

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13204 OF 2024

The Deputy Director Health

Services Thane Mumbai Mandal Thane & Ors.

... **Petitioners**

Versus

Varsha Vasant Narote

... **Respondent**

AND

WRIT PETITION NO. 13205 OF 2024

The Deputy Director Health

Services Thane Mumbai Mandal Thane & Ors.

... **Petitioners**

Versus

Suvarnamala Kamlakar Dhanawade

... **Respondent**

Ms. Vaishali S. Nimbalkar, *AGP for Petitioners.*

Mr. Avinash D. Kango *for Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATE : 26 SEPTEMBER 2024.

P.C. :

1) The Petitions challenge orders dated 24 June 2022 passed by the Member Industrial Court-1, Kolhapur allowing applications filed

by Respondent under provisions of Section 50 of The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**) sanctioning the monitory claims of Rs.10,81,889/- in respect of each of the Respondent-employees.

2) I have heard Ms. Nimbalkar, the learned AGP appearing for Petitioners and Mr. Kango, the learned counsel appearing for Respondent-employees.

3) Complaints under Section 50 of the MRTU and PULP Act were required to be filed by Respondent-employees on account of non-implementation of the Judgment and Order dated 13 April 2009 passed by the Industrial Court, Kolhapur. The operative portion of the order dated 13 April 2009 reads thus:

- i) Complaint (ULP) Nos. 22/2000, 25/2000 and 27/2000 stand dismissed.
- ii) Complaint (ULP) Nos. 18 to 21/2000, 23/2000, 24/2000/ and 26/2000 are allowed.
- iii) It is hereby declared that the act of the Respondents of continuing the seven Complainants as temporary for years together attracts items 6 and 9 of Sch. IV of the M.R.T.U. & P.U.L.P Act, 1971. The Respondents are hereby directed to cease and desist from continuing to engage in unfair labour practices by sending the proposal for regularisation of the seven Complainants for permanency and benefits thereof from the date of filing of the complaints, within a period of one month from today.
- iv) In the circumstances, there is no order as to costs.

4) Thus, all that was directed by the Industrial Court by Order dated 13 April 2009 was sending of proposals for regularisation of Complainants therein for permanency and benefits thereof from the date of filing of the complaints.

5) It appears that is in contravention of the order dated 13 April 2009, Petitioners did not send proposals to the State Government for grant of permanency to the complainants therein. It appears that out of the total 10 Complainants, direction for sending proposals was issued in respect of only seven of them as three complaints were dismissed. It appears that even out of the remaining seven complainants, some of them secured regular appointments in different departments. Thus, only two Respondent-employees herein await the benefit of permanency.

6) Ms. Nimbalkar would submit that the only reason why Petitioners could not have send proposals for grant of permanency to Respondent-employees in pursuance of Industrial Court's order dated 13 April 2009 was pendency of Writ Petition No. 1488 of 2003 in this Court. In Writ Petition No. 1488 of 2003, Petitioners had challenged orders dated 15 December 2000 passed by the Labour Court, Kolhapur by which Petitioners were restrained from terminating services of Respondent therein without following due process of law. In my view, pendency of Writ Petition No. 1488 of 2003 could not have come in the way of Petitioners in implementing Industrial Court's order dated 13 April 2009 by sending the necessary proposal. Be that as it may. By order dated 19 September 2024, this Court has disposed of Writ Petition No. 1488 of 2003 by passing the following order:

"1) The present Petition challenges orders dated 15 December 2000 passed by Labour Court, Kolhapur by which limited relief is granted in favour of Respondents by restraining the Petitioners from terminating the services of Respondents without following due process of law. Revision filed by the Petitioners challenging the Order of Labour Court dated 15 December 2000 has been dismissed by Order dated 6 June 2001 passed by the Industrial Court, Kolhapur.

2) The present Petition is admitted by Order dated 2 May 2003 and no interim relief was granted in favour of Petitioners. It appears that though the impugned order passed by the Labour Court restrained termination without following due process of law, meaning thereby that services could always be terminated by following due process of law, Petitioners continued the services of Respondents on their own and did not terminate them. It appears that in respect of most of the other Respondents, the Petition has been rendered infructuous on account of their subsequent regular appointments. The Petition survives only qua Respondent Nos. 2 and 5 who apparently still continue to work on temporary basis. It also appears that the respondents filed Complaint (ULP) Nos. 18 to 27 of 2000 seeking permanency in service which have been allowed by the Industrial Court on 13 April 2009. Correctness of order dated 13 April 2009 directing grant of permanency is not subject matter of challenge in the present Petition. The limited relief is granted in favour of Respondents by the impugned order of the Labour Court dated 15 December 2000 was not to terminate the services without following due process of law. Since Respondents were continued in service during pendency of the present Petition, nothing would survive to the adjudicated in the present Petition. Leaving open all the contentions of both the parties with regard to grant of permanency to the Respondents, the Writ Petition is disposed of. Rule is discharged."

7) Thus, the impediment erroneously assumed by Petitioners in sending proposals for grant of permanency to Respondent-employee, no longer survives. In that view of the matter, it is appropriate that Petitioners send the proposals for grant of permanency to Respondents in an expeditious manner.

8) So far as the order dated 24 June 2022 passed by the Industrial Court in Recovery Applications are concerned, in my view, the Industrial Court has committed a clear error in allowing monitory claims of Respondent-employees even before the relief of permanency is granted in their favour. The question of grant of consequential monitory benefits to Respondent-employees would arise only if they are absorbed in service by sanctioning their proposals by the State

Government. In that view of the matter, the order dated 24 June 2022 passed by the Industrial Court, Kolhapur are clearly unsustainable.

9) Accordingly, I proceed to pass the following order:

i) Order dated 24 June 2022 passed by the Industrial Court, Kolhapur in Recovery Application Nos. 2 of 2019 and 3 of 2019 are set aside.

ii) Petitioners shall forthwith send proposals of in Respondent-employees in pursuance of order passed by the Industrial Court on 13 April 2009 within a period of four weeks from today.

iii) The State Government shall take decision on such proposals within three months of receipt thereof.

iv) In the event, proposals for regularisation are accepted and Respondent-employees are regularised from the date of filing of complaints as directed by the Industrial Court, necessary consequential benefits raising out of such permanency shall be paid to the Respondent-employees within a period of three months of passing of orders by the State Government.

8) With the above orders, Writ Petitions are partly allowed and **disposed of**. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]