

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6080 OF 2024

1) Secretary,
Agricultural Animal Husbandry & Dairy
Development and Fishery Department,
Maharashtra State, Mantralaya, Mumbai-32.

2) Agricultural Commissioner,
Directorate of Agricultural,
New Administrative Building, Pune-1.

3) Assistant Agricultural Director,
Near Commissioner Officer, Main Building,
Jail Road, Nashik Road, Nashik.

4) District Agricultural Officer,
Nashik Division, Shalimar Chauk,
Nashik.

5) Dy. Divisional Agricultural Officer,
Malegaon, Near Thakare Hospital,
Malegaon Camp Road, Dist. Nashik-423 105.

6) Plantation Officer,
Taluka Nursery Center, Nilgavhal,
Tal. Malegaon, Dist. Nashik.

....*Petitioners*
(*Original Respondents*)

-Versus-

1) Sau. Shakuntalabai Tukaram Ahire,
Age- Major, Occ -Labourer.

2) Sau. Sajarabai Nimba Shelar,
Age- Major, Occ -Labourer.

3) Smt. Mangalabai Shantaram Shelar,
Age- Major, Occ -Labourer.

4) Smt. Ranjanabai Nimba Shelar,
Age- Major, Occ -Labourer.

5) Smt. Lalabai Ptabhakar Shelar,
Age- Major, Occ -Labourer.

6) Smt. Jijabai Mohan Jadhav,
Age- Major, Occ -Labourer.

All Respondents are R/o. Bhaygaon,
Tal. Malegaon, Dist. Nashik-423 203

.... Respondents
(Original Complainant)

Mrs. R. A. Salunkhe, AGP for Petitioner-State.

Ms. Seema Sarnaik, Senior Advocate i/b Ms. Sangeeta Salvi, for the
Respondent.

CORAM : SANDEEP V. MARNE, J.

Reserved On : 20 March 2025.

Pronounced On : 28 March 2025.

JUDGMENT :

1) **Rule.** Rule made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for hearing and disposal.

2) This petition is filed challenging the judgment and order dated 28 March 2023 passed by the Member, Industrial Court, Nashik in Complaint (ULP) No.42/2015. The Industrial Court has partly allowed the Complaint and has directed the Petitioners to give benefits of permanency to the Respondents from the date of filing of the Complaint with all consequential benefits attached to the post of Labourers. Since Respondent Nos.2 and 6 have crossed the age of retirement, the Industrial Court has directed grant of benefit and status

of permanency to them from the date of filing of the Complaint till the age of their retirement.

3) Facts of the case, in brief, are that the Respondents were engaged as daily wage labourers intermittently who worked seasonally and temporarily in the Nursery of Petitioner No.6 (Taluka Nursery Centre, Nilgavhal, Taluka-Malegaon, District-Nashik) since the year 1985. It is the case of the Petitioners that after the year 2001, they worked on contract basis as per G.R. dated 10 September 2001. After the year 2001, individual contracts were issued to the Respondents to perform the allotted work and payments were made to them for execution of the allotted work. It is the case of the Petitioners that they were not paid salaries or wages after the year 2001 but drew contractual amounts depending on the work performed by them. According to the Petitioners, none of the Respondents worked for 240 days in any calendar year. Respondents filed Complaint (ULP) No. 42/2015 before the Industrial Court, Nashik claiming the benefit of permanency on completion of five years of service or from the year 1991. Respondents relied on Kalelkar Award for grant of benefit of permanency on completion of temporary services of five years. The Complaint was resisted by the Petitioners by filing Written Statement. Both the parties led evidence in support of their respective claims. The Industrial Court has partly allowed the Complaint by judgment and order dated 28 March 2023 directing the Petitioners to give the benefit and status of permanency to the Respondents from the date of filing of the Complaint with all consequential benefits attached to the post of labourers. Since Respondent Nos.2 to 6 have retired, the benefit is directed to be extended to them till the dates of their retirement. Petitioners are aggrieved by the judgment and order dated 28 March 2023 and have filed the present petition.

4) Ms. Salunke, the learned AGP appearing for the Petitioners would submit that the Industrial Court has grossly erred in granting the benefit of permanency to the Respondents without appreciating the fact that they were working merely on contract basis since the year 2001. She would invite my attention to the G.R. dated 10 September 2001 in support of her contention that the Respondents worked merely as Contractors after the year 2001. She would then take me through the Chart showing the number of days of service put in by each of the Respondents to demonstrate that none of them had completed 240 days of service in any calendar year. She would submit that the Respondents were engaged seasonally as per availability of work at the nursery. That their engagement was never continuous. That they have not worked against sanctioned posts. Their engagements were not after following any selection process. That therefore the benefit of permanency could not have been extended to them by the Industrial Court. In support of her contention that it is impermissible to regularize temporary labourers on the strength of completion of 240 days of service in the Government, she would rely upon Division Bench judgment of this Court in Municipal Council, Tirora Versus. Tulsidas Baliram Bindhade¹. She would submit that this Court has repeatedly frowned upon Labour and Industrial Courts directing regularization of services merely on the strength of completion of 240 days of service. In support, she would rely upon judgments of this Court in The Deputy Director and Ors Versus. Vijay Balbhim Mali², Medical Superintendent, Rural Hospital and another Versus. Rajashree Lakshman Yadav³ and Raigad Zilla Parishad and others Versus. Kailash Balu Mhatre and others⁴. She would accordingly pray for setting aside the order passed by the Industrial Court.

¹ 2016 (6) Mh.L.J. 867.

² 2024 SCC OnLine Bom 3029

³ 2024 SCC Online Bom 1929

⁴ 2022 (2) Mh.L.J. 146

5) The petition is opposed by Ms. Sarnaik, the learned Senior Advocate appearing for the Respondents. She would submit that the Industrial Court has rightly appreciated the position that the services of the Respondents were being exploited by the Petitioners since the year 1985. That some of the Respondents have been working for the last 40 long years and have been deprived of the benefit of permanency. She would rely upon para-28 of the Kalelkar Award in support of her contention that every temporary worker must be brought on Converted Regular Temporary Establishment (CRTE) on completion of 5 years of continuous service. She would rely on judgment of this Court in State of Maharashtra Versus. M.V. Ghalge and another⁵ in support of her contention that it is not necessary to complete 240 days of service for the purpose of extension of benefit of para-28 of the Kalelkar Award. She would submit that what needs to be proved is mere continuation of the work for a period of 5 years. That even if there is break in service but the engagement is for five years, the benefit of Kalelkar Award must necessarily be extended to the temporary workers. She would submit that though Petitioners are actually entitled to CRTE from 1991, the Industrial Court has thought it appropriate to grant the benefit of permanency from the date of filing of the complaint i.e. w.e.f. 20 July 2015. She would submit that the Industrial Court has already denied the benefit of permanency or atleast CRTE to the Respondents from the year 1991 and therefore there is absolutely no warrant for interference in the impugned order passed by the Industrial Court.

6) Ms. Sarnaik would submit that the factum of continuous engagement of Respondents from the year 1995 is itself indicative of the fact that they are performing the work of perennial nature. She would invite my attention to the order passed by this Court in State of

⁵ 1991 Mh.L.J. 1557

Maharashtra & Ors. Versus. Smt. Jagan Hiranman Gaware⁶ in support of her contention that similar workers engaged in another Nursery have already been regularized in service by creation of supernumerary posts. She would submit that several posts are available for grant of permanency to the Respondents and in the event of non-availability of vacancies, supernumerary posts can be directed to be created for grant of permanency. She would submit that after having rendered several years of service, the least that the Respondents expect is grant of pensionary benefits for the service that they have rendered with the Petitioners.

7) Rival contentions of the parties now fall for my consideration.

8) It appears that the Petitioners operate a Nursery at Nilgavan, Taluka-Malegaon, District- Nashik. For execution of works at the Nursery, it appears that the Plantation Officer at the Nursery has utilized several labourers from time to time. Petitioners have placed on record number of years of service put in by each of the Respondents during 1985 to 2001. The details of engagement of Respondents during 1985 to 2001 are as under :

Total Days present from 1 January 1985 – 31 December 2001	Name of the Labourer					
	Sajarabai Nimba Shelar	Ranjanabai Nimba Shelar	Jijabai Mohan Jadhav	Mangalabai Shantaram Shelar	Lalabai Prabhakar Shelar	Shakuntalabai Tukaram Ahire
1985	57.5	0	0	0	0	0
1986	0	79	0	0	0	0
1987	50	85	0	7	76.5	0

⁶ Writ Petition No. 3038 of 2007 decided on 2 July 2007.

1988	60	0	0	7	7	0
1989	120	82	74	97	0	0
1990	90.5	68	86	10	0	102
1991	104	84	163.5	105	0	105
1992	104	118	125	138	0	132
1993	78	98	146	129	0	118
1994	101	97	149.5	126.5	0	155.5
1995	113	142	180	169	0	122
1996	0	20	16.5	22	0	17.5
1997	0	0	0	0	0	0
1998	63	103	122.5	117	119	113
1999	102	144.5	148	158	156	162
2000	124	173.5	194	186	192.5	143
2001	46	80	48	98	93	59

9) Thus, though a tall claim of engagement since 1985 is made in respect of the Respondents, none of them have rendered any substantial period of service during 1985 to 2001. If we take up the case of Respondent No.1 -Shakuntalabai Tukaram Ahire, she was engaged from the year 1990. During 1997, she was not engaged even for a single day. Between 1990 to 1996 and 1998 to 2001, she was engaged intermittently. In the year 1996, her engagement was only for 17.5 days. Throughout the year during 2001, she was engaged only for 59 days. In none of the years, she completed 240 days of service. Similar is the case of the other Respondents. To take up the case of Respondent No.5-Lalabai Prabhakar Shelar, she was engaged in the year 1987 for only 76.5 days and in 1988 only for 7 days. Thereafter, for next 9 long years, she was not engaged at all and the Plantation Officer utilized her services directly in the year 1998 for 119 days.

10) The position after the year 2001 is also not very encouraging. Alongwith the reply, the Respondents have placed on record, details of engagement after the year 2001 which again shows engagement for very few days every year. The position is as under :

Total Days present from 1 April 2001 – 31 December 2006	Name of the Labourer					
	Sajarabai Nimba Shelar	Shakuntalabai Tukaram Ahire	Mangalabai Shantaram Shelar	Lalabai Prabhakar Shelar	Ranjanabai Nimba Shelar	Jijabai Mohan Jadhav
1 April 2001 – 31 March 2002	41	41	57	4	46	18
1 April 2002 – 31 March 2003	5	58	40	38	76	79
1 April 2005 – 31 March 2006	0	51	50	148	127	0
1 April 2006 – 31 December 2006	30	31	36	31	24	97

11) The Petitioners have come out with a case that after the year 2001, Respondents were never paid salary or wages but were engaged as contractors. To illustrate, my attention is invited to the manner in which the contracts were awarded to various persons. It appears that bids were invited for various activities such as ploughing of fields, plucking of fruits, watering of plants, digging of pits, removal of grass etc. and rates were invited. The contract was awarded to person quoting the lowest rates. Contracts were awarded depending on the rates quoted. It is the contention of Ms. Sarnaik that the system of awarding contracts was deliberately implemented to avoid responsibility of paying wages despite extracting work of regular nature.

12) Perusal of the impugned order passed by the Industrial Court would indicate that the learned Presiding Officer has not applied his mind to the number of days put in by each of the Respondents and has proceeded to accept the bald averment that they were working since 1985. The findings recorded by the Industrial Court for allowing the Complaint are as under :

8. I have gone through the evidence of complainant's witnesses viz. AW No. 1 Sau. Shakuntala Ahire Exh. U-15, AW No. 2 Ranjanabai Shelar Exh. U-16, AW No. 3 Sharadabai Shelar Exh. U-17, AW No. 4 Latabai Shelar Exh. U-18, AW No. 5 Jijabai Jadhav Exh. U-19 and AW No. 6 Mangalabai Shelar Exh. U-20. They have reiterated the facts as per their complaint. In the cross examination, bare denial is put to them. The witnesses answered the question in negative. No candid evidence is brought on record, which destroyed their testimony before the court. After going through the written statement, it is established that, respondents admitted that, complainants are in service since 2001. It is the case of the respondents that, complainants are working on contract basis. There is no iota of evidence brought on record, which states that, complainants are working on contract basis since 2001. After going through the documents submitted alongwith Exh. C-8 at Sr. No. 5, on the contrary it is established that, since 1985 complainants are in service with respondents. It is the case of the respondents that, complainants have never worked for 240 days in the last calendar year continuously and uninterruptedly. It is mentioned here that, on perusal of document at Exh. C-8/5, it is appeared that, it is the record prepared by the respondents. The basis from which such record is prepared is not produced before the court. Respondents even not step-up in the witness box and deposed about such documents, consequent upon it is established that, complainants are in service with respondents since 1985. It is mentioned here that, in the written statement, there is bare denial to the version of the complainants. It is settled law that, employer will keep the record of his employee, and thus, admittedly they have all the attendance record and other ancillary record of the employees. No evidence to that effect is brought on record by respondents. No oral testimony even is adduced to that effect before the court.

9. On perusal of the documents at Exh. U-24 to Exh. U-29, it is established that, respondents have passed various resolutions as well as Government has passed various notifications and directed to give the status and benefits of permanency, even to the contract employees, who are in the service for more than 5 years. In the report of Kalelkar Award, it has also directed to implement the policy of the government scrupulously. There are no efforts on the part of the respondents to implement the Government resolutions as well as the notifications and the Award of Kalelkar committee. From the perusal of the document Exh. U-26, it is established that, there is a permanent post vacant for the category, which is claimed by complainants.

10. In defence, respondents submitted that, complaint is barred by limitation. It is mentioned here that, complainants are in service with respondents on the

date of filing of the complaint. Accordingly, the cause of action is continuing in nature. It is also argued that, respondents are the government entity. My attention is brought towards the case law submitted alongwith Exh.U-30/1. It is the judgment of the Hon'ble High Court passed against present respondents. Further more, on perusal of letter Exh. U26, it is established that, previously judgments are passed against respondents. Thus, the defence raised that, respondents are the governments entity is not tenable. It is argued that, respondents are not an industry and the provisions of the I. D. Act, 1947 is not applicable. I here studied the judgment passed by the Hon'ble High Court in W. P. No. 3038 of 2007 between the State of Maharashtra V/s. Jagan Gaware and others. Said judgment is passed against present respondents. In the said judgment, the defence of respondents that, they are not industry is already rejected by the Hon'ble High Court. Accordingly, said defence is not tenable in the eyes of law.

11. There is evidence on the part of the complainants that, they are in the service with respondents since 1985. They are giving their services continuously and uninterrupted. There is no contrary evidence that, complainants have not worked fore more than 240 days in the said years. Even if it is assumed that, complainants are the contract employees since 2001, as per the Government notification Exh. U-24 to Exh. U-29, as they have worked for more than 5 years, their services needs to make permanent. Apart to this, there is no evidence that, respondents have availed the services of the complainants on contract basis. Thus, on the basis of preponderance of probabilities, complainants have established their case that, there are vacant posts to the claims made by them. In the course of argument, it is also mentioned that, complainant No. 2 and 6 have attended the age of retirement on superannuation. Accordingly, there is an unfair labour practices falling / comprising under Item No. 5, 6, 9 & 10 of Sch-IV of the MRTU & PULP Act, 1971 is exercised, which needs to be impeded. Accordingly, issues are answered and I proceed to pass the following order :

ORDER

- 1) Complaint is partly allowed.
- 2) It is hereby declared that, the respondents have indulged into the act of an unfair labour practices under Item Nos. 5, 6, 9 & 10 of Sch-IV of the Act, 1971 and they are directed to cease and desist the same, in the future.
- 3) Respondents are directed to give the benefits permanency to the complainants from the date of filing of the complaint, with all consequential benefits attached to the post of labourers. Complainant No. 2 and 6 are entitled the benefits and status of permanency, with all consequential benefits from the date of filing of the complaint, till their respective date of retirement.
- 4) The judgment and order be complied with within a month from the date of this order.
- 5) Both the parties shall bear their own costs.

13) Thus, though specific contention was raised that Respondents never worked for 240 days in any calendar year, the

Industrial Court has recorded a perverse finding that the burden was on Petitioners to prove that Respondents had not completed 240 days of service. Since the Respondents filed complaint of unfair labour practice, the burden was on them to prove completion of 240 days of service. Even if the finding of the Industrial Court about burden put on the Petitioners is to be momentarily accepted as correct, still the said burden was discharged by producing details of engagement of each of the Respondents showing thereby that none of them have remotely completed 240 days of service. The engagement of the Respondents was seasonal and as per the availability of work. None of them have continued throughout the year even once since the year 1985. They were utilized intermittently as per availability of work. It therefore becomes difficult to believe that they performed work of perennial nature or that there was any need for creation of permanent posts for the work handled by the Respondents.

14) Even if Respondents were to complete service of 240 days in any calendar year, the law is now well settled that mere completion of 240 days of service does not make a temporary employee entitled to grant of status of permanency. The law in this regard is expounded by Division Bench judgment in *Municipal Council, Tirora* (supra) in which it is held as under :

19. In this reference, the position emerging before us is similar. There is no conflict between the provisions of M.S.O. 4C and the provisions of the section 76 of the 1965 Act. In the event of the appointment having been made validly, it may be possible to invoke the provisions Cl. 4C of M.S.O. A view to the contrary would result in regularizing/validating a void act. Cl. 4C neither permits nor contemplates the same. As held in the above judgments, if the appointment is not made in accordance with the constitutional scheme, it is void ab initio and, therefore, there can be no claim to its regularization or for grant of permanency in any manner. This is all the more so as Cl. 32 of the M.S.O. clarifies that the Standing Orders are not to operate in derogation of any other law i.e, section 76 of 1965

Act. Definitely any interpretation of Clause 4C conducive to defeating the Constitutional mandate is unwarranted. Violation of Clause 4C of the MSO may tantamount to an unfair labour practice under item 9 of Sch. IV of the 1971 Act but unless and until, other additional factors are proved on record, finding of indulgence in an unfair labour practice under Item 6 of Sch. IV thereof cannot be reached. As explained by the Hon'ble Apex Court in case of Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sanghatana, (supra), existence of a legal vacancy must be established and as discussed above, the power to recruit with the employer must also be demonstrated. In absence thereof, workman cannot succeed in proving the commission of unfair labour practice under Item 6 by the employer. These two ingredients, therefore, also must be established when benefit of Cl. 4C is being claimed. Unless availability of a vacancy is shown or then power with the employer to create the post and to fill it is brought on record, mere continuation of 240 days cannot and does not enable the workman to claim permanency by taking recourse to Cl. 4C read with Item 9 of Sch. IV of 1971 Act. Clause 4C does not employ word "regularisation" but then it is implicit in it as no "permanency" is possible without it. Conversely, it follows that when a statutory provision like section 76 disables the employer either from creating or filling in the posts, such a claim cannot be sustained. This also nullifies the reliance upon the judgment of learned Single Judge in case of Maharashtra Lok Kamgar Sanghatana vs. Ballarpur Industries Limited (supra) where the employer was a private Company not subjected to such regulatory measures by any Statute and enjoyed full freedom to create the posts and to recruit. One of us (B.P. Dharmadhikari, J.) is party to the judgment of this Court in Raymond UCO Denim Private Ltd. vs. Praful Warade and ors. (supra) which again needs to be distinguished for the same reasons. The judgment of learned Single Judge in case of Indian Tobacco Company Ltd. vs. Industrial Court and ors. (supra), judgment of Hon'ble Apex Court affirming it or then judgment of Hon'ble Apex Court reported at Western India Match Company Ltd. and Workmen are all considered therein and are distinguishable as the same do not pertain to the province of public employment or consider inherent Constitutional restraints (the *suprema lex* - see Mahendra L. Jain vs. Indore Development Authority and others (supra) and Cl. 32 of the MSO. For same reasons, law laid down by the Full Bench judgment of this Court in 2007(1) Mh.L.J. (F.B.) 754 2007 (1) CLR 460 Gangadhar Balgopal Nair vs. Voltas Limited and anr. does not advance the cause of workmen. The Division Bench of this Court in May and Baker Ltd. vs. Kishore Jaikishandas Ichchaporla (supra) while construing section 10A(3) held that the expression "other law" would not refer to the Model Standing Orders or the Certified Standing Orders since they are laws made under the provisions of Parent Act itself and not under any other law. The Model Standing Orders and Certified Standing Orders, held the Division Bench, "are laws no doubt but they are laws made under the provisions of the Act". They were held not to be provisions under any other law. This discussion therefore shows how these words "in derogation of any law for the time being in force" in Cl. 32 of MSO need to be understood and does not help Adv. Jaiswal or Adv. Khan.

20. In Vice-chancellor, Lucknow University vs. Akhilesh Kumar Khare and anr. (supra) relied upon by Adv. Parihar, Hon'ble Apex Court follows its Constitution Bench in Umadevi (III) and while rejecting relief of regularization to the daily wagers who were engaged in public employment without proper procedure, grants them compensation of 4 Lakh each by way of compassion. This judgment does not consider any welfare labour legislation and, therefore, cannot provide direct answer to the reference made. Judgment of this Court taking similar view in the light of 1971 Act in the case of Punjabrao Krishi Vidyapeeth, Akola vs. General Secretary, Krishi Vidyapeeth Kamgar Union and anr. (supra) is already considered above. The Division Bench of this Court in State of Maharashtra and anr. vs. Pandurang Sitaram Jadhav (supra) finds that the respondents before it were employed as daily wagers in the establishment of the Government Milk Dairy for a longer period of 12 to 20 years. There were no sanctioned posts and vacancies in existence in the concerned department. Respondents failed to demonstrate that their appointments were made in accordance with the procedure prescribed for selection. The Division Bench finds it wholly unjust to direct the appellant State Government to grant permanency to the respondents. It points out that the provisions of Model Standing Orders are subject to the Rules regulating selection and appointment so also subject to the constitutional scheme of public employment. Respondents daily wagers are declared to possess no legal right to claim permanency. Order passed by the learned Single Judge to the contrary have been quashed. State Government is held obliged to make appointments in adherence to the constitutional scheme of Public employment. Respondents Daily Wagers appointed without following the prescribed procedure for selection by passing public participation did not acquire any legal right to claim permanency. It is apparent that no inconsistency exists and cannot be worked out in State of Maharashtra and anr. vs. Pandurang Sitaram Jadhav as also Pune Municipal Corporation vs. Dhananjay Prabhakar Gokhale (supra) on one hand and Ballarpur Industries Limited vs. Maharashtra Lok Kamgar Sanghatana (supra) on the other hand. Status of employer, nature of employment and inherent Constitutional limitation on public employer or absence of such fetters on any private employer or absolute freedom available to it to create post/s and recruit, are some of the distinguishing features which prohibit this exercise.

21. Thus, in the light of this discussion, it follows that in absence of vacant sanctioned posts with the Municipal Council, a workman who has put in continuous service of 240 days or more in span of 12 months, cannot invoke Clause 4C of the MSO to claim either permanency or regularization. We accordingly answer the question referred. Registry to place the writ petitions before the learned Single Judge as per roster assignment for further consideration.

15) This Court has reiterated the principles of impermissibility to confer the benefit of permanency in terms of Clause-4C of the Model

Standing Orders in service of State Instrumentalities on mere completion of 240 days of service in *Medical Superintendent, Rural Hospital Versus. Rajashree Lakshman Yadav* (supra) and *The Deputy Director Versus. Vijay Balbhim Mali* (supra).

16) In *Raigad Zilla Parishad* (supra), the Coordinate Bench of this Court had encountered a situation where temporary workers were engaged by Zilla Parishad for over 30 years and were granted the benefit of permanency by the Industrial Court. This Court followed the dictum in *Municipal Council, Tirora* and held that grant of permanency cannot be automatic in absence of availability of sanctioned posts. This Court therefore adopted the mechanism of directing consideration of proposal for creation of posts for absorption of daily wagers who had worked for Zilla Parishad for over 30 years. In *The State of Maharashtra and others Versus. The Shetkari Shetmajoor Panchayat Mah. Through Vice President and others*⁷, this Court repeated similar course of action of consideration of proposal for creation of posts for absorption of workers, who had rendered decades of service.

17) In my view, considering the nature of engagement of Respondents and number of days of service rendered by them in each year, it is impermissible to confer status of permanency to them. The Industrial Court has grossly erred in directing confirmation of status of permanency from the date of filing of the complaint. Mr. Sarnaik has strenuously relied upon judgment of Single Judge of this Court in *State of Maharashtra Versus. M.V. Ghalge* (supra) in support of her contention that the benefit of Kalelkar Award must be given on completion of five years of continuous service even if the workers do not complete 240

⁷ Writ Petition No. 15221 of 2017 decided on 4 July 2019 (Bench at Aurangabad)

days of service in a calendar year. In my view, services of the Respondents cannot be treated as continuous by any stretch of imagination. If Ms. Sarnaik's contention is accepted, the same would virtually mean that a worker rendering one day of service in five years would be entitled to be brought on CRTE and would then claim regularization. The concept of CRTE contemplates payment of all benefits of regular employment when permanent posts are not available. It is a unique concept under which the Government finds it impossible to make a worker permanent in absence of availability of vacancy. However, till vacancy becomes available, he is put on CRTE so as to ensure that the worker gets paid on par with other regular employees. However, what must be borne in mind is that even for bringing the worker on CRTE, perennial work must be available. This is because a worker brought on CRTE would draw wages in the pay-scale of a regular employee. It is inconceivable that services of the worker are indeed for five days in a month but he has drawn salary for the entire month only because he is brought in on CRTE as per para-28 of the Kalelkar Award. In my view, therefore the Respondents were not entitled to be brought on CRTE. Considering the nature of work performed by them, in any case, the Industrial Court has not granted the benefit of CRTE on completion of five years of service. In my view, therefore what can be done at the highest in the present case is to follow the methodology adopted by the Coordinate Bench of this Court in ***Raigad Zilla Parishad and The Shetkari Shetmajoor Panchayat Mah. Through Vice President*** by directing consideration of proposal for creation of posts for possible absorption of the Respondents. If the State Government feels that services rendered by Respondents are required at the Nursery, posts can be created for their absorption.

- 18) I accordingly proceed to pass the following order:
- (i) The judgment and order dated 28 March 2023 passed by the Member, Industrial Court, Nashik in Complaint (ULP) No.42/2015 is modified by directing that the Petitioner No. 6 shall send a proposal to the State Government for creation of posts for grant of permanency to the Respondents within 8 weeks.
 - (ii) The State Government shall consider and decide the proposal sent by Petitioner No. 6 within 8 weeks of receipt thereof.
 - (iii) If the proposal for sanction of posts is approved, the Respondents shall be granted the benefit of permanency accordingly.
- 19) With the above directions, the Petition is **partly allowed**.
Rule is made partly absolute. There shall be no orders as to costs.

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[SANDEEP V. MARNE, J.]