance exam of the 598 employee and the persons who becomes eligible, to regularize their services and the employees who do not qualify, they be continued on consolidated salary. The Applicant was directed to file Civil Application and then forward the proposal to said effect to the government for its approval.

C) Any other suitable order may kindly be passed in the interest of justice.

3. In Writ Petition No. 6611/2021, the nine workers before us have put forth prayer clauses 'B', 'C' and 'D' as under :-

B) Rule may kindly be made absolute by directing the Resp. No. 2 to extend benefit of G.R. dated 17/09/2019 to the petitioners and issue regular appointment orders in favour of all of them on contractual basis as Trained or Untrained employee as the case may be.

C) Rule may kindly be made absolute by further directing the Respondents to extend all the consequential benefits to which the petitioners would become entitled in view of grant of Prayer Clause "A" in their favour.

D) Pending the admission, hearing and final disposal of this Writ Petition the Resp. No. 2 may kindly be directed to continue the petitioners in service of the Sansthan.

4. This Public Interest Litigation is intended to monitor the management and affairs of the Sansthan, since an Ad-hoc Committee has been constituted under the orders of this Court. Pursuant to the directions issued by this Court from time to time, decisions taken by the Adhoc Committee and the resolutions passed from time to time, are routinely placed before this Court for its approval. Needless to state that, this Court has to ensure that the resolutions passed by

Adhoc Committee are worthy of consideration and meet the object for which they are intended for. In short, this Court would grant its approval, only after carefully scrutinizing the resolutions. In a series of such Applications filed for seeking approval of this Court, the present Civil Application is filed.

5. Before advertng to the contentions of the parties, it would be necessary to take into consideration the orders passed by this Court earlier, which are relevant for a decision on this Application and the Writ Petition. On 27.10.2023, this Court has observed that the proposed action of the Sansthan, to hold entrance examination, is not proper. Our order reads as under :-

1. On 14.07.2023, we had passed the following order:

"1. By this application, the trust has put forth prayer clause "B" as under:-

"(B) The Applicant may kindly be permitted to implement Resolution No.274 passed by Ld. Ad-hoc Committee in its meeting held on 12.4.2023 r/w. Order dated 20.05.2023 passed by Ld. Ad-hoc(2) 935 ca 8707.23 Committee pursuant to which the applicant is directed to take permission of managing committee and take entrance exam of the 598 employee and the persons who becomes eligible, to

regularize their services and the employees who do not qualify, they be continued on consolidated salary. The Applicant was directed to file Civil Application and then forward the proposal to said effect to the government for its approval.”

2. 598 employees are proposed to be regularised in employment of the trust after conducting an entrance examination and based on those who qualify the examination, their services would be regularised. Those who do not qualify, would be continued on consolidated salary.

3. The applicant trust needs to place before us the details of how these 598 employees entered in service of the Sansthan. If they were appointed through contractors, we need to know as to what is the fate of the contract between the contractor and the Sansthan. If the earlier contractor has fled, whether these 598 employees could be granted regularisation. Shri Bajaj submits that these are employees who have been working for the last around 20 years.

4. Let the applicant place before us better details of these 598 employees, viz; their dates of joining, their employer (labour contractor who deployed them) and the manner of their selection by the contractors. The Sansthan shall also inform us as to whether

reservation policy has been made applicable to these employees and if yes, the break-up of the regularisation in order to assess as to the representation of the reserved categories while granting regularisation to these employees.

5. *Stand over to 28.07.2023, in the ‘urgent orders’ category.”*

2. *After considering the submissions of the learned advocates in the various Civil Applications filed, including Applications seeking intervention, we passed an order on 11.08.2023 which reads thus:*

“1. It appears that the applicants, who have preferred civil applications for intervention before us, are aggrieved by their exclusion by the Sansthan which presented a list of 598 workers in Civil Application No.8707 of 2023, as being the eligible workers whose proposals are to be forwarded to the State Government for granting absorption in employment. The grievance is that there are hundreds of workers who have been working from 1995 onwards. Their names are not included by the Sansthan in its list. Allegations of favoritism are being made while preparing such list. It is also alleged that some of the temporaries who had quit employment, are brought

back and their names are included in the list to be forwarded to the State Government for regularisation.

2. We see a very serious dispute being raised before us by several applicants who claim to be the employees of the Sansthan. The Sansthan has relied upon the Government Resolution dated 17.09.2019, vide which the Government has created posts of “contractual permanent”. We are unable to comprehend as to how a post can be created by the Government which is known as ‘contractual permanent’.

3. We are informed that the contractors gets a contract of only eleven (11) months. They are said to be registered under the Contract Labour (Regulation and Abolition) Act, 1970. Every year a fresh contract is entered into. Consequentially, the contractual labourers are also appointed for only eleven months when the nature of duties are of a perennial character.

4. It has been recorded in the judgment delivered by this Court dated 03.07.2021 in Writ Petition No. 6224 of 2020, that the Government has directed that 2908 posts shall be permanent and about 1918 posts shall be filled in on contractual basis. This Court has then concluded in paragraph 19 that 598 persons are

entitled to be appointed vide the Government Resolution dated 17.09.2019 on consolidated salary as fixed by the said Government Resolution for eleven (11) months on contractual basis. None of them would be entitled for permanency and regularisation. Now, the Sansthan desires that these 598 persons should be made permanent and be absorbed in employment. This has created widespread resentment and hence, the said applicants have approached this Court through their Civil Applications alleging discrimination in selection of such temporaries/contractual employees to be referred to the Government for grant of regularisation. There are approximately 2800 contractual employees as on the date.

5. Prima-facie, we are of the view that the Sansthan is moving on a wrong footing. The Government, on the one hand, has taken a decision of sanctioning a particular strength of contractual employees vide Government Resolution dated 17.09.2019, and on the other hand, is likely to grant regularisation. If there are posts for regularisation, the principle of seniority has to be necessarily followed, meaning thereby that the senior-most contractual employee would get the first right for absorption and regularisation. Several applicants before us have alleged that the Sansthan has indulged in cherry-picking. There is no transparency. Seniority list is not

maintained on the ground that they are contractual employees.

6. What intrigues us is that if a contractor is engaged for eleven (11) months and if his contract is terminated, what would be the fate of the contractual complement of workers since the law as laid down in the case of **Steel Authority of India Limited and Ors Vs. National Union Water Front Workers and Ors – (2001) 7 SCC 1**, requires that the contractual employees walkout of the establishment of the principal employer (the Sansthan in this case) and follow the contractor employer wherever he has a contract. If a contractor is changed, but the contractual employees continue in the same establishment through another contractor, the law laid down in **Vivid Kamgar Sabha v/s Kalyani Steels Ltd. and Anr – AIR 2001 SC 1534 and Cipla Ltd. v/s Maharashtra General Kamgar Union (MGKU) – (2001)2 SCC 381**, would be applicable.

7. In our view, at this prima-facie stage, it has to be scrutinized as to who are the senior-most contractual employees working with the Sansthan. For the purposes of seeking regularisation, the Sansthan is legally obliged to prepare a seniority list, which has to be published and objections have to be called for from all such employees. So also,

regularising contractual employees means that the contracts with all their contractors will have to be terminated, so that, they are relieved for his employment to be absorbed in the employment of the Sansthan. In fact, these are the cases which need to be referred to the Industrial Tribunal, which alone can consider each case on its merits in the light of oral and documentary evidence.

8. *The learned Advocate for the Sansthan submits that he would furnish further details about these 598 workers. As such, we will have to permit the applicants in the Civil Applications before us, to also tender their details. If we find that recording of evidence to prove the tenure of appointments as contractual employees, the number of days worked in each year of uninterrupted service, the total number of years put in, etc., is necessary and if all these aspects cannot be adjudicated upon by the High Court, we may consider whether these cases can be referred to the Industrial Tribunal for adjudication.*

9. *The recruitment rules are not yet framed. The proposed revised rules are likely to be sent by the Sansthan to the Government. We would expect the Sansthan to send the draft revised rules to the Government for approval, within two weeks. The Sansthan should furnish before us, the details as*

regard the contractual employees, in view of the proposal dated 08.12.2011 that was forwarded to the State Government.

10. Stand over to 25.08.2023.”

3. In the extensive hearing conducted today, there is reason to believe, prima facie, that the Sansthan unnecessarily desires to hold exams of the Class-4 employees who have been working for at least two decades. The Sansthan is unaware as to what would be the pattern of the examination and what would be the criteria for holding examination in a particular manner. A host of submissions have been put-forth before us by various advocates representing several workers who are on daily wages and working for decades. In their contention, the Sansthan is picking and choosing candidates. The purpose for proposing an examination is to select those who are to be absorbed under the pretext that those candidates have passed the exam. The intention is to eliminate certain workers on the pretext that they have failed in the examination.

4. We are informed by the Sansthan that there are around 635 contractual employees who have been approved by the Government vide the GR dated 17.09.2019. besides those in this GR, there are many and the total will be more than 1000 contractual employees. On

instructions, the learned advocate for the Sansthan submits that there are around 2800 contractual employees.

5. We find that the situation with regard to all these contractual employees, is quite serious. It is undisputed that all of them have been working at least for a decade. The Sansthan Act came into force from 23.08.2004. Before the Act came into force, around 1052 were employed and those were absorbed by the GR dated 21.08.2008. After the Act came into force, around 1900 contractual employees have been appointed. On 17.09.2019, the State Government approved a list of 635 contractual employees to be regularized. The Sansthan deleted 37 from the said list, at its end.

6. Taking a holistic view of the above recorded factors, it is obvious that all these contractual daily wagers do not have any job security and have a bleak service future if urgent steps are not initiated for formalizing a staffing pattern for absorbing contractual daily wagers strictly as per their seniority list, since many of them have been working for more than two decades and are unaware about what lies in store for them. The insecurity of being in contractual employment is naturally going to impact the minds and bodies of these individuals. In the absence of regularisation, they would be rendered to penury after retirement.

7. We find that the law laid down by the Hon'ble Supreme Court in **Secretary, State of Karnataka and Ors. V/s. Umadevi; 2006 4 SCC 1**, would offer an answer in this peculiar situation. The Government needs to act swiftly since every passing day, contractual employees may superannuate without getting regularization in service which would seriously jeopardize their right to pension and retirement benefits. The law laid down in **Umadevi** (supra) could be a beacon for the Government to prepare a one-time scheme for absorption of the contractual / daily wagers strictly as per their seniority after preparing a staffing pattern. Time is the essence and such steps need to be urgently taken by the Government. In doing so the State Government can also consider the reservation policy while preparing the staffing pattern.

8. The GP submits that he would have to take instructions from the Government as well as from the Sansthan so as to enable the Government to take a policy decision.

9. While expecting the Government to respond to what has been observed in the foregoing paragraphs, we make it clear that those who are in the list of such contractual employees and may have superannuated without any regularization, will also be considered for deemed

*regularization and retirement benefits. We, therefore, direct the State to initiate steps for formalising a staffing pattern and introduce a one-time absorption scheme in the light of **Umadevi (supra)**.*

10. On a query raised by the Court, the learned advocate for the Sansthan submits that no further recruitment on daily wages / contractual employees is being undertaken by Sansthan. If the tenure of a Contractor concludes, the Contractor would change, but not the workers who are working under the previous Contractor. We, therefore, direct that there shall be no further recruitment without the leave of the Court and if any Contractor concludes his contract with the Sansthan or vice versa and any other Contractor is willing to absorb the contractual employees of the Contractor, the said status be maintained.

11. List this Civil Application on 09.11.2023 to enable the learned GP to make a statement.

6. This Court has referred to the judgment of the Hon'ble Supreme Court in State of Karnataka vs. Umadevi, **2006 4 SCC 1**, and it was expected that the Government would take into consideration the staffing pattern keeping in mind the reservation policy. This Court issued a direction not to make further recruitment

until the staffing pattern is approved and that the contractual employees should not be replaced by new contractual employees, irrespective of any change in the contractor, since such contractors have been changed earlier, without any change in the employees.

7. Thereafter, we have passed another order on 09.11.2023, wherein it is directed that the Government shall consider the scheme prepared by the Sansthan in the light of the judgment in Umadevi (supra). A direction was also issued to the Sansthan to prepare an accurate list of all contract/daily wager employees within a period of 45 days and to call upon objections to the said list and after considering the said objections, to forward the list to the Government. Two months time was granted to the Government to take decision on the finalisation of recruitment rules and staffing pattern.

8. The record indicates that an affidavit was filed by the Sansthan on 13.03.2024, apprising this Court about the steps taken for preparation of the model rules which would be submitted to the Government, after suitable changes. The Circular dated 17.12.2023, was also placed on record which indicates details required for the

preparation of staffing pattern and the scheme sought to be approved from the Government.

9. With an object of ensuring that the contract/daily wagers would get regularisation in the establishment of the Sansthan at the earliest, various orders were passed by this Court issuing directions to the Sansthan as well as to the appropriate Government, to take early decisions in this regard. However, during the hearing of this Application and the Writ Petition, number of intervention applications are sought to be filed by contract/daily wage/temporary employees as well as the employees who claim that their cases were already approved by the Government for regularisation, but, they were not granted actual regularisation. While hearing the Advocates in all these applications, we have noticed that the issues raised before us include seriously disputed questions concerning the rights of such employees and a full-fledged process of adjudication is required to be undertaken to assess the actual nature of duties, days/period of working, available vacancies and completion of 240 days in the continuous and uninterrupted service of the Sansthan.

10. The issue in this Civil Application and the Writ Petition is about regularisation of the employees who are temporary/daily wagers/contractual employees etc. Apparently, the Sansthan is an 'industry' under section 2(j) of the Industrial Disputes Act (for short "the Act"). So also, there cannot be any dispute with regard to the fact that the employees who claim regularisation, are 'workmen' within the meaning of Section 2(s) of the act. "Industrial Dispute" is defined under Section 2(k) of the Act which means any dispute or difference between the employer and workmen which is connected with employment, non-employment, terms of employment or with the conditions of labour of any person.

11. Prima facie, considering the material on record, we have no doubt that the issue sought to be raised in this Civil Application and the Writ Petition, is an 'industrial dispute'. Section 10 of the Act provides for a reference of a dispute to the Board, Court or Tribunal. For the purpose of making such reference by the appropriate Government, the procedure contemplated includes a demand and conciliation etc. We, however, find that the dispute between the parties is incapable of conciliation, at least before us in our Writ jurisdiction under Article 226, taking into account the serious

dispute regarding who should be granted regularisation and allegations of nepotism on the Sansthan of favouring employees in matters of granting permanency.

12. Thus, we will not permit the parties to undergo conciliation in a Writ Petition. It is the Industrial Tribunal which would be competent to adjudicate upon the dispute with regard to the regularisation of the employees. We feel that it would be beyond the jurisdiction of this Court to decide as to who is entitled for regularisation, in the backdrop of seriously disputed issues, even if the Government was to introduce a '*one time absorption scheme*'. For the purpose of deciding the claims of such individuals, recording of evidence would be imperative, which could be done only before the Tribunal and findings can be recorded on disputed questions of fact for determination of the individual rights.

13. Nevertheless, at this stage, we find it appropriate to permit the Government to consider the recruitment rules and formalise the staffing pattern for regularisation of employees. Let this exercise be completed within a period of 120 days. In case any individual or union of employees, is aggrieved by such recruitment

rules or staffing pattern, it would be open for them to raise an industrial dispute before the Appropriate Government. As observed herein above, in the absence of any possibility of settlement/conciliation between the parties in Writ jurisdiction, the Appropriate Government can refer the dispute to the Tribunal.

14. Considering the above observations and directions to the Government, **this Civil Application and Writ Petition No. 6611/2021, stand disposed off.** All pending **Civil Applications seeking intervention stand disposed off.**

15. All the employees are at liberty to raise an Industrial Dispute for seeking regularisation before the Appropriate Government.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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