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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.642 OF 2013

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- 1. The State of Maharashtra,**
through the Executive Engineer,
Thane Khadi Pool Vibhag No.1,
Konkan Bhavan, Navi Mumbai
- 2. The Superintending Engineer,**
Mumbai Bandkam Mandal, Public
Works Division, New Administrative
Building, 2nd Floor, R.C. Road,
Chembur, Mumbai 400 071
- 3. The Karyasan Adhikari (Seva 5),**
Public Works Division,
Mantralaya Mumbai

... Petitioners

Vs.

Devubai Bhagwan Kharat,
Balaram Patil Chawl,
Near Gaondevi Mandir, Sanpada,
Sector 5, Navi Mumbai

... Respondent

**WITH
INTERIM APPLICATION NO.12675 OF 2024
IN
WRIT PETITION NO.642 OF 2013**

Devubai Bhagwan Kharat
In the matter between
The Executive Engineer & Others
V/s.
Devubai Bhagwan Kharat

... Applicant

... Petitioners

... Respondent

Mrs. V.S. Nimbalkar, AGP for the petitioners-State.

Mr. Ravindra Nair with Mr. C.M. Lokesh for the respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 26, 2026.

PRONOUNCED ON : APRIL 2, 2026

JUDGMENT:

1. By the present writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioners have assailed the legality and correctness of the Judgment and Order dated 23 July 2012 passed by the Industrial Court at Thane in Complaint (ULP) No. 117 of 2010. The said complaint was instituted under Items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971.

2. The factual background giving rise to the present writ petition, in brief, is as follows. The respondent instituted a complaint of unfair labour practice on 23 August 2009, asserting that her deceased husband had been in employment with petitioner No. 1 since the year 1988 as a Mazdoor. It was alleged that his services came to be terminated with effect from 1 October 1990. According to the respondent, the petitioners had artificially created breaks in the service of her deceased husband and similarly situated workmen. It was further contended that, pursuant to discussions held before the Assistant Commissioner of Labour, employment was extended to about 15 workers, including the respondent's deceased husband. Out of these, 13 workers were

granted permanency. However, the respondent's deceased husband was neither regularised nor brought on the permanent muster roll. As a consequence, he was deprived of the benefits flowing from the Kalelkar Award. The respondent, therefore, alleged that such conduct on the part of the petitioners constituted unfair labour practice under Items 5 and 9 of Schedule IV of the said Act.

3. The petitioners resisted the complaint by filing their written statement, wherein they denied the entitlement of the respondent to claim permanency and consequential benefits. It was further contended that the complaint was deficient, inasmuch as it did not specifically disclose the names of persons alleged to have engaged in unfair labour practices, nor did it clearly set out the material particulars of the alleged acts. The petitioners further stated that the respondent's deceased husband, along with other workmen, had been discontinued from service with effect from 1 October 1990. Thereafter, the workmen approached the office of the Labour Commissioner. Pursuant to the intervention of the Assistant Commissioner of Labour, directions were issued to reappoint those workers who had completed more than 240 days of service in a year. In compliance thereof, the respondent's deceased husband was reappointed on a nominal muster roll on 20 February 1996. It was further contended that, in view of the Government Resolution dated 24 April 2001, which required completion of five years of continuous service prior to 31 December 1998, the respondent's deceased husband did not satisfy the eligibility criteria and, therefore, could not be conferred the status of a regular temporary worker or be made permanent.

4. The Industrial Court, upon appreciation of the oral and documentary evidence adduced by the parties, partly allowed the complaint. It recorded a finding that the petitioners had engaged in unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act, 1971. Consequently, the Industrial Court directed the petitioners to extend to the respondent the benefits admissible to a temporary worker and to accord the status of a Regular Temporary Worker in terms of the Kalelkar Award, upon completion of five years of service by the respondent's deceased husband. Being aggrieved by the said Judgment and Order, the petitioners have invoked the writ jurisdiction of this Court.

5. Smt. Nimbalkar, learned Assistant Government Pleader appearing for the State, submitted that the Industrial Court has failed to take into due consideration the Government Resolution dated 24 April 2001, which governs the absorption of temporary employees in the Converted Regular Temporary Establishment. It was contended that the deceased husband of the respondent had not completed five years of continuous service as on 31 December 1998, and, therefore, did not satisfy the eligibility criteria prescribed under the said Government Resolution for conferment of permanency. It was further urged that the initial engagement of the respondent's deceased husband was purely on a temporary basis. According to the learned AGP, the deceased workman did not fulfil the requisite conditions for conversion into a Converted Regular Temporary employee in terms of the Kalelkar Award as implemented through the said Government Resolution.

6. It was further submitted that the Industrial Court has

erroneously recorded a finding that the respondent's deceased husband had completed continuous service of 240 days so as to qualify for benefits under the Kalelkar Award. The learned AGP pointed out that the services of the deceased workman had been discontinued with effect from 1 October 1990, and it was only pursuant to the directions issued by the Assistant Labour Commissioner that he came to be reappointed on the Nominal Muster Roll on 20 February 1996. It was submitted that the proposal for his absorption on the regular establishment was considered by the State Government and came to be rejected on the ground that he had not completed five years of continuous service prior to 31 December 1998, as required under the applicable policy.

7. Per contra, Mr. Nair, learned Advocate appearing for the respondent, opposed the submissions advanced on behalf of the State. He contended that the respondent's entitlement to the benefits under the Kalelkar Award cannot be denied merely on the ground that the deceased workman had not completed five years of continuous service as on 31 December 1998. According to him, the essential requirement under the Kalelkar Award is the completion of five years of service, irrespective of the cut-off date stipulated in the Government Resolution dated 24 April 2001. It was submitted that the said Government Resolution does not curtail or override the rights flowing from the Kalelkar Award, and that the respondent is entitled to the benefits on the basis of completion of the requisite period of service as contemplated under the Award itself.

8. In support of the aforesaid submissions, reliance was placed on the judgment of this Court in *State of Maharashtra vs. M. V. Ghalge & Another*, reported in 1992 LAB I.C. 748 : 1991 Mh. L.J. 1557. In the said case, the concerned workman had rendered service from 5 June 1976 to 16 October 1978 and thereafter up to 24 December 1981. This Court, while accepting the claim of the employee, interpreted Clause 28 of the Kalelkar Award to hold that the benefit of conversion of posts is available to those workmen who have rendered continuous service of five years or more on daily rated establishment. Emphasis was placed on Clause 28 of the Kalelkar Award, which provides that daily rated workmen who have completed five years of continuous service are entitled, upon such completion, to have the posts held by them converted into posts on temporary establishment, with such posts being personal to the incumbent and governed thereafter by the Bombay Civil Services Rules.

9. Learned counsel for the respondent also relied upon the judgment of this Court in *Zilla Parishad, Aurangabad & Another vs. State of Maharashtra & Another*, reported in 2017 (2) Mh. L.J. 837. It was submitted that in the said decision, while considering the benefits flowing from the Kalelkar Award in conjunction with the recommendations of the Bhole Commission, the coordinate Bench referred to an earlier Division Bench judgment in Writ Petition No.5324 of 2009, which dealt with similarly situated workmen. It was observed therein that daily rated employees are not required to establish completion of 240 days in each calendar year for five consecutive years in order to claim benefits under the

Kalelkar Award. On the strength of these pronouncements, it was urged that the present writ petition is devoid of merit and liable to be dismissed.

10. In rejoinder, the learned AGP reiterated that the deceased Bhagwan Bhikaji Kharat had been appointed only on a temporary basis as a Mazdoor on Nominal Muster Roll, and that mere reliance on the Kalelkar Award, without satisfying the conditions prescribed under the Government Resolution implementing the same, would not confer any enforceable right upon the respondent. It was further submitted that the services of the deceased workman had been discontinued on 1 October 1990 and that he was subsequently reappointed in the year 1996. The proposal seeking his absorption was rejected by the State Government on 23 December 2004. It was pointed out that during his lifetime, the deceased workman did not challenge the said rejection, and that the present complaint came to be filed by the respondent only in the year 2010. On these grounds, it was prayed that the impugned Judgment and Award be set aside.

REASONS AND ANALYSIS:

11. I have considered the rival submissions with care. The issue is not a small one. The matter turns on the true nature of the Kalelkar Award, the effect of the Government Resolution dated 24 April 2001, and the right of a daily wager to claim benefit before the Labour Court or the Industrial Court. The petitioners argue that the Industrial Court travelled beyond the law because the deceased husband of the respondent had never completed five

years of continuous service as on 31 December 1998, and therefore he could not be treated as a worker entitled to conversion into the Converted Regular Temporary Establishment. The respondent contends that the right flows from the Award itself. According to her, the Government Resolution cannot cut down the benefit which the Award already gives.

12. The main question which comes for consideration in the present matter is about the legal position of what people generally call as Kalelkar Award. The further question is whether a daily wage-worker working under the State of Maharashtra can go before the Labour Court or Industrial Court and claim benefits under this Award, even if there is no Government Resolution in force at that time supporting such benefit. Without understanding these aspects properly, the controversy cannot be decided in a correct way.

13. At the beginning, it is necessary to see what is the nature of this Kalelkar Award. The State Government had at the relevant time taken a conscious step to deal with an industrial dispute. The dispute had arisen because workmen employed in the Irrigation and Power Department and also in the Building and Communication Department had jointly raised a charter containing thirteen demands. These demands were related to conditions of service affecting a large body of workers. In such a situation instead of leaving the matter to remain unresolved the State Government exercised its power under Section 5 of the Industrial Disputes Act, 1947 and constituted a special Board of Conciliation. The Board so constituted was chaired by Shri Kalelkar. Because of

his chairmanship the outcome came to be known as the Kalelkar Award. However, it is necessary to understand that this was not an award imposed unilaterally after adversarial adjudication. It was the result of negotiations and persuasion carried out before the Board. The Board brought both sides together. The workmen placed their demands. The State placed its stand. After deliberations, a settlement was reached. This settlement was the outcome of conciliation proceedings where both sides agreed to terms so that industrial peace could be maintained. This settlement was recorded under Section 13(2) of the Industrial Disputes Act which contemplates a report of settlement arrived at in the course of conciliation proceedings. Such a settlement is arrived at with the assistance of a statutory authority. In the present case, the settlement was also given retrospective effect from 1 October 1966. This indicates that the parties intended that the benefits and obligations under the settlement should relate back to an earlier date. It further appears that the settlement was published in the Official Government Gazette under Section 17 of the Act. Publication marks the stage from which the settlement attains enforceability. Once published it is no longer confined to the parties who signed it. It acquires a binding character as provided under the Act.

14. Section 18(3) of the Industrial Disputes Act states that a settlement arrived at in the course of conciliation proceedings shall be binding not only on the parties who actually appeared before the Board, but also on all persons who are employed in the establishment or who subsequently become employed. In other

words the binding nature of such a settlement is compulsory. It is not open to one party to treat it as optional.

15. The duration and continuation of such a settlement is governed by Section 19 of the Act. Under that provision a settlement remains in operation for the period agreed upon. Even thereafter it continues to be binding until it is terminated in the manner provided. Termination requires a notice by either party expressing intention to terminate. Even after such notice the settlement continues to bind for a period of two months.

16. In this background, the position becomes clear that if the State Government desired to alter, modify, or withdraw any part of the Kalelkar Award, it could not have done so by issuing administrative instructions or circulars. The law prescribes a method for changing service conditions which are governed by an industrial settlement. Section 9-A of the Industrial Disputes Act requires that before any change in conditions of service in respect of matters specified in the Schedule the employer must give a notice of change to the workmen. This gives an opportunity to the workmen to raise an industrial dispute regarding the proposed change. After issuing such notice the matter must proceed in accordance with law. If the parties do not agree the dispute may be referred for adjudication. Only through such process can an settlement be modified or replaced. Therefore, when the Kalelkar Award is seen in this scheme it becomes evident that it has a statutory force. The rights created under such a settlement continue to operate so long as they are not altered in the manner recognised by the statute.

17. Because of this character, Courts have always treated it as binding. It lays down a proper procedure by which a worker, who starts at a low level can move ahead in service after putting in long years of work. The scheme under this Award is also required to be understood in a proper way. It proceeds step by step. First a person comes as a daily wager. After working for five years he becomes entitled to be placed in what is called “Converted Regular Temporary Establishment”. This stage does not make him fully permanent, but still it gives him better status, better wages and some protection in service. After that depending on availability of posts and other service conditions he may move further towards regular establishment.

18. Another aspect is about the power of Labour Court and Industrial Court. A daily wager till he becomes part of regular establishment remains a workman. If he is denied benefit under the Award, his grievance becomes an industrial dispute. The Industrial Court especially in cases of unfair labour practice can examine whether the employer has treated him differently from others or has denied benefit without proper reason. So if a worker completes the required period of service and still is not given benefit of “Converted Regular Temporary Establishment” he can approach the Labour Court or Industrial Court. In this background, the argument of the State that absence of Government Resolution is a defence cannot be accepted. Accepting such argument would mean that the State can avoid its responsibility by remaining silent. Therefore, it is held that a daily wage-worker can approach the Labour Court or Industrial Court for claiming benefits under

the Kalelkar Award even if there is no specific Government Resolution in force provided he shows that his case properly fits within the Award and he has fulfilled the required conditions.

19. In the case of *M. V. Ghalge*, this Court was considering writ petitions filed under Article 227 of the Constitution of India. The challenge was to the orders passed by the Labour Court under Section 33C(2) of the Industrial Disputes Act, 1947. The background of that case shows that the dispute was about daily rated workers claiming benefits under the Kalelkar Award. Looking to the facts of that case, it appears that the workmen were working as casual labourers on daily wages for many years. They were not permanent employees. Still, they were part of the establishment continuously. They approached the Labour Court contending that after completing five years of service on daily rated establishment, they had a right to be converted into regular temporary employees as per the Kalelkar Award. They also claimed all benefits flowing from such conversion. On the other side, the State opposed this claim. The State did not deny that the workers had worked over the years. But it said that their service was not continuous. According to the State, there were breaks and gaps, and because of those breaks, the condition of five years continuous service was not satisfied. So, according to the State, no benefit could be given. This Court examined the scheme of the Kalelkar Award, especially Clause 28. It noticed that the expression “continuous service” is not defined in that clause. The Court held that a reasonable meaning has to be given. The Court did not agree that it must mean strict continuity. Instead, it held that if the worker remains

on the daily rated establishment for five consecutive years in substance, then the requirement is satisfied. It is not necessary that he should have worked for a fixed number of days every year. The Court further explained that this concept of continuous service under the Kalelkar Award is different from the concept used in retrenchment cases, where 240 days' work in a year is often required. The Court clearly said that those standards cannot be imported here. The Award does not say that the worker must work for 240 days every year. What it requires is that the worker should be part of the daily rated establishment for five years in a continuous sense. Therefore, even if the number of actual working days varies that alone cannot defeat the claim. After considering all these aspects, this Court found that the Labour Court had taken a correct view. The orders of the Labour Court were thus upheld confirming that the workers were entitled to benefits under the Kalelkar Award.

20. The respondent has relied upon the service book to show the nature of employment of the complainant's deceased husband Shri Kharat. The entries in the service book indicate that he was working as a Rozandari Mazdoor during different periods starting from November 1988 and continuing in parts through the year 1989 and later in the year 1990. The record shows month-wise engagement. It is further seen from the same record that after the earlier period the deceased husband was again taken back in service from 20 February 1996. This re-engagement was pursuant to the directions issued by the Assistant Commissioner of Labour. Those directions were given because the workman had completed

240 days of service earlier and his discontinuation had become an issue before the labour commissioner. This shows that the workman was already connected with the establishment and his reappointment was in continuation of that earlier relationship. From 20 February 1996 onwards the material placed on record shows that Shri Kharat continued to work till 31 December 1996 and thereafter from 1 January 1997 up to 31 May 2000. This is a continuous period. If this period is seen properly it clearly indicates that for five years he remained in service continuously.

21. In view of the foregoing discussion and for the reasons recorded hereinabove, the writ petition fails.

22. The impugned Judgment and Order dated 23 July 2012 passed by the Industrial Court, Thane in Complaint (ULP) No. 117 of 2010 is hereby upheld.

23. The petitioners are directed to extend to the respondent the benefits admissible to a temporary worker and to grant the status of Converted Regular Temporary employee in terms of the Kalelkar Award, upon completion of five years of service of the deceased husband of the respondent, if not already granted.

24. The aforesaid directions shall be complied with within a period of twelve weeks from the date of this order.

25. Rule is discharged. No order as to costs.

26. In view of disposal of the writ petition, all pending interim applications stand disposed of.

(AMIT BORKAR, J.)