

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6602 OF 2024

WITH

WRIT PETITION NO. 5757 OF 2024

The Conservator of Forest, Borivali
Circle Forest Department
V/s.

....Petitioner

Maharashtra Employees Union

....Respondent

Mrs. Vaishali Nimbalkar, for the Petitioner.

Mr. Sanjay Singhvi a/w. Ms. Jignasha Pandya, for the Respondent.

*Ms. Revati Kulkarni, Deputy Director (South), Sanjay Gandhi National Park
Division, Mumbai present.*

CORAM : SANDEEP V. MARNE, J.

Dated : 14 June 2024.

P.C. :

1) Petitioners have filed this petition challenging the judgment and order dated 17 June 2019 passed by the Industrial Court, Mumbai in Complaint (ULP) No. 203/2014. The operative portion of the order reads thus :

(I) Complaint is hereby partly allowed.

(ii) It is hereby held and declared that the Respondents have engaged in and are engaging in unfair labour practice under items 5 6 and 9 of

Sch.IV of the MRTU & PULP Act, 1971 and they are directed to cease and desist therefrom.

(iii) The Respondents are directed to provide wages, benefits and privileges which are given to the permanent daily rated employees and the Complainants be treated as equivalent to permanent daily-rated employees.

(iv) No orders as to costs.

2) There appears to be some delay in filing the petition. Though the impugned order is passed by the Industrial Court on 17 June 2019, Petitions appear to have been filed after delay of 5 years on 12 April 2024 and 22 April 2024 respectively. Mr. Singhvi, the learned senior advocate appearing for the Respondent-Union would pray for dismissal of the petitions on the ground of delay. An additional affidavit is filed to explain the delay in filing the petition. In ordinary course, this Court would have been justified in not entertaining the Petitions on the ground of delay. However, after going through the impugned judgment and order of the Industrial Court, in my view the same does not warrant any interference even on merits, except a clarification on the aspect of regularization/permanency to members of Respondent Union. For that limited purpose, the Petition is entertained.

3) Perusal of the operative portion of the order of the Industrial Court seems to create a confusion on the aspect as to whether the Industrial Court has granted the relief of permanency/regularisation to the members of the Respondent-Union. This is because of direction in the operative portion that '*....and the Complainants be treated as equivalent to permanent daily-rated*

employees'. Mr. Singhvi would read this direction to mean grant of benefit of permanency.

4) However, after going through the various findings recorded by the Industrial Court, it is clear that the relief of regularisation/permanency is specifically denied to the members of the Respondent-Union. This is clear from the following findings recorded by the Industrial Court :

“The previous application filed by the Complainants in the year 2012 itself shows that they demanded permanency by saying that they are working since last so many years and they have worked for more than 240 days in a year. Hence, in view of the fact that the evidence of this witness remained unchallenged on count of continuous work of more than 240 days in a year, I feel that the workers have achieved the deemed permanency. However, considering the directions in the case of **Secretary, State of Karnataka V/s. Umadevi & ors-2006 II CLR 261-SC**, I feel that the Court cannot create new posts so that these 17 Complainants can be given the permanency, by holding that they are entitled for the permanency in the Respondent Forest department.”

“Hence, it prima facie appears that these Complainants have completed 240 days of continuous service and acquired the status of deemed permanency. However, considering the Government Resolution of 16.10.2012, they are not in continuous service for the relevant period. Hence, they cannot be made permanent alongwith those employees who were made permanent by the Government Resolution of 16.10.2012.”

5) Thus the direction ‘....and the Complainants be treated as *equivalent to permanent daily-rated employees*’ would only mean that equivalence would only be with regard to the wages and the said direction does not mean that members of Respondent Union are directed to be made

permanent by the Industrial Court. It is therefore clarified that the order of the Industrial Court cannot be read to mean as if the relief of permanency/regularisation is granted to the members of the Respondent-Union.

6) Mr. Singhvi disputes the above position and submits that the relief of regularisation is actually granted to the members of the Respondent-Union. I am unable to agree. The Industrial Court has clearly held that even though the members of the Respondent-Union have completed 240 days of service in a year, they still cannot be granted the relief of permanency/regularisation in view of the law laid down by the Apex Court in **Secretary, State of Karnataka V/s. Umadevi & Ors¹**. Mr. Singhvi would therefore urge that in the event this Court clarifying that the Industrial Court has denied the relief of permanency/regularisation to the members of the Respondent-Union, the Respondent-Union be granted liberty to challenge the impugned judgment and order dated 17 June 2019 with regard to the relief of regularisation/permanency. It is for the Respondent Union to take a call in this regard and no liberty in that sense would be needed. Members of Respondent Union may challenge the Order of the Industrial Court, if they can satisfy the delay, or they can file fresh claim for permanency in future. All that needs to be clarified is that disposal of the present petitions would not come in the way of the Respondent-Union challenging the judgment and order dated 17 June 2019 to the extent of denial of relief of regularisation/permanency.

¹ 2006 II CLR 261-SC

7) This leaves the aspect of payment of wages, other benefits and privileges to the members of the Respondent-Union on par with other permanent employees of the Petitioner. In my view, the law laid in this regard is well settled by the judgment of the Apex Court in **State of Punjab and Ors. V/s. Jagjit Singh and Ors**² in which the Apex Court has held that all temporary/daily wage workers are required to be granted wages in the minimum of the pay scale payable to the regular employees on the principle of '*equal pay for equal work*'. It is held as under:

60. Having traversed the legal parameters with reference to the application of the principle of "equal pay for equal work", in relation to temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the employees concerned (before this Court), were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of "equal pay for equal work" summarised by us in para 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals were appointed against posts which were also available in the regular cadre/establishment. It was also accepted that during the course of their employment, the temporary employees concerned were being randomly deputed to discharge duties and responsibilities which at some point in time were assigned to regular employees. Likewise, regular employees holding substantive posts were also posted to discharge the same work which was assigned to temporary employees from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity on any of the principles summarised by us in para 42 hereinabove. There can be no doubt, that the principle of "equal pay for equal work" would be applicable to all the temporary employees concerned, so as to vest in them the

² (2017) 1 SCC 148

right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, in the present bunch of cases would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale), extended to regular employees holding the same post.

8) In my view, therefore the direction given by the Industrial Court for payment of same wages to the members of the Respondent-Union on par with the ones extended to the permanent workers cannot really be interfered with. All that needs to be clarified is that the said direction of the Industrial Court needs to be read with the ratio of the judgment in *Jagjit Singh* (supra) and that the members of the Respondent-union shall be entitled to be paid wages in the minimum of the pay scale payable to the permanent workers in the lowest grade.

9) With the above clarification, the Writ Petitions are **disposed of**.

[SANDEEP V. MARNE, J.]

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