

Sayali

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

WRIT PETITION NO. 6953 OF 2025

SAYALI
DEEPAK
UPASANI

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SAYALI DEEPAK
UPASANI
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- 1. Hemant Walu Deshmukh,**
Aged 44 Yrs, Occ. Service,
R/at Flat No. 4,
Mansarovar Residency,
Near Meghraj Bakery, Peth Road,
Panchavati, Nashik - 422 003.
- 2. Vilas Ashok Mahale,**
Aged 38 Yrs, Occ. Service,
R/at Anand Residency,
Room No. 502, Plot No. 90,
Sector 16E, Near D Mart,
Kalamboli, Roadpali,
Navi Mumbai - 410 218.
- 3. Pravin Daryappa Katte,**
Aged 37 Yrs, Occ. Service,
R/at Green Village Complex,
Jari Mari Mandir Road, Kashimira,
Mira Road [E], Dist.
Thane - 401 107.
- 4. Arjun Rajaram Amale,**
Aged 43 Yrs, Occ. Service,
R/at 02/5, Salunkhe Building,
Om Sai Nagar, Near Transformer,
New Raut Wadi, Boisar,
Tal. & Dist. Palghar – 401 501.

5. **Jayant Shamrao Karande,**
Aged 46 Yrs, Occ. Service,
R/at Plot No. 70, Room No. C-5,
Mitrata Co-operative Housing
Society, RSC-14, Gorai 1,
Borivali [W], Mumbai – 400 091.
6. **Aniket Ashok Chavan,**
Aged 36 Yrs, Occ. Service,
R/at: B/113, Anand Sagar Krushna
Township, Ambardi Road,
Vasai [W], Dist. Palghar – 401 202.
7. **Satish Balu Giri,**
Aged 33 Yrs, Occ. Service,
R/at Sonoshi Road, A/P Maldad,
Tal. Sangamner, Dist. Ahmednagar.
8. **Baudhadeep Suresh Gaikwad,**
Aged 39 Yrs, Occ. Service,
R/at Room No. 2, Chawl No. 9,
Vijay Karpe Chawl, Kalyan [E],
Dist. Thane.
9. **Mrs. Anita Arun Medhe,**
Aged 42 Yrs, Occ. Service,
R/at Gautam Nagar, Gaondevi
Road, Room No. 9A,
Bhandup [W], Mumbai.
10. **Mrs. Vishakha Manohar Gowari,**
Aged 40 Yrs, Occ. Service,
R/at D.G. Nagar, Building No. 12,
Room No. 209, 2nd Floor,
Diwanman, Near K.T. Wadi,

.....Petitioners

Vasai [W], Dist. Palghar - 401 202.

V/s.

1. **M/s. Vasantao Naik Vimukta Jatis
& Nomadic Tribes Development
Corporation Ltd.,**
At Juhu Supreme Shopping Centre,
1st Floor, Gulmohar Cross Road
No. 9, J.V.P.D. Scheme [North],
Vile Parle [W], Mumbai - 400 049.
2. **The Managing Director,**
**M/s. Vasantao Naik Vimukta Jatis
& Nomadic Tribes Development
Corporation Ltd.,**
At Juhu Supreme Shopping Centre,
1st Floor, Gulmohar Cross Road
No. 9, J.V.P.D. Scheme [North],
Vile Parle [W], Mumbai - 400 049.**Respondents**

Mr. N. V. Bardiwadekar, Senior Advocate i/b Mr.
Rajendra B. Khaire with Mr. Vinayak Kumbhar, for
Petitioners.

Mr. Anish Khandekar, for Respondent nos. 1 and
2.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 5, 2026

PRONOUNCED ON : MARCH 17, 2026

JUDGMENT.:

1. The present petition is instituted under Articles 226

and 227 of the Constitution of India, whereby the Petitioners have assailed the judgment and order dated 10 October 2024 passed by the learned President, Industrial Court, Maharashtra at Mumbai in Complaint (ULP) No. 298 of 2018. The said complaint was preferred by the Petitioners alleging that the Respondents had indulged in unfair labour practices falling under Items 3, 5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, read with Section 28 thereof. By the impugned judgment, the Industrial Court partly allowed the complaint and held that the Respondents had engaged in unfair labour practice under Item 9 of Schedule IV. However, the complaint came to be rejected in respect of the remaining allegations under Items 3, 5 and 6 of Schedule IV. Being aggrieved by the rejection of the complaint to that extent, the Petitioners have invoked the supervisory jurisdiction of this Court.

2. The record indicates that about 96 posts had been sanctioned on a regular basis in the establishment of Respondent No. 1. Over a period of time several posts fell vacant on account of superannuation, resignation and death of employees. As a result, by the year 2004 only 43 posts remained occupied whereas as many as 53 posts were vacant. Considering the volume of work and the responsibilities being discharged by the existing staff, it was felt necessary that additional posts be created and sanctioned on a regular basis. In that regard a

proposal was forwarded by the Respondents to the State Government seeking creation and sanction of new posts. However, the said proposal remained pending and no decision was taken by the State Government. In the meantime the existing staff strength proved to be inadequate for effectively carrying on the functioning of Respondent No. 1. In these circumstances, and in exercise of powers conferred under Clause 86(5) of the Memorandum and Articles of Association, the Board of Directors of Respondent No. 1 in its 68th meeting held on 20 May 2004 passed Resolution No. 68.09 resolving to recruit approximately 120 employees including Clerk-cum-Typists, Office Assistants and Peons so as to ensure efficient functioning of the Corporation.

3. Pursuant to the aforesaid resolution of the Board of Directors, Respondent No. 2 initiated the process of recruitment for the posts of Clerk-cum-Typists, Office Assistants and Peons. The Petitioners came to know about the vacancies available in the establishment of Respondent No. 1 and the recruitment process initiated for filling those posts. Since the Petitioners possessed the requisite qualifications, they submitted their applications to the office of the Respondents. Petitioner Nos. 1 and 8 applied for the post of Peon, whereas the remaining Petitioners applied for the post of Clerk-cum-Typist. The Petitioners submitted documents relating to their educational qualifications and age. Upon verification of the said documents and being satisfied that the Petitioners fulfilled the eligibility

requirements, their applications were considered for further stages of recruitment. Petitioner Nos. 1 and 8 appeared for the test conducted for the post of Peon. The other Petitioners underwent a typing speed test and a written examination, and thereafter appeared for an oral interview.

4. Upon completion of the selection process and after assessing the candidates on the prescribed criteria, Petitioner Nos. 1 and 8 were appointed to the post of Peon. Petitioner Nos. 2 to 7 and Petitioner Nos. 9 and 10 were appointed to the post of Clerk-cum-Typist by the Respondents. Thus the Petitioners came to be appointed to their respective posts after undergoing the selection process undertaken by the Respondents. According to the Petitioners, their appointments were made after following the due procedure and therefore the same were lawful and valid appointments.

5. After the completion of the selection process, Petitioner No. 1 joined the services of the Respondents as a Peon on monthly wages in September 2006. Subsequently, from June 2018 he has been discharging duties as an Office Assistant, which is a promotional post. Petitioner No. 2 joined the services of the Respondents on 12 July 2007 as a Clerk-cum-Typist on monthly wages, and from June 2018 he has also been working as an Office Assistant on promotion. Petitioner No. 3 entered service in June 2010 as a Clerk-cum-Typist on monthly wages and since June 2018 he has been working on the promotional

post of Office Assistant. Petitioner No. 4 joined service in June 2010 as a Clerk-cum-Typist on monthly wages and thereafter has been working as an Office Assistant from June 2018. Petitioner No. 5 joined service in September 2010 as a Clerk-cum-Typist on monthly wages and in June 2018 he was deputed to Mantralaya at Mumbai.

6. Petitioner No. 6 joined the services of the Respondents on 1 February 2011 as a Clerk-cum-Typist on monthly wages and continues to work on the said post. Petitioner No. 7 joined the services of the Respondents on 22 July 2010 as a Clerk-cum-Typist on monthly wages and thereafter came to be assigned duties on the promotional post of Office Assistant. Petitioner No. 8 was appointed on 1 December 2009 as a Peon on monthly wages and subsequently he was promoted to the post of Clerk. Petitioner No. 9 joined the services of the Respondents on 1 October 2010 as a Clerk on monthly wages and continues to work on the said post. Petitioner No. 10 joined the services of the Respondents on 3 February 2011 as a Clerk on monthly wages and continues to discharge duties as a Clerk-cum-Typist. It is the case of the Petitioners that all of them continue to serve the Respondents in their respective posts.

7. The Petitioners contend that since the date of their respective appointments they have continuously worked with the Respondents without any break in service. According to them, each of the Petitioners has completed more than 240 days

of service in every calendar year. The Respondents, by communication dated 26 February 2014, addressed the State Government requesting that the Petitioners and similarly placed employees be absorbed in the posts occupied by them, since Respondent No. 1 was vested with such authority under Clause 86(5) of the Memorandum and Articles of Association. In response to the said communication, the State Government by letter dated 28 February 2014 informed the Respondents that under Clause 86(5) the Board of Directors of Respondent No. 1 possessed the authority to appoint employees on permanent, temporary or special service from time to time and therefore appropriate action could be taken at the level of the Respondents themselves. According to the Petitioners, notwithstanding the said position, the Respondents failed to grant permanency to them in the posts which they were occupying. The Petitioners assert that they were entitled to be made permanent under Clause 4-C of the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946, as well as under the provisions of the MRTU and PULP Act, 1971 and the Industrial Disputes Act, 1947.

8. The Petitioners further contend that in the year 1984 the Respondents had appointed about 10 employees on daily wages. Subsequently those employees were absorbed on regular posts such as Clerk-cum-Typist, Typist and Office Assistant pursuant to Resolution No. 3.11 passed in the 3rd meeting of the Board of Directors held on 10 September 1985. According

to the Petitioners, on earlier occasions also several employees initially appointed on daily wages were later granted regular and permanent status in the services of Respondent No. 1. The Petitioners assert that those employees were recruited in a manner similar to the process through which the present Petitioners were recruited. Despite such precedent, the Petitioners were not granted similar treatment. The Petitioners therefore contend that the Respondents showed favouritism or partiality towards one set of employees without any justifiable basis and thereby engaged in unfair labour practice falling under Item 5 of Schedule IV of the MRTU and PULP Act, 1971.

9. In the above circumstances, the Petitioners instituted Complaint (ULP) No. 298 of 2018 before the Industrial Court at Mumbai on or about 21 September 2018. In the said complaint the Petitioners sought a declaration that the Respondents had engaged in and were continuing to engage in unfair labour practices under Items 3, 5, 6 and 9 of Schedule IV of the MRTU and PULP Act, 1971. They further prayed for directions to the Respondents to cease and desist from committing such unfair labour practices. The Petitioners also sought a declaration that they be treated as permanent employees of the Respondents either from the date of their respective appointments or from the date on which they completed 240 days of continuous service. Additionally, the Petitioners prayed for a restraint against the Respondents from terminating their services or transferring them elsewhere.

10. Upon consideration of the pleadings of the parties, the documentary material placed on record and the submissions advanced by the learned Advocates appearing for both sides, the learned President of the Industrial Court, Maharashtra at Mumbai decided the said complaint by judgment and order dated 10 October 2024. By the impugned decision the Industrial Court partly allowed the complaint and held that the Respondents had engaged in unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act, 1971, and consequently restrained the Respondents from continuing the said unfair labour practice. However, the Industrial Court rejected the prayer seeking a declaration that the complainants were permanent employees of Respondent No. 1. The Court held that the complainants were temporary employees and that they were entitled only to the benefit of minimum pay in the lowest stage of the regular pay scale applicable to employees holding the same posts. The Industrial Court directed that such benefit be granted from the date of filing of the complaint, namely 21 September 2018, for so long as the complainants continued in service. The Respondents were accordingly directed to pay the difference in wages arising from such benefit within a period of six months from the date of receipt of the order.

11. Mr. N. V. Bandiwadekar, learned Senior Advocate appearing for the Petitioners, submits that the Industrial Court committed an error in failing to appreciate that the Petitioners

were appointed to posts which were duly sanctioned and vacant at the time when their appointments were made. According to the learned Senior Counsel, the appointments were preceded by a proper process of selection which included written examinations as well as oral interviews. It is further contended that the appointments were made pursuant to the authority vested in the Board of Directors under the Memorandum and Articles of Association of Respondent No. 1 Corporation. In that view of the matter, the appointments of the Petitioners were not irregular or dehors the governing rules but were made in exercise of the powers lawfully conferred upon the competent authority.

12. Learned Senior Counsel further submits that the Industrial Court failed to properly appreciate that although the Petitioners were initially engaged on daily wages, they were continuously retained in service from the date of their respective appointments without any interruption or break. According to him, each of the Complainants had completed continuous service of more than 240 days in every year from the date of their appointment until the filing of the complaint. It is contended that the Respondents were therefore not justified in continuing the Petitioners on daily wage basis for an extended period exceeding ten years. Such prolonged continuation of employees on daily wages, despite availability of work and continued engagement, according to the Petitioners, constitutes an unfair labour practice as

contemplated under Item 6 of Schedule IV of the MRTU and PULP Act, 1971. It is therefore urged that the Industrial Court ought to have allowed the complaint also in respect of the allegation of unfair labour practice under Item 6 of Schedule IV.

13. It is further submitted that the Industrial Court ought to have taken into consideration that the Complainants were appointed during the period between the years 2006 and 2011 to their respective posts. Since the date of their initial appointment, all the Complainants have continuously discharged their duties without any interruption. It is urged that each of the Complainants had completed more than 240 days of service in every calendar year and had therefore rendered long and continuous service with the Respondents. By the time the complaint came to be decided by the Industrial Court, each of the Complainants had completed more than ten years of service. On this basis it is contended that the Complainants had acquired a legitimate claim to be regularised in service on the posts on which they were working.

14. Learned Senior Counsel also submits that the Industrial Court failed to properly consider the material indicating that in the past the Respondents had appointed several employees on daily wage basis and subsequently granted them permanency. It is pointed out that on earlier occasions the Respondents had appointed 19 employees on daily wages and even prior thereto had appointed 10, 11 and 41 employees on similar terms.

According to the Petitioners, the appointments of those employees were made in a manner similar to the recruitment process through which the present Complainants were appointed. Despite this, while the said employees were subsequently regularised and granted permanency, the same benefit was not extended to the present Complainants. It is therefore contended that the Respondents have adopted a discriminatory approach by extending favourable treatment to one set of employees while denying the same benefit to the Petitioners. Such conduct, according to the Petitioners, amounts to unfair labour practice under Item 5 of Schedule IV of the MRTU and PULP Act, 1971 and entitles the Petitioners to a declaration of permanency.

15. It is further contended that the Industrial Court erred in observing that the Complainants had failed to place any material on record to demonstrate that the Respondents or the Board of Directors of Respondent No. 1 had passed any resolution granting permanency to employees who were appointed pursuant to the Resolution dated 20 May 2004 of the Board of Directors. Learned Senior Counsel submits that the Industrial Court also erred in recording a finding that no material had been produced to show that the Respondents or the Board of Directors had passed a resolution granting permanency to the employees appointed along with the Complainants pursuant to the communications dated 23 April 2010, 26 February 2014 and 28 February 2014. According to

the Petitioners, the said findings are erroneous and contrary to the material available on record.

16. Learned Senior Counsel further submits that the Industrial Court failed to properly consider and apply the principles laid down by the Supreme Court in *Maharashtra State Road Development Corporation v. Casteribe Rajya Parivahan Karmachari Sanghatana*, (2009) DGLS (SC) 1256. In the said decision the Supreme Court has held that the judgment in *Secretary, State of Karnataka v. Umadevi*, (2006) 4 SCC 1 does not curtail or take away the statutory powers vested in the Industrial and Labour Courts under Sections 30 and 32 of the MRTU and PULP Act, 1971 to grant appropriate relief, including an order of permanency, where it is established that the employer has engaged in unfair labour practice under Item 6 of Schedule IV. The Apex Court has further held that the decision in *Umadevi* does not override the jurisdiction of the Industrial and Labour Courts to grant such relief once the existence of unfair labour practice on the part of the employer is established.

17. Learned Senior Counsel also submits that several complaints filed by employees of the Respondents who were similarly placed and identically situated as the present Petitioners have been allowed by different Industrial Courts. In this regard reliance is placed on the judgment and order dated 23 October 2024 passed by the Industrial Court, Akola in Complaint (ULP) No. 111 of 2017 in the case of *Avinash Govind*

Sanap v. The Managing Director and Anr. Similar reliance is placed on the judgment and order dated 23 October 2024 passed in Complaint (ULP) No. 114 of 2017 in the case of *Abhay Vasantrao Autkar v. The Managing Director and Anr.* The Petitioners have also relied upon the judgment dated 23 October 2024 delivered by the Industrial Court, Akola in Complaint (ULP) No. 112 of 2017 in the case of *Indal Lashkar Rathod v. The Managing Director and Anr.* Reference is further made to the judgment dated 9 October 2023 delivered by the Industrial Court, Yeotmal in Complaint (ULP) No. 197 of 2018 in the case of *Vandana Dinesh Fale v. The District Manager and Anr.* The Petitioners have additionally relied upon an earlier judgment dated 27 February 2003 rendered by the Industrial Court, Solapur in Complaint (ULP) No. 65 of 1998 in the case of *Smt. Shailaja Pralhad Kale v. The Managing Director and Anr.* These decisions are cited to contend that similarly placed employees were granted relief of permanency.

18. Mr. Anish Khandekar, learned Advocate appearing for the Respondents, submits that the Petitioners were engaged merely as contractual employees for a temporary period and their appointments were expressly governed by the terms and conditions incorporated in the initial orders of appointment. According to him, the Petitioners do not hold any substantive posts in the establishment of the Respondents and their engagement was purely contractual in nature. In the absence of any statutory provision or legal right conferring entitlement to

regularisation or permanency, the Petitioners cannot seek such relief from this Court. It is therefore contended that the very foundation of the case put forth by the Petitioners is misconceived and legally untenable. On this premise, it is urged that the present writ petition does not disclose any valid cause of action and is liable to be rejected.

19. Learned Counsel further submits, without prejudice to the aforesaid contention, that it is an admitted position that the Petitioners were engaged only on daily wage and contractual basis as temporary employees. According to the Respondents, such engagement was made for temporary requirements and not against regular sanctioned posts. It is further contended that the engagement of the Petitioners was not preceded by a lawful recruitment process in accordance with the applicable rules governing public employment. In this regard reliance is placed upon an enquiry report prepared by the then Director of the VJNT, OBC and Special Backward Classes Welfare Department. Learned Counsel submits that the said enquiry report clearly records the circumstances relating to the engagement of the Petitioners and supports the stand of the Respondents. He accordingly relies upon the said report and proposes to refer to the same as and when required.

20. Learned Counsel further submits that the Petitioners were never appointed against any duly sanctioned posts in the establishment of the Respondents. It is contended that their

engagement was not made through any competitive recruitment process in accordance with the prescribed recruitment rules governing the service. In these circumstances, according to the Respondents, the Petitioners cannot claim parity with regular employees either with regard to their status in service or with respect to the benefits available to permanent employees.

21. Learned Counsel also submits that the contention of the Petitioners seeking parity with employees who were allegedly absorbed or regularised in the past is legally unsustainable. According to him, in service jurisprudence temporary employees and permanent employees constitute two distinct and separate classes. Any alleged irregularity or deviation that may have occurred in the past cannot confer a legal or enforceable right upon the Petitioners to claim similar treatment. It is further submitted that the Industrial Court has already granted limited equitable relief by holding the Respondents guilty of unfair labour practice under Item 9 of Schedule IV and by directing that the Petitioners be extended the benefit of the minimum of the regular pay scale applicable to the posts held by them. The Respondents submit that the said direction is being duly implemented. According to the Respondents, the remaining allegations of discrimination, violation of Articles 14 and 16 of the Constitution of India, or breach of the doctrine of legitimate expectation are without merit and are contrary to the principles laid down by the Supreme Court in *Secretary, State of Karnataka v. Umadevi*,

(2006) 4 SCC 1.

REASONS AND ANALYSIS:

22. The material placed on record indicates that the Petitioners had responded to a recruitment process which was made known to the public. The record shows that vacancies for certain posts in the establishment of the Respondents were required to be filled and, accordingly, candidates were invited to apply. The Petitioners, who possessed the necessary educational qualifications and satisfied the eligibility criteria, submitted their applications along with the required documents relating to their age and academic qualifications. These documents were scrutinised by the Respondents before the Petitioners were allowed to participate in the further stages of the selection process.

23. The evidence further discloses that the Petitioners were required to undergo different stages of assessment before their selection. Certain Petitioners, who had applied for clerical posts, were required to appear for a typing speed test as well as a written examination so as to assess their proficiency and suitability for the work attached to the said posts. Other Petitioners who had applied for the post of Peon were required to undergo a trade or skill test appropriate to the duties of that post. After the completion of these tests, the candidates were called for an oral interview. It is during this stage that the Respondents evaluated the overall suitability of the candidates

for the posts in question.

24. After the completion of these stages of selection, the Petitioners were issued appointment letters and they joined the services of the Respondents. The sequence of events therefore clearly shows that the Petitioners were not brought into service by way of any casual arrangement. Their appointments followed a process of selection which included verification of qualifications, conduct of tests and personal interviews.

25. Another important aspect which emerges from the record is that the recruitment process undertaken by the Respondents was supported by a decision of the Board of Directors. The Board, in its meeting held on 20 May 2004, passed a resolution authorising recruitment of employees for the functioning of the Corporation. The Board derived such authority from the provisions contained in the Memorandum and Articles of Association governing the Respondent Corporation. Thus the decision to recruit employees was not an isolated administrative act. It was taken by the competent governing body of the Corporation in exercise of powers vested in it under the governing documents. This circumstance lends support to the case of the Petitioners that their appointments were made pursuant to an authorised decision taken at the level of the Board.

26. The record also establishes that after joining service the Petitioners continued to work with the Respondents for a

substantial length of time. From the dates of their respective appointments, each of the Petitioners remained in service without interruption. The material placed before the Court shows that in every calendar year the Petitioners had completed more than 240 days of work. The service records placed before the Industrial Court further demonstrate that the engagement of the Petitioners was not for a short or isolated period. Their employment extended over several years. In fact, by the time the complaint filed by the Petitioners came to be decided by the Industrial Court, a number of them had already rendered service for more than ten years. Such long and uninterrupted engagement indicates that the work performed by the Petitioners formed part of the regular functioning of the establishment.

27. It is also significant that the Respondents did not produce any convincing material to show that the Petitioners' service was interrupted at any stage or that they were disengaged for any particular period. No documentary record was placed before the Court to indicate that the Petitioners had breaks in service or that their engagement was discontinued and later resumed. In the absence of such material, the consistent position which emerges from the record is that the Petitioners continued to work with the Respondents for long periods without interruption.

28. Taking these circumstances together, the record clearly establishes that the Petitioners entered service after undergoing a process of selection and thereafter continued to work for several years. Their service was continuous and uninterrupted. The length of their engagement and the absence of any material showing breaks in service demonstrate that the Petitioners were in fact part of the regular working set up of the Respondent establishment for a considerable period of time. These facts form an important background while considering the nature of their claim in the present proceedings.

29. From the facts which have already been discussed, certain legal questions naturally arise for consideration. The first question is whether the prolonged engagement of the Petitioners on daily wage basis, despite their continuous service for several years, amounts to an unfair labour practice within the meaning of Item 6 of Schedule IV of the MRTU and PULP Act, 1971. The Petitioners have specifically relied upon Item 6 of Schedule IV. They have also invoked Item 5 of the said Schedule. The Industrial Court, while deciding the complaint, recorded a finding of unfair labour practice only under Item 9 of Schedule IV and declined to grant relief under the other items. In these circumstances it becomes necessary for this Court to carefully examine whether the material on record also makes out a case under Item 6 or Item 5 of Schedule IV.

30. Item 6 of Schedule IV deals with a situation where an employer continues to employ workers as temporary employees or on daily wages for a long period, even though the work performed by them is of a regular and permanent nature. The object of this provision is to prevent a situation where employees are deliberately kept on temporary status for years together, even though the work they perform is neither seasonal nor occasional. Such conduct, if proved, is regarded by the Act as an unfair labour practice.

31. Item 5 of Schedule IV concerns favouritism or partiality shown by an employer to one set of employees over another, even though they are similarly placed. If employees performing similar work under similar conditions are treated differently without any reasonable justification, such conduct may fall within the purview of Item 5.

32. When the evidence on record is examined in this background, it reveals certain relevant circumstances. It has come on record that in earlier years the Respondent Corporation had appointed several employees on daily wage basis. It is further shown that those employees were subsequently absorbed on regular posts such as Clerk-cum-Typist, Typist or Office Assistant. The material indicates that the Board of Directors had passed resolutions on earlier occasions granting such employees the benefit of regularisation. These facts have not been seriously disputed by the Respondents.

There is no clear denial that such regularisation had taken place in the past.

33. The existence of these earlier instances assumes importance for two reasons. First, it shows that the Corporation had, in the past, followed a course of action where employees initially appointed on daily wages were eventually absorbed in regular service. Secondly, it shows that the governing body of the Corporation, namely the Board of Directors, had itself taken decisions to grant permanency to such employees. This suggests that the Corporation had adopted a certain practice in dealing with employees who had rendered long years of service. When such past practice is considered together with the fact that the present Petitioners have worked continuously for several years, the matter requires closer scrutiny. The Petitioners have placed material to show that they have been working for a long period and that the work performed by them forms part of the regular functioning of the establishment. If earlier batches of employees in similar circumstances were granted permanency, the denial of similar treatment to the present Petitioners requires a reasonable explanation. In the absence of such explanation, the Petitioners' grievance that they have been treated differently cannot be lightly brushed aside.

34. The Respondents, however, rely strongly upon the judgment of the Supreme Court in *Umadevi*. According to the Respondents, the said judgment lays down that employees who

have entered service without following the regular recruitment procedure cannot claim regularisation as a matter of right. It is submitted that even if irregular regularisations had taken place in the past, such actions cannot create a legal entitlement in favour of the present Petitioners.

35. There can be no disagreement with the principle stated in the said decision. The judgment in *Umadevi* emphasises the importance of following the constitutional scheme of public employment and the recruitment rules applicable to government and public bodies. It cautions against granting regularisation to persons who were not appointed through a lawful recruitment process. To that extent the submission of the Respondents deserves acceptance. However, the principle laid down in *Umadevi* must be understood in its proper context. The said judgment does not completely take away the statutory powers which are vested in Industrial and Labour Courts under the MRTU and PULP Act. In this regard it is important to note that the powers of the Industrial and Labour Courts flow from Sections 30 and 32 of the MRTU and PULP Act. If a case is made out that an employer has deliberately continued workers on temporary terms for years together despite the availability of regular work, the court is not rendered powerless merely because the employees were initially appointed on daily wages.

36. The Supreme Court has recognised this position in *Casteribe* dealing with the powers of labour courts under the

MRTU and PULP Act. The Court has clarified that the decision in *Umadevi* cannot be read in a manner which completely disables labour courts from granting relief where unfair labour practices are proved. What the judgment in *Umadevi* prevents is regularisation contrary to recruitment rules. It does not take away the jurisdiction of labour courts to grant appropriate relief in situations where the employer's conduct falls within the statutory definition of unfair labour practice.

37. Therefore, the legal position which emerges is that each case must be examined on its own facts. If it is shown that workers were kept on temporary or daily wage basis for long years even though the work was regular in nature, and if such conduct amounts to unfair labour practice under the statute, the Industrial or Labour Court retains the authority to mould suitable relief. The judgment in *Umadevi* cannot be used as a complete shield in every such case.

38. While considering the submission advanced on behalf of the Petitioners that several complaints filed by employees who were similarly placed have been allowed by different Industrial Courts, it becomes necessary to examine the legal position explained by the Supreme Court in the case of *ONGC v. Krishan Gopal (2021) 18 SCC 707*.

39. In the said decision the Supreme Court considered earlier judgments dealing with the question of regularisation of employees who had worked for long periods on daily wage or

temporary basis. The Court referred to the earlier decisions in *U.P. Power Corporation Ltd. v. Bijli Mazdoor Sangh* (2007) 5 SCC 755 and *Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana*. These decisions had expressed views which required reconciliation. The Supreme Court explained that the correct legal position was later clarified in *Hari Nandan Prasad v. Food Corporation of India* (2014) 7 SCC 190.

40. The principle explained in those judgments is that a Labour Court or Industrial Court cannot grant regularisation merely because a worker has continued to work for several years on daily wage or temporary basis. Length of service by itself does not automatically confer a legal right to become a permanent employee. The Court must first examine whether sanctioned posts exist, whether the employee possesses the necessary qualifications, and whether the recruitment rules governing the post have been followed. If there are no posts available, or if the worker does not satisfy the eligibility conditions under the applicable recruitment rules, the direction for regularisation cannot ordinarily be granted. Such a direction, given merely because a worker has worked for many years, may result in what the Supreme Court described as a backdoor entry into public service. This would be contrary to the constitutional principle of equality in public employment under Article 14.

41. However, the Supreme Court also clarified an equally important aspect. The Court observed that a different situation may arise where the employer itself has regularised some workers who were similarly placed. If workers performing the same duties under similar conditions have been regularised by the employer, and if other workers who approach the Industrial or Labour Court are placed on the same footing, denial of similar treatment may amount to discrimination. In such circumstances the Court may justifiably grant relief in order to remove the inequality. The reasoning behind this approach is that the Court is not creating a new right. Instead it is ensuring that workers who are similarly situated are treated equally.

42. Thus, the decision in *ONGC v. Krishan Gopal* makes it clear that regularisation cannot be ordered merely because a worker has served for a long time. At the same time, if it is shown that the employer itself has granted permanency to other workers who were appointed and engaged in a similar manner, then the refusal to extend the same benefit to the remaining workers may amount to unequal treatment. In such a situation the Industrial or Labour Court may step in to restore equality and fairness.

43. Applying this principle to the present case, the submission of the Petitioners requires careful consideration. The Petitioners have placed reliance on several judgments delivered by Industrial Courts in complaints filed by employees who were

allegedly similarly situated and working under the same establishment. If it is shown that those employees were appointed in a similar manner, were performing similar duties, and were later granted permanency through judicial orders or through the action of the employer itself, then the claim of the present Petitioners cannot be rejected without examining the question of parity. At the same time, the Court must also verify whether the Petitioners satisfy the necessary conditions such as availability of posts and eligibility for the posts in question. Only after examining these aspects can it be determined whether the Petitioners stand on the same footing as the employees who have already obtained relief.

44. Therefore, the decision in *ONGC v. Krishan Gopal* does not support an automatic grant of permanency. What it emphasises is the need to maintain equality. If the employer has regularised one group of workers who were similarly placed, the remaining workers cannot be arbitrarily denied the same treatment. The Industrial adjudicator in such circumstances acts to uphold the principle of equality contained in Article 14 of the Constitution.

45. On the facts before me there are three findings. First, the Petitioners were recruited after selection processes. Second, they worked continuously for many years and completed the statutory threshold of days each year. Third, past conduct of the Respondents shows that other daily wage appointees in similar

circumstances were regularised. These findings together establish an unfair labour practice under Item 6 and under Item 5. Item 6 is made out because work was regular and engagement was prolonged on daily wages. Item 5 is made out because similar workers were treated differently and were absorbed while the present Petitioners were not.

46. While deciding the present matter, it is also necessary to keep in mind certain limits which arise in matters relating to public employment. Any direction for regularisation affects public administration and also involves financial implications for the public body concerned. For this reason the Court must proceed with caution. The principles laid down by the Supreme Court in *Secretary, State of Karnataka v. Umadevi* make it clear that courts should not ordinarily interfere in matters of recruitment or grant regularisation in a manner which bypasses the prescribed procedure.

47. In the present case, the Petitioners have prayed for complete regularisation along with all service benefits as if they were appointed on regular basis from the very beginning. Such relief, however, cannot be granted without considering the legal position governing public employment. In the present case, upon examining the material on record, it has been found that the conduct of the Respondents attracts the provisions of Items 5 and 6 of Schedule IV. In view of these findings, the Petitioners are entitled to the benefit of regularisation in service. They shall

therefore be absorbed on the posts which they have been discharging for a considerable period of time. However, the process of absorption must be carried out in a manner which is fair to both sides. The relief granted should not cause unnecessary disruption to the administration while at the same time ensuring that the rights of the workers are protected. For this reason certain directions are required to be issued.

Operative Order

- (i) The Writ Petition is partly allowed.
- (ii) The judgment and order dated 10 October 2024 passed by the Industrial Court, Maharashtra, Mumbai in Complaint (ULP) No. 298 of 2018 is modified to the extent indicated herein.
- (iii) The finding recorded by the Industrial Court declining the relief of regularisation in favour of the Petitioners is set aside.
- (iv) It is declared that the Respondents have engaged in unfair labour practices under Items 5 and 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.
- (v) The Respondents are directed to regularise the services of the Petitioners on the posts on which they have been working. Such regularisation shall be effected within a period of three months from the date of this judgment.

(vi) Upon regularisation, the Petitioners shall be entitled to seniority reckoned from the respective dates on which they initially joined service with the Respondents.

(vii) The service conditions of the Petitioners, including increments and other statutory benefits applicable to regular employees holding the same posts, shall be regulated in accordance with the applicable rules prospectively from the date of regularisation.

(viii) The direction issued by the Industrial Court granting the benefit of the minimum of the regular pay scale from the date of filing of the complaint, namely 21 September 2018, shall remain undisturbed. The Respondents shall comply with the said direction within the time stipulated by the Industrial Court, if not already complied with.

(ix) If any dispute arises with regard to the computation of monetary benefits payable pursuant to this judgment or the order of the Industrial Court, it shall be open to the parties to approach the Industrial Court for appropriate determination.

(x) Rule is made absolute in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)