



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 7418 OF 2019

(The Wardha District Central Cooperative Bank, Through its Manager, Shri Sanjay Gangadhar Korde ..Vs.. Amol s/o Rambhauji Farande)

with

WRIT PETITION NO. 7419 OF 2019

(The Wardha District Central Cooperative Bank, Through its Manager, Shri Sanjay Gangadhar Korde ..Vs.. Miss Madhavi Vithobaji Yenurkar)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. K. Bhoyar, Advocate for the petitioner
Mr. C. V. Jagdale, Advocate for the respondents

CORAM : ANIL L. PANSARE J.

Date of reserving the order : 26-09-2024

Date of pronouncing the order : 11-11-2024

Heard Mr. S. K. Bhoyar, learned counsel for the petitioner and Mr. C. V. Jagdale, learned counsel for the respondents.

2. These petitions arise out of the judgment and order passed by the Industrial Court, Nagpur in the complaints filed by the respondents being Complaint (ULP) No. 173/2016 and Complaint (ULP) No. 174/2016. The respondents were working with the petitioner- bank for substantial period but were not made permanent nor were regularized despite completing 240 days of continuous service during preceding 12 calendar months. Accordingly, both the respondents filed complaint under Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade

Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as 'the Act of 1971').

3. The complaint was opposed by the petitioner – bank on the count that the post under question was neither sanctioned nor vacant. The respondents were appointed on contract basis and, therefore, there arises no question of granting permanency or regularization. It is/was further the case of the petitioner that the appointment of respondents was not made by following due procedure of law. It is/was further averred that the petitioner is facing financial problem and is under the control of Administrative Board under the provisions of the Maharashtra Cooperative Societies Act, 1960.

4. In view of the rival submissions, the Industrial Court formulated the following questions in both the complaints and answered the same accordingly.

Issues	Findings
<i>1] Does the complainant proves that he was appointed on vacant and sanctioned post, completed 240 days continuous service and entitled for regularization ?</i>	<i>Yes.</i>
<i>2] Does the complainant proves that respondents indulged in unfair labour practice under Items – 9 & 10 of Schedule-IV of the MRTU & PULP Act by not regularizing the complainant in</i>	<i>Partly Affirmative. Unfair labour practice under Items-6 & 9 of Schedule-IV of</i>

service and depriving him of consequential benefits ?

the MRTU & PULP Act.

3] What order ?

As per final order.

5. The respondents relied upon the judgment in the case of ***Shri Gangadhar Balgopal Nair Vs. M/s Voltas Ltd. and another [2007(1) ALL MR 621]*** wherein Full Bench of this Court held that amendment to the model standing orders would not apply only where the industrial establishment has standing orders which are finally certified before 15-1-1959 in terms of Section 2-A of the Industrial Employment (Standing Orders) (Bombay Amendment) Act, 1957. The Court further held that, where the standing orders are subsequent to 15-1-1959, the model standing orders would apply automatically without any amendment to the certified standing orders.

6. Accordingly, the Industrial Court held that by virtue of Section 2-A of the Industrial Employment (Standing Orders) (Bombay Amendment) Act, model standing orders clause 4(C) *ipso facto* applies to the temporary workman in an industrial establishment. The same is applicable to the complainants (respondents).

7. Clause 4(C) provides that where a manual or technical work is done by *badli*/temporary workman but has put in uninterrupted service of more than 240 days in the aggregate during the period of 12 calendar months

shall be made permanent, irrespective of his name being on the muster roll.

8. The petitioner has relied upon the judgment of this Court in the case of ***State of Maharashtra Vs. Pandurang Sitaram Jadhav [2008(3) CLR 151]***. The Division Bench of this Court held thus :

“17. The learned Single Judge has considered the issue by placing reliance on the Model Standing Orders which regulates the terms and conditions of service in the matter of grant of permanency on completion of 240 days of service without dealing with the effect of non availability of sanctioned posts and the requisite vacancies. In our considered view, the order passed by the learned Single Judge can not be sustained. Provisions of Model Standing order by themselves cannot and does not confer any right of permanency unless and until the other two prerequisites are satisfied i.e. (1) appointment being in conformity with the rules relating to appointment and (2) permanent sanctioned vacant posts being in existence.”

Thus, unless two conditions mentioned above are fulfilled, the provisions of model standing orders by themselves will not confer any right of permanency. The two conditions enumerated are that the appointment should be in conformity with the rules relating to appointment and existence of permanent sanctioned vacant posts.

9. These two conditions have been admittedly not fulfilled in the present case, rather, it is/was not even

the case of the respondents that their appointment were made in accordance with due procedure. The foundation of their case is that they have been appointed as daily wagers but were not made permanent despite continuous service of 240 days in a calendar year. The Industrial Court held that the proposition laid down in ***Pandurang Sitaram Jadhav's*** case is not applicable because the petitioner – bank has adopted *modus operandi* to appoint daily wage employees and to extract work from them and that the bank is run by the management and not by the Government institute.

10. The Industrial Court, after having considered various judgment cited by both the sides, held that since the respondents were working with the petitioner – bank for substantial period, but have been denied the status of regular employee, the petitioner has indulged in unfair labour practice under Items 6 and 9 of Schedule IV of the Act of 1971. The Industrial Court was of the view that clause 4(C) of the model standing orders will be applicable and that both the respondents will be entitled for regularization, having completed 240 days of uninterrupted service during preceding 12 calendar months. On the point of permanency, the Industrial Court took a view that since there was no post vacant, nor was it the case of respondents through pleadings and evidence that despite the availability of sanctioned vacant posts, they were continued in service as daily wagers, they were not entitled for permanency.

11. I have heard both sides to find that the Industrial Court has arrived at a finding by ignoring or without considering important factual as well as legal principles attached to the issues involved. The Industrial Court held that the respondents' case falls within the ambit of item 6 of Schedule 4 of the Act of 1971 which reads thus :

“6. To employ employee 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.”

To attract above provision, one will have to render a finding that an employer has employed persons as badlis, casuals or temporaries and continued them as such for years, with the object of depriving them of the status and privilege of permanent employees. The intention of the employer to deprive employee of the status of permanent employees is of utmost importance to blame the employer of indulging into unfair labour practice. Such intention could be gathered from various factors, one of which will be where, despite availability of sanctioned vacant post, an employer has employed a person as badli, casual or temporary and continued him as such for years together.

12. In the present case, it is not even the case of the respondents that despite availability of sanctioned post, the petitioner has employed them as daily wagers. In fact the Industrial Court has denied the relief of permanency

only on the count that respondents failed to show that there existed a vacant post.

13. It is also not the case of the respondents that the Board of Directors of the petitioner – bank is empowered to create a post and has not done so in order to deprive the respondents of status and privileges of permanent employees. The parties have not placed on record the bye-laws of the petitioner – bank or the rules framed thereunder, if any, as regards creation of post and appointment of employees. In absence thereof, one wonders as to how could there be a finding that with an object of depriving the respondents of the status and privileges of the permanent employees, they were employed and continued as daily wagers.

14. The petitioner's counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Oil and Natural Gas Corporation Vs. Krishnan Gopal and ors.*** [(2020) 3 SCALE 272]. The Supreme Court has formulated following points for determination.

“i) *Whether the decision of the two judge Bench of this Court in PCLU is per incuriam on the ground that it did not consider the binding precedents on the interpretation of Item 10 of Schedule V of the ID Act, particularly those in :*

. Mahatma Phule Agricultural University v Nasik Zilla Sheth Kamgar Union [(2001) 7 SCC 346];

. Regional Manager, State Bank of India v Raja Ram [(2004) 8 SCC 164]

- . *Regional Manager, SBI v Rakesh Kumar Tewari* [(2006) 1 SCC 530] ; and
- . *Oil & Natural Gas Corpn. Ltd. Engg. Mazdoor Sangh* [(2007) 1 SCC 250]

- (ii) *Whether the interpretation which has been placed in PCLU on clause 2(ii) of the Certified Standing Orders for contingent employees of ONGC to the effect that a temporary workman who has put in 240 days of attendance in any period of twelve consecutive months and possesses the minimum qualifications is **entitled** to regularisation, is correct in view of the fact that the standing order only provides that the ‘workman’ “**may be considered for conversion as regular employee**”;*
- (iii) *Whether the view of the High Court of Andhra Pradesh that the principles enunciated in the judgment of the Constitution Bench in **Secretary, State of Karnataka v Umadevi** [(2006) 4 SCC 1] (“**Umadevi**”) are not applicable to labour law, is correct;*
- (iv) *What are the ingredients of an unfair labour practice under Item 10 of Schedule V of the ID Act; and*
- (v) *Whether a finding of an unfair labour practice can be rendered in a proceeding under Article 226 of the Constitution without the workmen leading evidence in a reference under the ID Act.”*

Hon’ble Supreme Court considered various judgments and summarized the proposition of law as under :

“23. The following propositions would emerge upon analyzing the above decisions:

- (i) *Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a*

direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

*(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, **with the object of depriving them of the benefits payable to permanent workmen.**"*

15. The Supreme Court thereafter opined that the judgment in *Oil and Natural Gas Corporation Limited Vs. Petroleum Coal Labour Union (PCLU)* needs reconsideration and accordingly requested to place the matter before the Hon'ble Chief Justice of India so as to enable His Lordship to consider placing the appeal before the appropriate Bench.

16. What is important, amongst other, is that the Supreme Court held that to attract Item 10 of the Vth Schedule of the ID Act, the employer should engage workmen as badlis, temporaries or casuals, and continued them for years, with the object of depriving them of the benefits payable to permanent workmen. Item 10 of Vth Schedule of ID Act is *pari materia* Item 6 of Schedule IV of the Act of 1971. Another aspect that is highlighted by the Supreme Court is that power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service.

17. The Industrial Court, in the present case, has not delve upon these important categories , may be because parties failed to place on record the relevant material.

18. The Industrial Court has observed that the petitioner – bank has a *modus operandi* of appointing the employees on daily wages and to extract work from them.

This observation has been made on the ground that the petitioner's witness had admitted that in the year 2002, 56 employees were appointed in the bank as daily wagers and as per the Court's order, they were taken on work.

19. Here, one will have to understand, that the Court ought to render a finding based on facts of each case. In a given case, if it is proved that the employer has regularized similarly situated workmen either under the scheme or otherwise, it would be open to workmen who have been deprived with same benefit at par with the other workmen, as has been held by the Supreme Court in the above referred judgment. Such is not the case here. The employees, here, were not regularized by the bank under any scheme but were regularized in terms of orders passed by the Court.

20. In the circumstances, unless there is a finding that respondents herein were appointed as daily wagers and were continued in service with the sole object of depriving them all the benefits payable to permanent workmen, the Industrial Court ought not to have inferred that the petitioner has indulged into unfair labour practice under Item 6 of Schedule IV of the Act of 1971. As stated earlier, to render such finding, the parties will have to place on record bye-laws of the bank, the scheme/rules of appointment etc. and for that purpose matters will have to be remanded back.

21. Accordingly, writ petitions are partly allowed. Judgments and orders dated 29-4-2019 passed by the Industrial Court, Nagpur in Complaint (ULP) No. 173/2016 and Complaint (ULP) No. 174/2016 are quashed and set aside.

22. The matters are remanded back to the Industrial Court, Nagpur to consider it afresh in accordance with law and what has been stated in the body of the order.

23. The parties shall appear before the Industrial Court, Nagpur on 27-11-2024.

(Anil L. Pansare, J.)

wasnik