

(2024) 01 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No.9965 Of 2022?????????

Mahadu Lahanu Bhoye

APPELLANT

Vs

General Manager F.D.C.M.L. Ltd

RESPONDENT

Date of Decision : 05-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 32, 142, 226
Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 — Section 30, 32

Citation : (2024) 01 BOM CK 0051

Hon'ble Judges : Sandeep V. Marne J

Bench : Single Bench

Advocate : Abhishek Karnik, Vivek B. Rane, Ashwin Kapadnis, Sejal Todkar

Final Decision : Dismissed

Judgement

Sandeep V. Marne J

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

2) By this Petition, Petitioner challenges the Judgment and Order dated 23 September 2022, passed by Learned Member, Industrial Court, Nashik in Complaint (ULP) No. 71 of 2014. By the impugned order, the Labour Court has rejected the Complaint filed by Petitioner seeking the benefit of permanency in service with effect from 1 June 2012.

3) The facts of the case are in a narrow compass. It is Petitioner's case that he came to be engaged in the services of the Respondent-Corporation, which is fully owned and managed by the Forest Department of the State of Maharashtra in the year 1999. His initial engagement was with Project Forest Ranger, Boripada Center, Harsul. That, he completed more than 240 days of service in each year. The Government of Maharashtra, Revenue and Forest Department issued a Government Resolution dated 16 October, 2012 for absorption daily wage

workers who had completed 240 days of service in any of the 5 years during 1 November, 1994 to 30 June, 2004. It is Petitioner's case that he fulfills the criteria prescribed in the GR dated 16 October 2012. Since he was not absorbed in his service, he filed Complaint (ULP) No. 71 of 2014 before Industrial Court, Nashik seeking absorption in service with effect from 1 June 2012 in accordance with the GR dated 16 October 2012. The Complaint was resisted by the Respondent-Corporation by filing a reply. Both sides led evidence in support of their respective contentions. The Industrial Court delivered Judgment and Order dated 23 September 2022 rejecting the Complaint filed by Petitioner. Aggrieved by the decision of the Industrial Court, Petitioner has filed the present Petition.

4) Mr. Karnik, the learned counsel appearing for Petitioner would submit that the Labour Court has erred in rejecting Petitioner's Complaint. That the Labour Court has erroneously held that the Petitioner does not satisfy the required criteria enumerated in the GR dated 16 October 2012. Mr. Karnik would invite my attention to the statement issued by Project Forest Ranger, Boripada Center, Harsul showing that Petitioner has rendered more than 240 days of service during the years 1999-2000 to 2003-2004. That the Labour Court has ignored the said statement issued by the Forest Ranger while recording the erroneous finding that Petitioner does not satisfy the criteria enumerated in GR dated 16 October, 2012. Mr. Karnik would submit that Petitioner still continues to work with the Respondent and his services cannot be exploited by treating him as daily wager by the Respondent-Corporation. He would rely upon the judgment and order dated 23 September 2022 passed by the Industrial Court on the same day in the case of Shri. Nilesh Manshiram Raut, whose complaint is allowed by the Industrial Court. Mr. Karnik would submit that in spite of the Petitioner being similarly situated, his Complaint is erroneously dismissed by the Industrial Court. He would pray for setting aside the order of the Industrial Court.

5) Per contra Mr. Kapadnis, the learned counsel appearing for the Respondent-Corporation would oppose the Petition and submit that the services of Petitioner have been utilized as when required. That, he has not been in continuous service of the Respondent-Corporation. That, he does not satisfy the criteria prescribed in the GR dated 16 October 2012. Mr. Kapadnis would further submit that there is no post available for absorption of services of Petitioner. That there is no master-servant relationship between Petitioner and Respondent-Corporation as Petitioner has never been paid any salary or issued with any written Appointment Order. Mere payment of daily wages in the absence of issuance of Appointment Order does not make Petitioner an employee of Respondent-Corporation. Mr. Kapadnis would submit that Petitioner's case cannot be compared with the case of Shri. Nilesh Manshiram Raut. He would pray for the dismissal of the Petition.

6) Rival contentions of the parties now for my consideration.

7) Forest Development Corporation of Maharashtra Limited is fully owned by the Government of Maharashtra. As per the affidavit filed by it, it has nearly five decades of experience in raising teak plantations and marking forest produce like

timber, firewood, and bamboo. The Respondent-Corporation claims to have raised successful plantations on behalf of external clients on their lands by undertaking 'turnkey plantations'. It appears that the Respondent-Corporation employs services of daily wage workers to undertake various forest related activities.

8) No discussion on the issue of regularization of services of temporary / ad-hoc / casual / contract employees can be complete without reference to the landmark Judgment of the Apex Court in Umadevi which marks a watershed moment on the subject of regularization of employees in government services. In Umadevi, the Apex Court has held that mere continuance of employees for a long period does not create any right of regularization in their favour. The Apex Court however has carved out one exception in respect of employees whose appointments are made in irregular manner against sanctioned vacant posts who held eligibility criteria for such appointment and who had worked for 10 years or more without interim orders of Courts/Tribunals should be regularized in service as one time measure. The Apex Court has recorded following findings in paragraph 43, 44, 47, 49 and 53 as under :-

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment in the earlier part of the judgment, he would not be entitled to any right to be absorbed

or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be Justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in

consultation with the Public Service Commission Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

9) Applying the law expounded by the Constitution Bench in Umadevi, regularization of casual employees in Government services is impermissible, except by way of one-time exception carved out by the Apex Court in Para 53. Despite authoritative ruling of the Constitution Bench in Umadevi, a bench of two learned judges of the Supreme Court in U.P. State Electricity Board vs Pooran Chandra Pandey & Others, (2007) 11 SCC 92 struck a sort of discordant note. However, it did not take a bench of three learned judges of the Apex Court too long to hold in Official Liquidator vs Dayananad & Ors., (2008) 10 SCC 1 that the binding effect of Umadevi cannot be diluted and that decision in Pooran Chandra Pandey would not be treated as a binding precedent. Does it mean that in no other circumstances, regularization can be ordered by Courts and Tribunals? Does Umadevi circumscribe the powers of industrial adjudicator to direct regularization in facts of a particular case? The issue of jurisdiction of labour/ industrial courts to direct regularization attracted attention of the Apex Court in Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India and another, (2014) 7 SCC 190. In Hari Nandan Prasad, the Apex Court took note of its judgments in UP Power Corporation 2007 5 SCC 755 and in MSRTC Vs. Casteribe Rajya Parivahan Karmachari Sanghatana, (2009) 8 SCC 556 for essentially holding that in absence of post, regularization cannot be directed. The Apex Court however has carved out certain exceptions to this general principle. Before advertng to the exposition of law in Hari Nandan Prasad, it would be first apposite to refer to the law declared in MSRTC about scope of powers of Industrial/Labour Courts. In MSRTC the Apex Court has held in paragraph 32, 33 and 36 as under :-

"32. The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

33. The provisions of the MRTU and PULP Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred to, considered or decided in Umadevi. Unfair labour practice on the 9 part of the employer in engaging employees as badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of the Industrial and Labour Courts under Section 30 of the Act did not fall for adjudication or consideration before the Constitution Bench.

36. Umadevi does not denude the Industrial and Labour Courts of their statutory

power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and the PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established.”

(emphasis supplied)

10) Thus in MSRTC, the Apex Court held that Umadevi does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer where the posts on which they have been working exist. It further held that the provisions of MRTU and PULP Act enables an industrial adjudicator to give preventive as well as positive direction to an erring employer. After taking into consideration the Judgments in UP Power Corporation, and MSRTC, the Apex Court in Hari Nandan Prasad proceeded hold in paragraph 34, 35, 39 and 40 as under :-

34 A close scrutiny of the two cases, thus, would reveal that the law laid down in those cases is not contradictory to each other. In U.P. Power Corporation, this Court has recognised the powers of the Labour Court and at the same time emphasised that the Labour Court is to keep in mind that there should not be any direction of regularisation if this offends the provisions of Article 14 of the Constitution on which the judgment in Umadevi is primarily founded. On the other hand, in Bhonde case the Court has recognised the principle that having regard to the statutory powers conferred upon the Labour Court/Industrial Court to grant certain reliefs to the workmen, which includes the relief of giving the status of permanency to the contract employees, such statutory power does not get denuded by the judgment in Umadevi’s case. It is clear from the reading of this judgment that such a power is to be exercised when the employer has indulged in unfair labour practice by not filling up permanent posts even when available and continuing to employ workers on temporary/daily-wage basis and taking the same work from them and making them do some purpose which was being performed by the regular workers but paying them much less wages. It is only when a particular practice is found to be unfair labour practice, as enumerated in Schedule IV of the MRTP and PULP Act, and it necessitates giving direction under Section 30 of the said Act, that the court would give such a direction.

35. We are conscious of the fact that the aforesaid judgment is rendered under the MRTP and PULP Act and the specific provisions of that Act were considered to ascertain the powers conferred upon the Industrial Tribunal / Labour Court by the said Act. At the same time, it also hardly needs to be emphasised that the powers of the industrial adjudicator under the Industrial Disputes Act are equally wide. The Act deals with industrial disputes, provides for conciliation,

adjudication and settlements, and regulates the rights of the parties and the enforcement of the awards and settlements. Thus, by empowering the adjudicator authorities under the Act to give reliefs such as reinstatement of wrongfully dismissed or discharged workmen, which may not be permissible in common law or justified under the terms of the contract between the employer and such workmen, the legislature has attempted to frustrate the unfair labour practices and secure the policy of collective bargaining as a road to industrial peace.

39. On a harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily-wage worker/ad hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily-wager, etc. may amount to back door entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the worker concerned does not meet the eligibility requirement of the post in question as per the recruitment rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.

40. The aforesaid examples are only illustrative. It would depend on the facts of each case as to whether the order of regularisation is necessitated to advance justice or it has to be denied if giving of such a direction infringes upon the employer's rights.

11) Thus, in Hari Nandan Prasad, the Apex Court ruled that if posts are not available, issuance of directions for regularisation would be impermeable and that such directions cannot be issued only on the basis of number of years put in by a daily wager. However the Apex Court did carve out some exceptions i. e. where similarly situated workmen are regularised in terms of a scheme. It thus held that by ordering regularization of similarly placed employee the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision. Thus once an employer formulates a scheme for regularization and regularizes similarly placed employees in accordance with that Scheme, it is permissible for an industrial adjudicator to direct regularization of casual/daily wage worker who fulfills the criteria

prescribed in the Scheme. However since the right to claim regularization, in such case, flows purely out of the Scheme, it is mandatory that the concerned worker fulfills all the criteria prescribed under the Scheme to the hilt.

12) Having considered sound exposition of law by the Apex Court on the subject of regularization of adhoc/causal/daily wage workers and permissibility of ordering regularization by an industrial adjudicator in accordance with the Scheme formulated by the employer, I proceed to examine the provisions of the Scheme formulated by the State Government in the present case.

13) It appears that several daily wage workers were employed by the Forest Department of the State Government for carrying out various works undertaken in forests by Government Resolution dated 31 June 1996. The State Government created 10264 supernumerary posts of Van Majur (Forest Labourers). As per GR dated 31 January 1996, daily wagers rendering 240 days of continuous service in 5 years during 1 November 1989 to 31 October 1994 were directed to be absorbed in service. The Government encountered a situation where several daily wagers engaged after 1 November 1994 were deprived of the benefit of absorption, whose services were required for undertaking various forest-related activities. The State Government therefore constituted a study group under the chairmanship of Additional Chief Conservator of Forest. The study submitted a report making recommendations that services of 5089 workers in the Forest Department, 451 workers of the Social Forestry Department, and 1006 workers of Respondent Corporation, who had completed 5 years of services be absorbed of service. Based on the recommendations of the study group, the State Government issued GR dated 16 October 2012 which envisages absorption of a total 6546 daily wages in government service with effect from 1 June, 2012. For the purpose of absorption of 5089 daily wages in the State Government, approval was granted for correction of 5089 supernumerary posts in the State Government. Following eligibility criteria has been prescribed for absorption of daily wages workers :

14) Thus GR dated 16 October 2012 envisages absorption of daily wagers, who have rendered 240 days service in any of the 5 years, either continuously or in broken spells, during 1 November 1994 to 30 June 2004. Such daily wage workers needed to be in service as on 1 June 2012.

15) Thus under the GR dated 16 October 2012, Petitioner needs to satisfy the twin conditions of completion of 240 days of service in any of the 5 years from 1 November 1994 to 30 June 2004 and being in service as of 1 June 2012.

16) So far as the first condition is concerned, the statement certifying the number of days of service put by Defendant by Project Forest Ranger, Boripada Center, Harsul would indicate that Petitioner had rendered the following days of service:

Year

Number of Days of Service

1999-2000

344

2000-2001

331

2001-2002

285

2002-2003

289

2003-2004

241

Thus the certificate issued by Project Forest Ranger clearly indicates that Petitioner satisfies the condition of rendering 240 days of services in 5 years from 1999-2000 to 2003-2004.

17) So far as the second condition of being in service as of 1 June 2012, there is no specific evidence to show that Petitioner was in service as of 1 June 2012. My attention is invited to the statement of service rendered by Petitioner certified by the Divisional Manager, Forest Project Division, West, Nashik which shows that Petitioner did not render any service during the years 2004-2005 to 2012-2013. He appears to have been engaged twice in August and September 2013 for 12 days each. Later he has been engaged for few days during 2014-2015 (106), 2015-2016 (311), 2016-2017 (312) and 2017-2018 (156). Thus, it appears that the Petitioner was not in service as of 1 June 2012. In the Affidavit in Reply filed by Respondent Corporation specific averment is made in para 10 as under:

"10. I say that the benefits of the GR dated 16.10.2012 cannot be extended to the Petitioner as the Petitioner was not working on 01.06.2012."

18) Perusal of the Complaint filed by Petitioner indicates that no specific averment is made that he was in service as of 1 June 2012. Even in the present Petition, Petitioner has not made any specific averment that he was in service as of 1 June 2012. The service subsequently rendered by him during 2013-2014 to 2017-2018 is inconsequential. It is a mandatory requirement of GR dated 16 October 2012 that a daily wager must be in service as of 1 June 2012. Since Petitioner does not satisfy this mandatory requirement, he is not illegible to be absorbed in service as per GR dated 16 October 2012. This appears to be the reason why the Petitioner has been left out of the absorption exercise where the Respondent-Corporation absorbed about 1006 daily wagers in the service of the Corporation.

19) Reliance of Mr. Karnik on the judgment of the Industrial Court in the case of Shri. Nilesh Manshiram Raut does not cut any ice as the said judgment does not relate to the applicability of the GR dated 16 October 2012. The Judgment in the case of Shri. Nilesh Manshiram Raut is delivered on the basis of provisions of Model Standing Orders framed under the provisions of the Industrial Employment (Standing Orders) Act, 1946. Applicability of the said Model Standing Orders to the Respondent-Corporation is questionable. However, I need not delve deeper into that aspect as the Petitioner did not seek absorption in service on the basis of the applicability of Model Standing Orders. His prayer for absorption in the complaint was specifically premised on the GR dated 16 October 2012. Petitioner does not satisfy the eligibility criteria prescribed in the GR dated 16 October 2012. As held above, after the judgment in Umadevi, an industrial adjudicator can direct regularization only in accordance with the Scheme formulated by the employer. Since right of absorption flows out of the Scheme, it is mandatory that all criteria prescribed in the Scheme must be scrupulously met with. Since Petitioner does not meet the criteria of being in employment as on 1 June 2012, he cannot claim regularization in accordance with the GR. In my view, therefore, no error can be traced in the order of the Industrial Court dismissing the Complaint.

20) I therefore find the order of the Industrial Court to be unexceptionable. Writ Petition, being devoid of merits, is dismissed without any order as to costs. Rule is discharged.