

18 January 2024.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 669 OF 2007

State of Maharashtra and anr.

....Petitioner

V/s.

Konkan Sarvajanik Bandakam and

Patbandhare Kamgar Sangh

....Respondent

Mrs. M.S. Bane, AGP for State.

Mr. Sachin Thorat, for the Respondent.

CORAM : SANDEEP V, MARNE, J.

Dated : 18 January 2024.

ORAL JUDGMENT :

1. The State of Maharashtra, through Executive Engineer, Jal Vidhyut Prakash, Thane has filed this petition challenging the Judgment and Order dated 9 July 2004 passed by the Industrial Court, Kolhapur partly allowing Complaint (ULP) No. 413 of 1994 filed by the Respondent-Union. While the Industrial Court has rejected the prayer of the Union for grant of permanency to the employees listed in Annexure-A to the complaint, it has directed Petitioners to extend the benefit of Kalelkar Settlement to 6 employees namely, Baban Laxman Pandere, Suryakant Pandurang Kamble, Santosh Dhondu Thomare, Ajit Parshuram Chavan,

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Sitaram Laxman Kirave and Dinesh Madhukar Parshete with all consequential benefits to which they are entitled in law.

2. The Respondent-Union filed Complaint (ULP) No. 413 of 1994 on behalf of nine employees who were working as Gauge Readers or Gauge Clerks at Hydroelectricity Project at Devrukh, Taluka-Sangmeshwar, District-Ratnagiri. The details of the said nine employees as included in Annexure-A to the complaint are as under:

:: तक्ता "अ" ::

अ. न.	कामगाराचे नांव	जन्म तारीख	कामाचे ठिकाण	हुद्दा	रुजू तारीख	सेवाकालावधीचा तपशील
१	दत्ताराम मारुती सावंत	३१-०५-६६	बारेवाडी, मारळ, देवळे	मापीवाचक	१९८४	जून १९८४ ते ऑक्टो. १९९४
२	बबन लक्ष्मण पंढरे	०१-०६-६५	बावनदी	मापीवाचक	१९८५	जून १९८५ ते ऑक्टो. १९९४
३	सुर्यकांत पांडुरंग कांबळे	११-०८-६८	गोठणे	मापीवाचक	१९८८	जून १९८८ ते ऑक्टो. १९९४
४	संतोष धोंडू ठोंबरे	२२-०२-७०	निनावे	मापीवाचक	१९८९	जून १९८९ ते ऑक्टो. १९९४
५	विलास श्रीधर सावंत	०५-०३-५६	मारळ	मापीवाचक	१९८९	जून १९८९ ते ऑक्टो. १९९४
६	अजित परशुराम चव्हाण	०१-०७-७२	मारळ	मापीलिपीक	१९९१	जून १९९१ ते ऑक्टो. १९९४
७	सुरेश लक्ष्मण दळवी	१०-०२-६५	मारळ, सांगवेख निनावे	मापीलिपीक	१९८४	जून १९८४ ते ऑक्टो. १९९४
८	सिताराम लक्ष्मण किरवे	१२-०५-६१	बावनदी	मापीलिपीक	१९८७	जून १९८७ ते ऑक्टो. १९९४
९	दिनेश मधूकर परशेटे	१४-०६-७१	देवळे	मापीलिपीक	१९९०	जून १९९० ते ऑक्टो. १९९४

3. In the complaint, the Respondent-Union prayed for permanency on completion of service of one year by the said nine employees. The complaint was resisted by Petitioners by filing Written Statement. It appears that an interim order was passed by the Industrial Court on 26 October 1994 restraining the Petitioners from terminating the services of the said nine employees until further orders. It appears that in pursuance of the said orders, the

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services of the said nine employees were continued as 'Gauge Reader' or 'Gauge Clerk'. After hearing both the sides, the Industrial Court proceeded to deliver the Judgment and Award dated 19 July 2004 rejecting the prayer of the Union for grant of permanency status to the said nine employees. However, it has directed the Petitioners to extend the benefit of Kalelkar Settlement to only six out of the nine employees with all consequential benefits. The reasons for issuing directions in respect of only six employees was on account of three employees leaving the services during the pendency of the complaint. Petitioners are aggrieved by the Judgment and Order dated 19 July 2004 passed by the Industrial Court and have filed the present petition.

4. By the order passed by this Court on 26 November 2007, the petition was admitted. By further order passed by this Court on 28 February 2008, this Court rejected the interim relief.

5. I have heard Mrs. Bane the learned AGP appearing for the State-Petitioners. She would submit that the Industrial Court has erred in granting the benefit of Kalelkar Settlement to the six employees. That the said six employees were seasonally employed during the rainy season for the purpose of gauzing in the rainfall. That the work performed by them is not of permanent nature. Their services were utilized as and when required. That none of them completed 240 days of continuous service. That Kalelkar Settlement requires rendering continuous service for five years and it

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is impossible that a Rain Gauger employed during rainy season can work continuously for five years, which is the requirement of Kalelkar Settlement. She would place reliance on the Government Resolution dated 24 April 2021 under which part time workers, contract workers and workers drawing honorarium were excluded from the purview of Government Resolution dated 24 July 2001 which provided for bringing daily workers on Converted Regular Temporary Establishment (CRTE). That the services of the six employees were utilized on payment of honorarium and that therefore they were clearly excluded from Kalelkar Settlement by virtue of the G.R. dated 24 April 2001.

6. *Per-contra*, Mr. Thorat the learned counsel appearing for the Respondent-Union would oppose the petition and support the order passed by the Industrial Court. He would submit that the services of the employees were utilized throughout the year. That during the rainy season, they were deployed to measure rainfall whereas during rest of the months, they services were utilized for noting temperatures. He would invite my attention to the Order dated 24 November 1992, by which their services were engaged during the period 1 November 1992 to 31 May 1993 and by order issued on 23 June 1993, they were again engaged only for the period 1 June 1993 to 31 October 1994. He would submit that the said two orders clearly prove that the engagement of services of the employees was throughout the year, except giving artificial breaks. He would submit that the concerned workers have diligently worked

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with the Petitioner-Organisation for several years beginning from the year 1984 and though the relief of permanency is denied to them by the Industrial Court, the least that they deserve is the benefit of Kalelkar Settlement by bringing them CRTE on completion of five years of service. That they fulfilled the conditions of five years continuous service and no error is committed by the Industrial Court in granting the benefit of Kalelkar Settlement to them. He would pray for dismissal of the petition.

7. Rival contentions of the parties now fall for my consideration. As directed by this Court, the Industrial Court has sent the records and proceedings of the complaint. I have perused the said records and proceedings.

8. Alongwith its complaint, the Respondent-Union filed a chart of particulars of nine employees at Annexure-A. The Petitioner-Union during the course of cross-examination admitted the correctness of details mentioned in Annexure-A to the complaint. Thus, there is no dispute about the particulars reflected in Annexure-A to the complaint. The said Annexure-A would indicate that the concerned employees were employed by the Petitioner from the year 1984 onwards and that they continued to work till October 1994 when the complaint was filed. There is no dispute to the position that on account of passing of interim order by the Industrial Court, the said nine employees (except three) continued to work till delivery of the Judgment and Order dated 19 July 2004. Thus, in so

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far as Baban Pandhere is concerned, by the time the Industrial Court delivered its judgment on 19 July 2004, he had rendered services of 19 long years. So far as the contention of Mrs. Bane about engagement of employees as temporary workers and non-rendering of services throughout the year is concerned, the said contention is belied by the evidence on record. The witness of the Petitioner has admitted in his cross-examination that the employees were paid pay scale during rainy season and that they were paid Rs.36/- per day during rest of the year. Thus, it is conclusively proved that the employees were engaged throughout the year and that they performed the work of recording rainfall during rainy season and recording temperature during rest of the year. I am therefore not inclined to interfere with the finding of fact, which is well supported by evidence, recorded by the Industrial Court about continuous engagement of the employees by the Petitioners. Since the details given in Annexure-A to the complaint are admitted, it is proved beyond iota of doubt that the concerned workmen rendered more than five years of continuous service.

9. Mrs. Bane has invited my attention to the Compendium of various instructions issued by the Public Works and Housing Department relating to the daily wage, workcharged and CRTE workers. Clause-28 of the instructions issued under the Head 'Daily Workcharged Establishment' reads thus :

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28. The benefits available to the daily rated employees under the Kalelkar Agreement (regarding availability of definite appointments on definite establishment). Such of the workmen on daily wages who have been working continuously for five years on such establishment shall be entitled, upon completion of five years, to have the posts held by them converted into posts on temporary establishment and such daily rated workmen shall be appointed on such converted posts. The post created on the converted establishment shall be personal to the incumbent and if the incumbent, for any reason leaves the services, such post shall come to an end. Upon appointment on the Converted Temporary Establishment, the workmen shall be covered by the Bombay Civil Services Rules.”

10. Mrs. Bane has also placed on record the G.R. dated 24 April 2001 which provides that all employees employed on daily wage/workcharged establishments and who have completed five years of service as on 31 December 1998 would be brought on CRTE. Though she has sought to rely on the Government Resolution dated 24 April 2001, I fail to understand as to how the said G.R. would be of any assistance to the case of the Petitioner. It has come in evidence that the services of the concerned employees were placed in pay scales at the time of their initial appointments and that they were subsequently converted into honorarium. Petitioner’s witness has also admitted that during the rainy season, employees were paid salaries in pay scales. It is therefore difficult to believe that the engagement of concerned workers were on honorarium throughout their service career. Therefore reliance on G.R. dated 24 is misplaced.

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11. Perusal of the relevant para-28 of instructions published in the Compendium issued by the Public Works and Housing Department together with the provisions of the G.R. dated 24 April 2001 would indicate that the Government of Maharashtra, based on recommendations of Justice Kalelkar took a decision to treat daily wage and workcharged workers working on such establishments for more than five years to be brought on CRTE. The objective behind bringing such workers on CRTE appears to be that they atleast get some of the benefits drawn by regular employees such as pay scale, leave etc. The concept of CRTE is brought into effect with a view to ensure that such workers, who cannot be regularized in service on account of absence of posts, are atleast granted the benefits of pay scales etc. till they are actually absorbed in service. Thus the concept appears to have been brought into effect with a view to get over the difficulty of regularisation of daily wage/workcharged workers on account of absence of regularly sanctioned posts for their absorption. If this objection is borne in mind, I find no difficulty in accepting the case of the Respondent-Union that the concerned six workers continued to languish on daily wages/honorarium for a considerable period of time and deserve atleast the benefit of Kalelkar Settlement by bringing their services on CRTE. The impugned order passed by the Industrial Court upholds the objective behind implementation of Kalelkar Settlement.

12. I therefore do not find any patent error in the impugned order passed by the Industrial Court. The same is unexceptional.

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The Writ Petition must fail. The Writ Petition is accordingly **dismissed** without any orders as to costs. The Petitioner shall implement the order of the Industrial Court within a period of three months from today.

13. Rule is discharged.

SANDEEP V. MARNE, J.