

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4109 OF 2009
WITH
WRIT PETITION NO.1070 OF 2010

Superintendent,
College of Agriculture Borgaon and anr. ... Petitioners
V/s.
Chandrakant Sampatrao Salunkhe and anr. ... Respondents

None for the Petitioners in WP No.4109 of 2009 and for the Respondents in WP No.1070 of 2010.

Mr. Nitin A. Kulkarni, Advocate for the Respondents in WP No.4109 of 2009 and for the Petitioners in WP No.1070 of 2010.

CORAM : SANDEEP V. MARNE, J.

Dated : 20 February, 2025.

P.C. :

1. These are cross petitions filed by the Employer-College of Agriculture, Borgaon and by the Employee-Chandrakant Sampatrao Salunkhe challenging the judgment and order dated 11th December, 2008 passed by the Industrial Court, Satara partly allowing Complaint (ULP) No.37 of 2001. The Industrial Court has directed grant of preferential treatment to the employee for his engagement against the available vacant post. The employer has challenged Industrial Court's order to the extent of issuance of directions for grant of preference to the employee in the matter of

engagement against the vacant post. As against this, the employee has challenged the order of Industrial Court to the extent it did not grant the relief of reinstatement and backwages.

2. When the petition is called out for final hearing, none appears on behalf of the employer in both the petitions. Mr. Kulkarni, learned counsel has appeared for the employee in both the petitions. I have accordingly heard the submissions canvassed by Mr. Kulkarni. I have also gone through the findings recorded by the Industrial Court while passing the impugned order as well as the relevant records of the case filed alongwith both the petitions.

3. It appears that the employee came to be engaged as unskilled farm labour with effect from 3rd January, 1989 on daily wage basis. From the findings recorded by the Labour Court, it appears that the engagement of the employee was not continuous but intermittent. From the details of his employment during 1989 to 1999, it appears that he had worked for 1206 and ½ days. This would essentially indicate that the employee was not engaged continuously but intermittently performed the activities at the farm as a daily wage worker. From 24th August, 1999 onwards, the employee stopped attending the duties. According to the employee, he was detected with Appendix and was required to take prolonged medical treatment. After a long absence of more than one year and two months, the employee resurfaced in the office of the Vice Chancellor on 30th December, 2000 and according to him, he was not permitted to rejoin the duties. Instead he was handed over an option to opt for Voluntary Retirement, which he refused to exercise. In the light of the above factual background, the employee

approached Industrial Court, Satara by filing Complaint (ULP) No.37 of 2001, in which he prayed for relief of permanency from date of completion of 180 days of service. The prayers raised by the employee in his complaint are as under :-

" तक्रारदार तर्फे विनंती कि

१. प्र. वदिने फियादीचे बाबतीत अनुचित प्रथाचा अवलंबन केला आहे. हे जाहीर होऊन मिळावे तसेच ते थांबविण्याचे आदेश मे. कोर्टाकडून व्हावेत.

२. फियादीने १८० दिवस पूर्ण केलेल्या दिवसापासून सर्व सर्व फायद्यासहित फियादीस नोकरी कायम करण्याबाबतचे ते आदेश प्र. वादीस देण्यात यावेत.

३. प्र. वादीला फियादीस कामावरून दूर ठेवण्यात मनाई करण्यात यावी.

४. फियादी त्वरित कामावर रुजू करून घेण्याचे आदेश प्र. वादीस मे . कोर्टाकडून व्हावेत हा तक्रार अर्ज असे."

4. Thus no specific prayer was made by the employee for his reinstatement in service.

5. The Labour Court has also not granted the relief of reinstatement in favour of the employee but has directed grant of preference to him as and when vacant post becomes available.

6. The employee was merely working as temporary and daily wage majdoor. He was engaged intermittently as and when there was a requirement by paying him daily wages. He had not attained status of a permanent workman. Despite being mere temporary worker, the employee chose to proceed on alleged medical leave on 24th August, 1999 and made an attempt to join the duties only on 30th December, 2000. Since he was the

mere daily wage worker, there was no question of issuing any notice/charge-sheet to him or passing of any order terminating his services. Since the employee stopped attending duties from 24th August, 1999 for more than one year and two months, the employer did not permit him to rejoin the duties upon his return on 30th December, 2000. In my view, there was no semblance of right in favour of the employee to join the services after remaining unauthorizedly absent for one year and two months. It has come in evidence that he did not even bothered to send any intimation to the employer about his alleged medical treatment. He himself relied upon fitness certificate issued by Aanande Hospital, Magathane on 8th December, 1999 meaning thereby that he was fit to resume his duties on 8th December, 1999. However, there is no explanation as to why he did not remain present for duties after 8th December, 1999. Being a mere casual and daily wage worker, absence of one year and two months would clearly be fatal and no right existed in favour of the employee to remain in continuous service with the employer. He did not pray for relief of reinstatement and directly prayed for the relief of regularization in service. By now it is a well settled position of law that mere completion of 240 days of service does not make a temporary workman working in State Instrumentality to claim permanency/regularization. Reference in this regard can be made Division Bench Judgment of this Court in ***Municipal Council Tirora vs. Tulshidas Baliram Bindhade***¹. Therefore, mere completion of 240 of service (which the employee did not complete in most of the years) did not create any right to seek regularization/ permanency.

¹ (2016) 6 Mh. L.J. 867

7. Despite holding that the employee was not entitled to have his services regularized in absence of availability of sanctioned vacant posts, the Industrial Court has proceeded to grant relief of grant of preference to him against vacant posts. This direction would essentially mean that the employee was to be engaged as and when the work was available by grant of preference. This relief was apparently granted after noticing that some of workmen were permitted to discharge duties even after implementation of the Voluntary Retirement Scheme on 1st April, 2001.

8. In my view, since termination was not under challenge and since relief of permanency could not be granted, there was no question of directing grant of preference to the employee in the matter of fresh temporary appointment. The Industrial Court has thus grossly erred in partly allowing the complaint filed by the employee. No vested right existed in him to continue in the service of the employer. Therefore, there was no question of grant of any preference to him in the matter of fresh appointment as and when vacancies arise. The impugned order passed by the Industrial Court is thus defensible and liable to be set aside.

9. Once Writ Petition No.4109 of 2009 is allowed, nothing would survive in Writ Petition No.1070 of 2010, in which the Petitioner has prayed for grant of relief of reinstatement and backwages.

10. Writ Petition No.4109 of 2009 is accordingly allowed by setting aside the judgment and order dated 11th December, 2008 passed by Industrial Court, Satara in Complaint (ULP) No.37 of 2001.

11. Rule is made absolute in Writ Petition No.4109 of 2009. With dismissal of Writ Petition No.4109 of 2009, nothing would survive in Writ Petition No.1070 of 2010 which is accordingly dismissed by discharging the Rule therein.

12. Considering the facts and circumstances of the case, there shall be no order as to costs.

(SANDEEP V. MARNE, J.)