



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

WRIT PETITION NO. 3092 OF 2019

Sau. Jawantibai w/o Hamesh Rane
 Aged about 50 years, Occ. Service
 R/o. Gaushala Ward, Gondia
 Tah. and District – Gondia



.. Petitioner

Versus

1. Gondia Agriculture Produce Marketing Committee, Through Director Suresh Kumarji Agrawal, Agriculture Produce Marketing Committee, Gondia
2. Incharge Secretary, Agriculture Produce Marketing Committee, Gondia
3. Chief Officer, Nagar Parishad, Gondia, Tah. and District – Gondia
4. District Deputy Registrar, Co-Operative Society, Gondia, Tah. and District – Gondia
5. Assistant Deputy Registrar, Co-Operative Society, Gondia,
6. Chairman, Agriculture Produce Marketing Committee, Gondia



.. Respondents

 Ms. Shubhangi Gaiki, Advocate h/f Mr. Z.S. Charlerwar, Advocate for petitioner.

Mr. S.A. Sahu, Advocate h/f Mr. M.I. Dhatrak, Advocate for respondent No.3.

Mrs. Mukta Kavimandan, AGP for respondent Nos.4 and 5.

CORAM : SIDDHESHWAR S. THOMBARE, J.

DATED : NOVEMBER 26, 2025

ORAL JUDGMENT

(1) Heard. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties at the stage of admission.

(2) By this petition, the petitioner has challenged the order dated 08/03/2019, passed by learned Industrial Court, Bhandara, in Complaint(ULP)No.186/2015, whereby the Complaint filed by the petitioner came to be dismissed.

(3) The facts of the case are as under :-

The petitioner had approached before the learned Industrial Court by filing Complaint(ULP) No.186/2015 alleging that respondents have engaged in an unfair labour practice under Item 5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU and PULP Act) for not regularizing the services of the complainant/petitioner, despite continuous service from 1990.

(4) According to the petitioner, her mother, namely, Pramilabai wd/o. Bahira was rendering her services for respondent No.1. After the demise of Pramilabai, the petitioner/complainant came

to be appointed on compassionate ground as sweeper and since then she had worked continuously, however, the respondent No.1 had not extended the benefit of permanency to her.

(5) Before the Industrial Court respondent No.1 appeared and filed Written Statement and resisted the claim on the ground that APMC is established under the Maharashtra Agriculture Produce Marketing (Development and Regulation) Act, 1963 and its function are limited to regulate the sale and purchase of agricultural produce only and submitted that it has not involved in any commercial activities. It was further stated that APMC is not an Industrial Establishment within the meaning of Section 2(e) of the Industrial Employment (Standing Orders) Act, 1946 and/or Section 2(ii) of the Payment of Wages Act, 1936. It was further contended that APMC does not have power to sanction the posts.

(6) After considering the evidence led by the parties, the Industrial Court framed issues. Learned Industrial Court observed that there is no dispute about the fact that the petitioner was working since 1990 with respondent APMC, but only on the ground that there are no sanctioned post available and APMC is not having the power to create the post, the complaint filed by the petitioner/complainant came to be dismissed.

(7) I have gone through the entire documents on record and the findings recorded by the learned Industrial Court.

(8) The Hon'ble Apex Court in the case of **Pandurang Sitaram Jadhav and others Vs State of Maharashtra Through its Dairy Manager and another**, reported in **[(2020) 17 SCC 393]** observed in paragraphs 12, 13 and 14 as under:

"12. In view of the aforesaid facts as also the legal pronouncements made subsequently, we have no doubt that these appellants before us would be entitled to the benefit of regularisation and mere delay in preferring the claim would not come in their way except that the benefit of regularisation would arise from the date the complaints were filed.

13. The finding of an unfair labour practice by the Tribunal has in fact been confirmed by the learned Single Judge in the present case and the only two reasons for interference by the Division Bench relating to Umadevi (3) case have already been explained in the aforesaid subsequent judgments.

14. We thus, direct the respondents to regularise the appellants accordingly and the necessary orders be issued within three months from the date of the order. The benefits which the appellants would be entitled to should also be remitted to the appellants within the same period from the date of the complaints, though the earlier period would be counted for the purpose of calculation of benefits without the appellants being monetarily entitled for that period."

(9) The Hon'ble Apex Court further in the case of **Shripal and another Vs. Nagar Nigam, Ghaziabad**, reported in **(2025 SCC OnLine SC 221)** has observed in paragraphs 16, 17 and 18 as under:

"16. The High Court did acknowledge the Employer's inability to justify these abrupt terminations. Consequently, it ordered re-engagement on daily wages with some measure of parity in minimum pay. Regrettably, this only perpetuated precariousness: the Appellant Workmen were left in a marginally improved yet still uncertain status. While the High Court recognized the importance of their work and hinted at eventual regularization, it failed to afford them continuity of service or meaningful back wages commensurate with the degree of statutory violation evident on record.

17. In light of these considerations, the Employer's discontinuation of the Appellant Workmen stands in violation of the most basic labour law principles. Once it is established that their services were terminated without adhering to Sections 6E and 6N of the U.P. Industrial Disputes Act, 1947, and that they were engaged in essential, perennial duties, these workers cannot be relegated to perpetual uncertainty. While concerns of municipal budget and compliance with recruitment rules merit consideration, such concerns do not absolve the Employer of statutory obligations or negate equitable entitlements. Indeed, bureaucratic limitations cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period.

18. The impugned order of the High Court, to the extent they confine the Appellant Workmen to future daily-wage engagement without continuity or meaningful back wages, is hereby set aside with the following directions:

I. The discontinuation of the Appellant Workmen's services, effected without compliance with Section 6E and Section 6N of the U.P. Industrial Disputes Act, 1947, is declared illegal. All orders or communications terminating their services are quashed. In consequence, the Appellant Workmen shall be treated continuing in service from the date of their termination, for all purposes, including seniority and continuity in service.

II. The Respondent Employer shall reinstate the Appellant Workmen in their respective posts (or posts akin to the duties they previously performed) within four weeks from the date of this Judgment. Their entire period of absence (from the date of termination until actual reinstatement) shall be counted for continuity of service and all consequential benefits, such as seniority and eligibility for promotions, if any.

III. Considering the length of service, the Appellant Workmen shall be entitled to 50% of the back wages from the date of their discontinuation until their actual reinstatement. The Respondent Employer shall clear the aforesaid dues within three months from the date of their reinstatement.

IV. The Respondent Employer is directed to initiate a fair and transparent process for regularizing the Appellant Workmen within six months from the date of reinstatement, duly considering the fact that they have performed perennial municipal duties akin to permanent posts. In assessing regularization, the Employer shall not impose educational or procedural criteria retroactively if such requirements were never applied to the Appellant Workmen similarly situated regular employees in the past. To the extent that sanctioned vacancies for such duties exist or are required the Respondent Employer shall expedite all necessary administrative processes to ensure these longtime employees are not indefinitely retained on daily wages contrary to statutory equitable norms".

(10) Further, the Hon'ble Apex Court in the matter of **Dharam Singh and others Vs. State of U.P. and Another,**

reported in **(2025 SCC Online 1735)** observed in paragraph 17 to 20, as under:

“17. Before concluding, we think it necessary to recall that the State (here referring to both the Union and the State governments) is not a mere market participant but a constitutional employer. It cannot balance budgets on the backs of those who perform the most basic and recurring public functions. Where work recurs day after day and year after year, the establishment must reflect that reality in its sanctioned strength and engagement practices. The long-term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. Financial stringency certainly has a place in public policy, but it is not a talisman that overrides fairness, reason and the duty to organise work on lawful lines.

18. Moreover, it must necessarily be noted that "ad-hocism" thrives where administration is opaque. The State Departments must keep and produce accurate establishment registers, muster rolls and outsourcing arrangements, and they must explain, with evidence, why they prefer precarious engagement over sanctioned posts where the work is perennial. If "constraint" is invoked, the record should show what alternatives were considered, why similarly placed workers were treated differently, and how the chosen course aligns with Articles 14, 16 and 21 of the Constitution of India. Sensitivity to the human consequences of prolonged insecurity is not sentimentality. It is a constitutional discipline that should inform every decision affecting those who keep public offices running.

19. Having regard to the long, undisputed service of the appellants, the admitted perennial nature of their duties, and the material Indicating vacancies and comparator regularisations, we issue the following directions:

i. Regularization and creation of Supernumerary posts: *All appellants shall stand regularized with effect from 24.04.2002, the date on which the High Court directed a fresh recommendation by the Commission and a fresh decision by the State on sanctioning posts for the appellants. For this purpose, the State and the successor establishment (U.P. Education Services Selection Commission) shall create supernumerary posts in the corresponding cadres, Class-III (Driver or equivalent) and Class-IV (Peon/Attendant/Guard or equivalent) without any caveats or preconditions. On regularization, each appellant shall be placed at not less than the minimum of the regular pay-scale for the post, with protection of last-drawn wages if higher and the appellants shall be entitled to the subsequent increments in the pay scale as per the pay grade. For seniority and promotion, service shall count from the date of regularization as given above.*

ii. Financial consequences and arrears: *Each appellant shall be paid as arrears the full difference between (a) the pay and admissible allowances at the minimum of the regular pay-level for the post from time to time, and (b) the amounts actually paid, for the period from 24.04.2002 until the date of regularization/retirement/death, as the case may be. Amounts already paid under previous interim directions shall be so adjusted. The net arrears shall be released within three*

months and if in default, the unpaid amount shall carry compound interest at 6% per annum from the date of default until payment.

iii. Retired appellants: Any appellant who has already retired shall be granted regularization with effect from 24.04.2002 until the date of superannuation for pay fixation, arrears under clause (ii), and recalculation of pension, gratuity and other terminal dues. The revised pension and terminal dues shall be paid within three months of this Judgment.

iv. Deceased appellants: In the case of Appellant No. 5 and any other appellant who has died during pendency, his/her legal representatives on record shall be paid the arrears under clause (ii) up to the date of death, together with all terminal/retiral dues recalculated consistently with clause (1), within three months of this Judgment.

v. Compliance affidavit: The Principal Secretary, Higher Education Department, Government of Uttar Pradesh, or the Secretary of the U.P. Education Services Selection Commission or the prevalent competent authority, shall file an affidavit of compliance before this Court within four months of this Judgment.

20. We have framed these directions comprehensively because, case after case, orders of this Court in such matters have been met with fresh technicalities, rolling "reconsiderations," and administrative drift which further prolongs the insecurity for those who have already laboured for years on daily wages. Therefore, we have learned that Justice in such cases cannot rest on simpliciter directions, but it demands imposition of clear duties, fixed timelines, and verifiable compliance. As a constitutional employer, the State is held to a higher standard and therefore it must organise its perennial workers on a sanctioned footing, create a budget for lawful engagement, and implement judicial directions in letter and spirit. Delay to follow these obligations is not mere negligence but rather it is a conscious method of denial that erodes livelihoods and dignity for these workers. The operative scheme we have set here comprising of creation of supernumerary posts, full regularization, subsequent financial benefits, and a sworn affidavit of compliance, is therefore a pathway designed to convert rights into outcomes and to reaffirm that fairness in engagement and transparency in administration are not matters of grace, but obligations under Articles 14, 16 and 21 of the Constitution of India".

(11) The Hon'ble Apex Court in the matter of **Jaggo vs. Union of India and Others**, reported in **2024 SCC OnLine SC 3826**, has also observed in paragraphs 9, 20 and 26 as under:

"9. On the other hand, the following primary arguments have been advanced before us on behalf of the Respondents:(i)

(ii) Absence of Sanctioned Posts : They assert that the appellants were not appointed against any sanctioned posts. According to the respondents, without sanctioned vacancies, there can be no question of regularization or absorption into the permanent workforce.

(iii)

- (iv)
- (v)
- (vi)

20. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in *Vinod Kumar v. Union of India*, (2024) 1 SCR 1230, it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgment have been reproduced below:

"6. The application of the judgment in *Uma Devi (supra)* by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of *Uma Devi (supra)*.

7. The judgment in the case *Uma Devi (supra)* also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case..."

26. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in *Uma Devi (supra)* to argue that no vested right to regularization exists for temporary employees, overlooking the Judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades."

(12) There is no dispute about the fact that the petitioner was appointed on compassionate ground in the year 1990 in her mother's place. There is also no dispute about the fact that since 1990 the petitioner had worked for respondent No.1. Therefore, it clearly reveals that the petitioner had continuously worked with the respondent No.1. Thus, it is clear that the petitioner had completed 240 days in a calendar year, therefore, she is entitled for benefit of regularization/permanency.

(13) Only because the post was not sanctioned, the benefit of regularization of permanency cannot be denied. In view of the above Judgments of the Hon'ble Apex Court and the fact that the petitioner had worked with respondent No.1 since 1990 on compassionate appointment, I am of the opinion that petitioner is entitled to regularization.

(14) In view thereof, I find that the Complaint filed by the complainant needs to be allowed. Therefore, I proceed to pass following order :-

ORDER

1. The Writ Petition is allowed.
2. The order dated 08/03/2019, passed by learned Industrial Court, Bhandara in Complaint(ULP) No.186/2015 is hereby quashed and set aside.

3. The Complaint (ULP) No.186/2015 is allowed.

Rule is made absolute in the above terms.

(SIDDHESHWAR S. THOMBRE)

KOLHE