

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7870 OF 2012

WITH

INTERIM APPLICATION NO. 10349 OF 2024

WITH

INTERIM APPLICATION NO. 3756 OF 2019

Shri Rajendra Babanrao Jadhav ... Petitioner

V/s.

Dy. Director, Health Services and Ors ... Respondents

Mr. Avinash Kango, for the Petitioner.

Mr. N.K. Rajpurohit, AGP for the Respondent/State.

CORAM : SANDEEP V. MARNE, J.

DATE : 27TH MARCH 2025.

PC:

1. The petition challenges the judgment and order dated 13th June 2012 passed by the learned Industrial Court, Sangli partly allowing the complaint (ULP) No. 18 of 2011 and directing permanency in favour of the petitioner on completion of 240 days of service after 7th March 2008 with further directions to pay actual benefits and privileges of permanency from the date of filing of the complaint i.e. 10th March 2011. Though the petitioner has virtually succeeded before the Industrial Court, its order dated 13th June 2012 is challenged by the petitioner to the extent it seeks to deny the benefit of

permanency from the date of completion of 240 days of service after his initial appointment on 26th August 1996.

2. I have heard Mr. Kango, learned counsel appearing for the petitioner and Mr. Rajpurohit, learned AGP appearing for the Respondent/State.

3. I have gone through the findings recorded by the Industrial Court as well as various other documents filed along with the petition. It appears that the petitioner was initially engaged as a Driver on 26th August 1996. There is no dispute to the position that his initial engagement as a Driver was not after following recruitment process. His initial appointment was for a period of three months with effect from 26th August 1996. The same was continued for 29 days on five different occasions. After 4th June 1997, the appointment was continued for two months. It appears that the petitioner continued in the temporary employment as a Driver upto 5th July 1997. His services came to be terminated on the grounds of absenteeism. He filed Complaint (U.L.P) No. 26 of 1997 before the Labour Court, Ratnagiri and succeeded in the same. He was directed to be reinstated. It appears that during pendency of the complaint, his services were protected by the interim order and therefore, there was no issue of payment of back wages. Towards implementation of the order passed by the Labour Court, the petitioner came to be reinstated in service. He, thereafter, filed Complaint (U.L.P) No. 18/2011 seeking the benefits of permanency from the date of completion of 240 days of service. The learned Industrial Court has partly allowed the complaint directing grant of benefits of permanency on completion of 240 days of

service after 7th March 2008 and for payment of actual benefits flowing out of such permanency with effect from the date of filing of the complaint i.e. 10th March 2011.

4. The petitioner has already been granted the benefits of permanency of completion of 240 days of service after 7th March 2008. ***'The Municipal Council, Tirora, through its Chief Officer and Anr. Vs. Tulsidas Baliram Bindhade'***¹, the Division Bench of this Court has held that, an industrial adjudicator cannot direct grant of permanency in terms of clause 4C of the Model Standing Orders formulated under provisions of the Industrial Employment (Standing Orders) Act, 1946 merely on completion of 240 days of service in the absence of the availability of sanctioned vacant posts.

5. By now, it is well settled principles of law that the industrial adjudicator cannot direct creation of posts in an indirect manner by directing conferment of permanency on completion of 240 days of service. Despite the above settled principles of law, the Industrial Court appears to have granted the benefits of permanency on the petitioner on completion of 240 days of service after 7th march 2008. The respondent employer has not challenged the order dated 13th June 2012 and has already implemented or is bound to implement the same. Since petitioner has already succeeded in getting the benefits of permanency, I am of the view that no further benefit can be conferred on the petitioner on the basis of his purely temporary services. I am, therefore, not inclined to interfere in the impugned order passed by the Industrial Court.

1 WP No. 5199/2044 and connected matters dated 22/07/2016.

6. Petition is devoid of merits. It is, accordingly dismissed with no order as to costs.

7. At this stage, Mr. Kango, would complaint that because of pendency of the petition, the actual benefit of permanency in terms of the impugned order of the Industrial Court has not been accorded to the petitioner. He would also complain that the petitioner is now on the verge of retirement and would superannuate on 31st March 2025. If indeed the order of the Industrial Court is not implemented, the respondent shall forthwith take steps for implementation of the order of the Industrial Court within a period of two months. The monetary benefits arising out of implementation of the order of the Industrial Court shall also be paid to the petitioner within a period of two weeks along with simple interest @ 6% p.a.

8. In view of disposal of the main petition, nothing survive in the interim applications, the same shall be disposed of.

(SANDEEP V. MARNE, J.)