

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.4086 OF 1999**

The Horticultural Deputy Director,
Ratnagiri and Anr.

....Petitioners

V/s.

Narayan Govind Antarkar, General
Secretary, Shet Mazoor Sangh
Konkan Union, B.M.S., Chiplun,
District -Ratnagiri.

....Respondent

Mrs. M.S. Bane, AGP for the Petitioners.

Mr. V.P. Vaidya for the Respondent.

**Mr. Amol Balu Sapkal, Tantra Adhikari, Upavibhagiya Krushi Adhikari,
Ratnagiri.**

CORAM : SANDEEP V. MARNE, J.

Dated : 11 July 2024.

P.C. :

1) By this Petition, the Horticultural Department of the State Government has challenged the Judgment and Order dated 1 February 1999 passed by the learned Member, Industrial Court, Kolhapur, partly allowing the complaint filed by Respondent-Union and directing conferment of status and privileges of permanency to the enlisted 102 workers from the date of completion of 5 years of continuous service and also to pay them $\frac{1}{4}$ of arrears of wages from the date of permanency.

2) I have heard Ms. Bane, the learned AGP for the Petitioner -State and Mr. Vaidya, the learned counsel appearing for the Respondent-Union.

3) Perusal of the impugned judgment of the Industrial Court would indicate that the Industrial Court has accepted the position that permanency on completion of 240 days of service could not be granted on account of non-availability of posts. It has however noted that recommendations of the Kalelkar Award, which created concept of Converted Regular Temporary Establishment (**CRTE**), where posts are not available, so that in absence of posts, the concerned workers can be brought least on CRTE. Accordingly, though the Industrial Court felt that relief of regularisation could not be granted to the members of Respondent-Union merely on the basis of completion of 240 days of service under Clause 4-C of the Model Standing Order formulated under the Industrial Employment (Standing Orders)Act, 1946, it has thought it prudent to extend the benefit of Kalelkar Award to the said members by directing that they should be granted status and privileges of permanency at least from the date of completion of five years of service.

4) From the perusal of the complaint filed by Respondent-Union, it appears that Kalelkar Award was not even relied upon before the Industrial Court by the Respondent-Union nor any relief was sought as per the Kalelkar Award. On the contrary, status of permanency was claimed only on the claim of completion of 240 days of service in a calendar year as per Clause 4-C of the Model Standard Order. However, Industrial Court on its own, considered the recommendations of Kalelkar Award and directed that at least on completion of service of five years, the members of the Respondent-

Union must be extended status and privileges of permanency to the enlisted employees. In my view, since none of the parties had relied upon Kalelkar Award before the Industrial Court, its applicability to Horticulture Department of Government of Maharashtra was neither raised nor contested. The Industrial Court ought to have limited its consideration to the claim raised by Respondent -Union about permanency on completion of 240 days' of service in a calendar year. The direction given by the Industrial Court for extension of benefit of Kalelkar Award thus, appears to be clearly erroneous.

5) So far as the claim raised by members of the Respondent-Union about grant of permanency on completion of 240 days' of service, by now it is well settled law as expounded by the Division Bench of this Court in ***Municipal Council, Tirora, Vs. Tulsidas Baliram Bindhade***,¹ in which it is held that the Industrial Court does not have jurisdiction to direct State instrumentalities to grant permanency under Clause 4-C of Model Standard Order in absence of available posts. Similar case relating to workers employed in Horticulture Department came up before this Court before the Bench of Aurangabad in ***State of Maharashtra and Ors. Vs. The Shetkari Shetmajoor Panchayat Mah. Through Vice President and Ors.***² After relying on the judgment in ***Municipal Council, Tirora*** (supra) as well as the Constitution Bench judgment in ***Secretary, State of Karnataka and others Vs. Umadevi (3) and others***,³ this Court held that the members of the Union therein were not entitled to claim permanency only on account of completion of 240 days of service. This Court however took note of the fact that workers in the said

1. 2016 (6) Mh.L.J. 867

2. Writ Petition No.15221 of 2017 decided on 4 July 2019

3. (2006) 4 SCC

case were working for 30 to 35 years. Accordingly, this Court directed sending of proposal by the Horticulture Department to the State Government for sanction of regularization of those workers against available vacancies in a staggered manner. In this connection, the findings recorded by this Court in paragraphs 10, 11 and 12 read thus:-

10. While issuing these directions, I have kept in mind that these workers have been working for more than three decades. After having put in about 30 to 35 years in employment, it would be unfair and inhuman to remand these matters to the Industrial Court at the request of the petitioners who have been totally negligent in conducting the proceedings before the Industrial Court. The directions issued in the said earlier judgment, would balance the equities and do justice to the parties.
11. In view of the above, these petitions are partly allowed only to the extent of quashing and setting aside the declaration of ULP made by the Industrial Court against the petitioners. Similarly, the directions to the petitioners to desist from committing ULP, are also set aside.
12. The direction of the Industrial Court of granting permanency in both the impugned judgments dated 10/02/2017, delivered at Jalna and 26/04/2018 delivered at Latur are set aside. Said directions are replaced by the 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.

6) Ms Bane, would place on record Government Resolution dated 16 April 2024 issued towards implementation of order dated 4 July 2019 passed by this Court. It appears that in direction No.12(a) this Court had directed submission of proposal in respect of similarly situated daily wages employees, which will include members of the Respondent -Union as well. Accordingly, a detailed proposal was sent to the Horticulture Department of the State Government and the State Government had decided the said proposal by GR dated 16 April 2024. The present Petition relates to daily wages employees working in Ratnagiri District. So far as Ratnagiri District is concerned, it is observed in the GR dated 16 April 2024 that total 1238 Mazdoors were engaged under District Superintendent Agriculture Officer, Ratnagiri and out of said 1238 daily wages employees, only 200 employees were found to have completed 240 days of service. After applying the other eligibility criteria, it was found that 86 out of 200 members were available for granting of benefit of regularization. It appears that in Ratnagiri District only one post was available and accordingly one out of the said 86 employees have been regularized in service by order dated 4 July 2019. This Court has directed that the other workers be regularized progressively and in a staggered manner as and when vacancies arise in future. Ms. Bane would submit that so far as rest 85 workers in Ratnagiri District are concerned, their cases will be considered for regularization as and when vacancies arise.

7) In my view therefore, nothing remains to be adjudicated in the present Petition as the issue involved in the Petition stands concluded by order dated 4 July 2019 passed by this Court in *Shetkari Shetmajoor Panchayat* (supra) coupled with G.R. dated 16 April 2024 adopted by the State Government.

The members of the Respondent-Union are already covered by G.R. Dated 16 April 2024 which includes regularisation /permanency in a staggered manner as and when vacancies arise in the concerned Department.

8) It is accordingly directed that the cases of eligible members of Respondent -Union shall be considered in view of the order passed by this Court on 4 July 2019 in ***Shetkari Shetmajoor Panchayat*** (supra) read with provisions of G.R. dated 16 April 2024. By order passed by this Court dated 4 July 2019, it is already directed that till the cases of eligible workers are considered for regularization of services, their services should not be terminated. The said direction would apply to the members of the Respondent -Union as well.

9) With the above directions, Writ Petition is disposed of. Rule is made partly absolute.

[SANDEEP V. MARNE, J.]