



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3426/2023

Zilla Parishad, Yavatmal,
Through its Chief Executive Officer,
Zilla Parishad, Yavatmal

.....PETITIONER

...V E R S U S...

1. Ashok Rajaram Bondekar,
Aged about 50 Yrs., Occ. - Service,
R/o Gharfal, Tah. Babhulgaon,
Dist. Yavatmal PHC Gharfal.
2. Eknath Haribhau Dhime,
Aged about 47 Yrs., Occ. - Service,
R/o Waradh, Tah. Ralegaon,
Dist. Yavatmal. PHC Waradh
3. Maroti Pandurang Mhase
Aged about 47 Yrs., Occ. - Service,
R/o Kayar, Tah. Wani, Dist. Yavatmal
PHC Wani
4. Vilas Kantramji Padghan,
Aged about 50 Yrs., Occ. - Service,
R/o Kinhi, Tah. Darwha, Dist. Yavatmal.
PPIC Mangkinhi
5. Santosh Aganna Nugurwar,
Aged about 38 Yrs., Occ. - Service,
R/o Patanbori, Tah. Kelapur, Dist. Yavatmal.
PHC Wani
6. Ramesh Dashrath Gawande,
Aged about 47 Yrs., Occ. - Service,
R/o Sawargadh, Tah. Yavatmal,
Dist. Yavatmal. PHC Sawargadh

7. Prakash Ramaji Chavan,
Aged about 43 Yrs., Occ. - Service,
R/o Sawargaon, Tah. Kalamb,
Dist. Yavatmal. PHC Sawargadh
8. Sunil Parasbram Dhule,
Aged about 44 Yrs., Occ. - Service;
R/o Mahagaon, Tah. Mahagaon,
Dist. Yavatmal. PHC Mahagaon
9. Pradip Ambadas Ramteke,
Aged about 43 Yrs., Occ. Service,
R/o Saikheda, Tah. Darvha,
Dist. Yavatmal. PHC Saikheda
10. Gajanan Vithobaji Jisingpure,
Aged about 44 Yrs., Occ. - Service,
R/o Mhasola, Tah. Arni, Dist. Yavatmal.
11. Rajendra Manoharrao Binnod,
Aged about 43 Yrs., Occ. - Service,
R/o Madani, Tah. Babhulgaon,
Dist. Yavatmal. PHC Malmhasola
12. Ramdas Maroti Sabale,
Aged about 49 Yrs., Occ. - Service,
R/o Jamb Bazaar, Tah. Pusad,
Dist. Yavatmal. PHC Jamb Bazaar
13. The Divisional Commissioner,
Amravati Division, Amravati
14. The Directorate of Health Service,
Mumbai
15. The Secretary,
The State of Maharashtra
Department of Public Health,
10th Floor, Complex Building Premises
of GT Hospital, Mumbai

16. The Secretary,
The State of Maharashtra,
Department of Rural Development
and Water Consumption of Mantralaya,
Mumbai

...RESPONDENTS

Mr. Nalin Majithia, Advocate for petitioner.
Mr. R. R. Dawda, Advocate for respondent nos. 1 to 12.
Ms S. S. Jachak, Addl. G. P. for respondent Nos. 13 to 16.

CORAM:- ANIL L. PANSARE, J.
DATED :-14.06.2024

ORA JUDGMENT

Rule. Rule made returnable forthwith. Heard finally
by consent of learned counsel for the parties.

2. Heard Mr. Nalin Majithia, learned counsel for the
petitioner, Mr. R. R. Dawda, learned counsel for respondent nos. 1
to 12 and Ms S. S. Jachak, Additional Government Pleader for
respondent Nos. 13 to 16.

3. The petitioner – Zilla Parishad, Yavatmal, is aggrieved
by order dated 27.09.2022, passed by Industrial Court, Yavatmal
in Complaint ULP No.171/2015, which was filed by the
respondents – drivers, under Section 28 of the Maharashtra
Recognition of Trade Unions and Prevention of Unfair Labour
Practices Act, 1971 (For short the, “MRTU & PULP Act”). The

Industrial Court was pleased to allow the complaint filed by the respondents and thus declared that the petitioner is engaged in unfair labour practice and was directed to accommodate the respondents on the post of driver along with consequential benefits from the date of their initial appointment.

4. The respondents had filed a complaint, stating therein that they were serving as drivers on contractual basis continuously and uninterruptedly since 2006 at the Public Health Centres of the petitioner – Zilla Parishad, Yavatmal. They were initially appointed for six months on the recommendation of the Employment Exchange. They were interviewed and accordingly appointment letters were issued. According to the respondents, their appointment was made through proper channel. The respondents fulfilled all criteria for appointment on the post of the driver. Their entry is not a back-door entry as referred to in the Government Resolution dated 26.01.2003, which the petitioner sought to rely upon. The respondents came to know that the petitioner issued public advertisement for appointment of Drivers and, therefore, they made a representation to regularize their services and also instituted a writ petition before this Court. This Court directed the respondents to approach the appropriate forum

and accordingly complaint under Section 28 of the MRTU & PULP Act was filed. Pending complaint, the services of the respondents were continued by the petitioner, even though there was no order to that effect. In other words, their services were continued willingly.

5. The petitioner, in the reply, admitted that while giving initial appointment, they had published an advertisement in the year 2006. Various applications were received and after conducting written test and interview, the respondents were selected for the post of Driver. The only defence, that has been raised, is that their appointment was on contractual basis.

6. The parties led evidence. Evidence of the respondents (original complainants) and admission given by the petitioner (original respondent) has been noted by the Courts below in the following terms.

“22] Complainants came with the case that they were appointed as driver in the year 2006, and their names were recommended by the employment office. It is deposed that Complainants are working for more than 6 months continuously and uninterruptedly by giving them technical and artificial one day break. It is further deposed that respondent No.1 has passed resolution No.43 for regularising the service of the complainants and a proposal was sent for sanctioning and recommendation. Respondent No.1’s witness has

admitted the said fact. It is also admitted that the procedure for selection of drivers on a contractual basis or regular basis is the same. It is admitted that complainants were appointed in the year 2006 and till this date, they are working with the respondent No.1. Complainants have filed on record the copy of appointments dated 09/03/2018. The said order was given for the period of 6 months from 09/03/2018. The terms and conditions are filed at Exh.C-33 to C-44. It is admitted that the appointment orders for the period from 18/07/2014 to 18/07/2015, 18/07/2015 to 12/01/2016, 08/01/2017 to 05/07/2017, 07/07/2017 to 01/02/2018 was given to the complainants. It is further admitted that during pendency of the cases before the industrial and the Labour Court, said orders are issued.

23] The above evidence proves that respondent No.1 is not disputing the issuance of appointment order for the year 2006. During the pendency of the cases, they continued their services till 2018. Complainants' witness has deposed in details how they were recommend for appointment and they are providing service in health department. Respondent No.1's witness has admitted that the regular drivers are not available with them and their service are utilized and they called at any time to render the services. Thus, it is a clear case which provides that since 2006 their services are utilized. However, it is case of the respondent No.1 that only for specific purpose and for specific period their services are utilized, after completion of the period it must be terminated with immediate effect.

24] In the case at hand, by giving a technical and artificial one day break, the agreements are executed and their services are utilized. The another most important aspect is that during the pendency of the Court proceeding also their services were extended. If it is the case of respondent No.1 that the services of the

complainants were not required and nature is not of permanent nature, there was no question of extending the services. They could have utilized the services of other private drivers. It is clearly indicates that their services are permanent in nature, therefore, they are continued from time to time.

25 to 32

33. Respondents No. 1, 3 to 5 have categorically admitted the fact of services rendered by complainants No.1 to 4, 6 to 9 and 11 to 14. It is further mentioned that the complainants fulfilled the conditions for appointing a driver. It is further mentioned that the advertisement was published, and accordingly, the forms were called. It is admitted that the services of complainants were utilized giving one day break. It is admitted fact that resolution No.43 for regularising the services of all complainants was passed. Thus, the evidence and admitted facts clearly prove that the intention of respondent No.1 was to utilize the services of the complainants as if they are regular employees and pass a resolution to make them permanent. Therefore, it can not be said that only for a particular purpose, for the specific time their service were utilized. Thus, there is sufficient evidence on record to conclude that the Model Standing Order is applicable to the case in hand. In view of the judgment referred above Pandurang Jadhaw Vs. State of Maharashtra, they are entitled for regularization.”

7. As could be seen, while appointing the respondents, the petitioner have followed the recruitment procedure, which includes publication of advertisement, taking interview, taking skill tests, etc. The counsel does not dispute that there were and there are vacant posts of the drivers. There is further no dispute that the

services of the respondents were availed continuously except for the technical break of one day after every 11 months. I am informed that the appointment of the drivers were for driving ambulances. Counsel for the respondents submit that the services of the respondents were availed during Covid-19 period as well and all the respondents are Covid Warriors.

Accordingly, he supported the impugned judgment.

8. Despite, the well reasoned order by the Industrial Court, the Zilla Parishad, Yavatmal is before this Court to deprive the respondents of their legitimate benefits on flimsy grounds. First of such grounds, as raised by the counsel for the petitioner, is that the respondents are not “Workmen” as defined under Section 2(s) of the Industrial Disputes Act, 1947.

9. Counsel for the respondents has, by relying upon the judgments in the case of Devinder Singh .Vs. Mnicipal Council, Sanaur, reported in (2011) 6 SCC 584, countered the aforesaid submissions and rightly so. The Supreme Court, while dealing with the test to determine whether the employee is a workman, has held thus:

“12. Section 2(s) contains an exhaustive definition of the term “workman”. The definition takes within its ambit any person including an apprentice employed in

any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person, who has been dismissed, discharged or retrenched in connection with an industrial dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute. The last segment of the definition specifies certain exclusions. A person to whom the Air Force Act, 1950, or the Army Act, 1950 or the Navy Act, 1957, is applicable or who is employed in the police service as an officer or other employee of a prison or who is employed mainly in managerial or administrative capacity or who is employed in a supervisory capacity and is drawing specified wages per mensem or exercises mainly managerial functions does not fall within the definition of the term 'workman'.

13. *The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. It is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*

14. *Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of*

Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of “workman”.

9. Thus, the Supreme Court has held that whenever the petition is challenged on the ground that the employee is not a workman, the Court below has to consider whether the person was employed in an industry for hire or reward for doing manual, unskilled, skilled operational, technical or clerical work in an industry. The Court further held that once the test of employment for hire or reward for doing specific type of work is satisfied, the employee would fall within the definition of “Workman”.

10. In the present case, admittedly, the respondents are skilled workers. They were employed on salary though the employment was on contractual basis and in that sense, they could be said to be hired for doing work. There is no dispute that the Zilla Parishad is an industry for the purpose of the Act. Thus, the respondents would fall within the definition of “Workman”. There is, thus, no substance in the argument of petitioner that the respondents are not workmen.

11. Counsel for the petitioner then contended that the appointment was on contractual basis and, therefore, they are not entitled for regularization. He has relied on judgment in the case of CEO, Zilla Parishad, Thane and Ors. Vs. Santosh Tukaram Tiware and Ors., reported in (2023) 1 SCC 456. The facts before the Supreme Court were that the respondents therein were not only appointed on contractual basis but the appointment itself was a stop-gap-arrangement that too without proper selection process. Further, the tender process for appointment was initiated. The terms of the contract made express provisions in this regard. The extension of the term was sought only on the ground that there occurred delay in completion of the selection process. In this background, the Hon'ble Supreme Court held that merely because the respondents were continued in service for long period on contractual basis, the High Court could not have passed order of regularization, particularly when policy decision was taken to avail the services of driver by agency/contract, which process was delayed and that is the reason for the repeated extension. The Supreme Court further found that appointment of respondents was not made by following the due process.

12. Here, it is not even the petitioner's case that they were

in the process of regular appointments or that the appointment of the respondents was a stop-gap-arrangement. On the point of policy decision, the petitioner had passed Resolution No.43 for regularizing the services of the respondents and the proposal was sent for sanction and recommendation. The petitioner is completely silent as to what happened to the said proposal. In any case, the policy decision was taken to regularize the appointment of the respondents. Further, the appointments were made by following due procedure which was not so in the case before the Supreme Court. Thus, without examining the facts, the counsel for the petitioner has relied upon the above judgment, which has no bearing in the present case.

13. Similar is the situation in the second judgment. The petitioner's counsel has referred to the Supreme Court judgment in the case of *Union of India and Ors. Vs. ILMO Devi & anr., Civil Appeal Nos. 5689-5690 of 2021.* The respondents therein were working as contingent paid part-time Sweepers. Their working hours were less than 5 per day. The respondents approached the Central Administrative Tribunal, seeking a direction to frame a regularization/absorption policy for regularization of their services. The petitioner – Union of India, opposed the petition on

the ground that the respondents were contingent paid Sweepers, working for less than 5 hours and further that there was no regular sanctioned post of Safaiwala. In this background, the Court considered various judgments and held thus:

“8.7 Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.”

14. The learned counsel, while relying on the aforesaid judgment, has ignored vital facts. In the case before the Supreme Court, the workers were admittedly part time employees and were working for less than 5 hours a day. As against, in the present case, the workers were engaged on contractual basis but for the entire day and in a given case, as and when required, in addition to the regular hours. Thus, the services of the respondents were available round the clock. Further, it is not even the case of the petitioner that the appointment was part time. Secondly, there was no vacant post of Safaiwala in the case before the Supreme

Court, as against in the present case, admittedly, there were/are vacant posts of the drivers. Thus, the aforesaid judgment will be also not applicable in the present case.

15. In the case of *State of Maharashtra Vs. Prakash Rajaram Holkar*, reported in *2019 SCC Online Bom. 10931*, the Coordinate Bench of this Court, while dealing with identical facts, has justified the order of the Industrial Court by which the appointments were regularised by referring to the judgments of the Supreme Court, thus:

“13. In law, the learned Member, Industrial Court was justified in repelling the said contention based on the pronouncement of the Supreme Court in the case of Umadevi (supra) by placing reliance on the judgment of the Supreme Court in the case of Maharashtra State Road Transport Corporation and Anr. Vs. Casteribe Rajya Parivahan Karmachari Sanghatana wherein in paragraph Nos. 30 to 36 the following observations were made:

30. The question that arises for consideration is: have the provisions of MRTU & PULP Act denuded of the statutory status by the Constitution Bench decision in Umadevi. In our judgment, it is not.

31. The purpose and object of MRTU & PULP Act, inter alia, is to define and provide for prevention of certain unfair labour practices as listed in Schedule II, III and IV. MRTU & PULP Act empowers the Industrial and Labour Courts to decide that the person named in the complaint has engaged in or is engaged in unfair labour practice and if the unfair labour practice is proved, to declare that an unfair labour practice has been engaged in or is being

engaged in by that person and direct such person to cease and desist from such unfair labour practice and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate policy of the Act.

32. The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

33. The provisions of MRTU & PULP Act and the powers of Industrial and Labour Courts provided therein were not at all under consideration in the case of Umadevi. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi¹. Unfair labour practice on the part of the employer in engaging employees as badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in item 6 of Schedule IV and the power of Industrial and Labour Courts under Section 30 of the Act did not fall for adjudication or consideration before the Constitution Bench.

34. *It is true that the case of Dharwad District PWD Literate Daily Wage Employees Assn. arising out of industrial adjudication has been considered in Umadevi and that decision has been held to be not laying down the correct law but a careful and complete reading of decision in Umadevi¹ leaves no manner of doubt that what this Court was concerned in Umadevi was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognized by the rules or procedure and yet orders of their regularization and conferring them status of permanency have been passed.*

35. Umadevi is an authoritative pronouncement for the proposition that Supreme Court (Article 32) and High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad-hoc employees unless the recruitment itself was made regularly in terms of constitutional scheme.

36. Umadevi does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of MRTU & PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under item 6 of Schedule IV where the posts on which they have been working exists. Umadevi cannot be held to have overridden the powers of Industrial and Labour Courts in passing appropriate order under Section 30 of MRTU & PULP Act, once unfair labour practice on the part of the employer under item 6 of Schedule IV is established.

(emphasis supplied)

16. As held by the Supreme Court, the Industrial Court in the present case as well, is fully justified in directing the order of permanency of the workers who have been victims of the unfair labour practice on the part of the Zilla Parishad.

17. Put all together, what transpires is that the services of the respondents were availed on contractual basis, which continued even subsequent to the filing of complaint under Section 28 of the MRTU & PULP Act. This only indicates that the petitioners were in dire need of the services of the respondents. It is not disputed that the respondents fulfilled the conditions for appointment to the post of driver. The petitioner admitted that prior to the appointment, an advertisement was published, the applications were received, interviews were taken and, thereafter, appointment orders were issued, though titled as “Contractual Appointment”. The services of respondents were utilized giving one day break after 11 months. The posts of drivers are vacant. The Zilla Parishad had passed resolution for regularization of the services of the respondents. The aforesaid facts would clearly spell out and prove that the intention of the petitioner was to utilize the services of the respondents as if they were regular employees. Despite such status, the petitioners have opposed the legitimate

claim of the respondents. This is thus a classical case of Zilla Parishad engaged in unfair labour practice.

18. Surprisingly, the Zilla Parishad, by filing present petition is making an attempt to deprive the legitimate benefits available to the respondents. Such an attempt ought to be deprecated. The petition is, therefore, dismissed with costs of Rs.20,000/- to be paid by the petitioner to the respondents, equally, within 10 weeks from today.

Rule is discharged.

(Anil L. Pansare, J.)

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