

(2010) 12 BOM CK 0081

In the Bombay High Court

Case No : Writ Petition No. 4554 of 2006

Reliance Energy Ltd.

APPELLANT

Vs

Yadayya Giri and Others

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25(F)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30(1)

Citation : (2011) 1 ALLMR 636 : (2011) 1 BomCR 576 : (2011) 113 BOMLR 93 : (2011) 129 FLR 396 : (2011) 4 LLJ 428 : (2011) 1 MhLj 998

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : J.P. Cama, instructed by K.P. Anil Kumar, for the Appellant; S.K. Talsania instructed by M.D. Nagle, for the Respondent Nos. 1 to 15 in WP/4554/2006 and for the Respondent Nos. 1 to 5 in WP/4694/2006, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—These Writ Petitions are being heard together as they challenge a common order passed in Complaint (ULP) No. 1230 of 2000 and Complaint (ULP) No. 749 of 2001 passed by the Industrial Court, Mumbai on 29th April, 2006. The Writ Petition No. 4554 of 2006 has been filed against 15 employees. Respondent No. 2 has expired and Respondent No. 11 has resigned. Therefore this Petition is confined against the other Respondents. Writ Petition No. 4694 of 2006 is filed against five workmen.

2. The Petitioner is a Public Limited Company generating, supplying and distributing electricity in the Suburbs and surrounding areas of Mumbai and Thane District. It has a Contract Division for securing annual maintenance contracts of sub-stations which are used for the supply of captive electric power by various parties including Private Companies, Government and Semi Government Agencies. According to the Petitioner, the workmen were engaged in

the maintenance work undertaken by the Contract Division. The Petitioner claims that the workers were engaged to work on the several projects undertaken by the Contract Division till 2003. Thereafter no project or contract work was undertaken by the Contract Division and therefore on completion of the last project the Petitioner, instead of terminating the services of the workmen, directed them to work in the office of the Contract Division till it secured a new contract or project. Admittedly, no appointment letters were issued to the workmen. They were directed to work as temporary workmen and were deployed on various projects.

3. On 16th October, 2000, the workmen called upon the Petitioner to grant them the status and benefits of permanent employees as they had completed 240 days in service and had been working for a number of years. Since the Petitioner did not pay heed to the demand of the workmen, they filed the aforesaid Complaints, being Complaint (ULP) No. 1230 of 2000 and Complaint (ULP) No. 749 of 2001, respectively, before the Industrial Court, Mumbai on 7th March, 2001. The complaints were filed under Items 3, 5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (for short "the MRTU & PULP Act").

4. The Respondents contended in the complaints that although they were categorized as "Core Staff", they were known as "Voucher Staff" because their emoluments including allowances, bonus etc. were paid on vouchers. It was further pleaded that they were employed by the Petitioner directly and not through any contractor. They relied on letters and other documents to establish this fact. The workmen contended that they had worked for several years with the Petitioner without any break in service and that they had performed duties which are regular, permanent and of a perennial nature in the Company. The workmen then contended that 13 workmen, who they named in the complaints, had been granted the status of permanent workmen and the benefits and privileges due to permanent workmen were also paid to them. As a result, although the Respondents and those 13 workmen performed the same nature of work, the difference in their wages per month was about Rs. 10,000/-. The Respondents therefore contended that the Petitioner had indulged in unfair labour practices under Item 5 of Schedule IV of the MRTU & PULP Act. It was then contended that because they were performing the same duties as the other permanent workmen, they were entitled to the same grades and pay scales in view of the "doctrine of equal pay for equal work". The Respondents then pleaded that they had completed 240 days of service despite which the Petitioner had not made them permanent and had thereby violated the Standing Orders 4B and 4C of the Model Standing Orders which govern the service conditions of the workmen. It was categorically pleaded that in the year 2000 each one of the complainants had completed 240 days in service. The Respondents therefore sought a declaration that the Petitioner had committed unfair labour practices under Items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act.

5. The complaints were contested by the Petitioner. It was contended that the complaints were not maintainable because the workmen were engaged for the purpose of certain projects undertaken by the Petitioner and that their engagement with the Company was limited to the duration of the project. The Petitioner then denied any relationship of master and servant between the workmen and itself. It was contended that the workmen were employed in the vacancies created in the Contract Division, which was a separate Unit altogether, dependent upon the exigencies of work on a particular project undertaken by the Petitioner on a turnkey basis. The Petitioner contended that there was no perennial work for temporary employees. It was then pleaded that since the workmen were Voucher Staff, they were not covered by the Certified Standing Orders. There is a denial contained in the written statement about the workers having completed 240 days of continuous service. The Petitioner then objected to the comparison made in the complaint of the Respondents with 13 other workmen.

6. Several documents were produced on record by the parties to establish their respective cases. One workman, i.e. Respondent No. 6 in Writ Petition No. 4554 of 2006, has deposed that he was working continuously since 1987 and was being paid @ Rs. 100/-per day. He has further deposed that the difference in the salary of the Respondents and the permanent workmen was about Rs. 10,000/- per month. He has further mentioned the names of the workmen who were junior to him and the other complainants who were granted permanency by the Petitioner. He has further stated that he and his 20 colleagues, i.e. his co-complainants, were employed by the Petitioner for 20 years without a break in service for work which was of a permanent nature. In his cross-examination he has admitted that though he was deposing on behalf of all the workmen, he was not aware of the particulars regarding those workmen, but that he had a broad idea of their service record. He has reiterated that when he was appointed, no appointment order was issued to him. He has also stated that he was not employed through a contractor but by the Petitioner directly. He has also stated that the 13 employees, whose names were mentioned in the complaint, were junior to the complainants and that they were less qualified. The Petitioner examined one of their Senior Managers who has deposed that all the workmen were recruited for the maintenance work undertaken by the Contract Division of the Petitioner from 2002 to 2003. In his cross-examination he has admitted that he had no personal knowledge about the facts contended and pleaded in the written statement. The muster roll produced at Exhibit "U-18" by the complainants was not admitted by him.

7. The Industrial Court, on appreciating both the oral and documentary evidence led before it, has allowed the complaints. It has held that the Petitioner was guilty of committing unfair labour practices under Items 5, 6 and 9 of Schedule IV of the MRTU & PULP Act. The Industrial Court directed the Petitioner to confer the status of permanency on the Respondents from the date each complainant completed 240 days of uninterrupted services. The Petitioner was further

directed to pay wages and other allowances to the complainants at par with the permanent employees. The Industrial Court was of the view that the workmen had established that an unfair labour practice had been committed under Item 6 of Schedule IV of the MRTU & PULP Act. It further concluded that the workmen were not employed as project employees but as direct employees of the Petitioner. The Industrial Court did not accept the contention of the Petitioner that the workmen had been engaged temporarily only for a particular project. The Industrial Court then came to the conclusion that no evidence was adduced by the Petitioner to establish the fact that the workmen were working on a particular project. The Industrial Court therefore held that the nature of duties required to be performed by the Respondents was permanent and perennial. After considering the judgments of the Supreme Court, the Industrial Court held that there was a violation of Item 6 of Schedule IV of the MRTU & PULP Act. Besides this, the Industrial Court was of the view that an unfair labour practice under Item 5 of Schedule IV of the MRTU & PULP Act had also been established. The Industrial Court then discussed whether there was a breach of any Settlement Award or Agreement. It concluded that the workmen having completed 240 days in service, the Petitioner had engaged in an unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act by not confirming them in service. The Industrial Court has held that the Petitioner has committed unfair labour practices under Items 5, 6 and 9 of Schedule IV of the MRTU & PULP Act.

PROJECT WORKERS

8. The first issue which needs to be addressed is whether the Respondents were project workers. Mr. Cama has submitted that the workmen in the present complaints were not temporary workmen as understood in common parlance but were project workers. They were employed for the duration of a particular project and no further. He has submitted that it was only due to fortuitous circumstances that the projects on which the workmen were employed continued over some period of time. Immediately after one project was over, the workers were engaged on another project. This procedure continued for some time only because of the fact that the Petitioner was able to secure several maintenance projects, submitted Mr. Cama. According to the learned Counsel, these workmen were employed on the projects, not because they had any right, but because the work was available. He submitted that the Petitioner has categorically pleaded in its written statement that the workmen were employed on various projects and that these projects having been discontinued either because they were completed or for other reasons; no work was available for workmen such as the Respondents. No existing projects were available for the workers to be absorbed as permanent workmen. Mr. Cama relied on the judgments of the Supreme Court in the case of Gangadhar Pillai v. Siemens Ltd. reported in 2007 II CLR 139, in the case of Gurbachan Lal Vs. Regional Engineering College, Kurukshetra and Others, in support of his contentions.

9. Mr. Talsania has argued that these workmen were not engaged on any project but were engaged by the Petitioner for its own work. They happened to be deployed at various places where the Petitioner had undertaken a maintenance contract. However that by itself would not establish that the workmen were employed only for a particular project, according to him. He cited the judgment of the Supreme Court in the case of S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, , where the Court has laid down certain criteria which would indicate whether workmen were engaged as project workers. Furthermore, he submitted that no evidence was led by the employer to indicate that the employment of the Respondents was co-terminus with a particular project. He pointed out that a heavy burden was cast on the employer to prove that such workers were engaged on a particular project; not having discharged that burden the employer cannot claim that these were project workmen.

10. The documents which are produced on record including the duty pass issued to the workmen indicate that the workmen were deployed at a particular site for the maintenance contract undertaken by the Petitioner's predecessors in title. The identity cards or contractor's passes have been issued by the Petitioner to the workmen mention that they were deployed on a particular maintenance project in Mumbai. However, that by itself would not lead to the conclusion that the workmen were engaged only for the duration of a particular project of maintenance undertaken by the Petitioner at various different sites.

11. The Supreme Court in the case of Gangadhar Pillai v. Siemens Ltd. (supra) was dealing with a case where the employer contended that the workman was employed for a particular period and that on the completion of the project, he was liable to be terminated u/s 2(oo)(bb) of the Industrial Disputes Act. The Supreme Court observed that there had been breaks in service which were not artificial. On the basis of the facts before it, the Supreme Court held that the burden to prove that the employer had committed an unfair labour practice had not been discharged by the workmen. Considering the nature of the projects undertaken by the employer, the Supreme Court observed that the requirement to employ employees on a temporary basis was writ large. The Court held that termination of service on account of a project being discontinued would fall within the purview of Section 2(oo)(bb) of the Industrial Disputes Act.

12. In the case of M.N. Mishra v. Siemens Ltd. (supra), a learned Single Judge of this Court (Khandeparkar J.) has held that the letters of appointment issued to the workman in that case indicated that he was engaged only for particular projects. The period of employment was specific and related to a particular project. The Court observed that it was not the case of the workman that such projects were continuously in progress and had been undertaken without interruption. There was no functional integrality between various projects undertaken by the employer. In these circumstances, the learned Judge accepted the finding of the Industrial Court that the workman was appointed at various sites for fixed terms and that he could not claim the status of permanency only

because letters extending his tenure or fresh appointment letters were issued to him, due to which he had completed 240 days service.

13. In the present case, admittedly, no appointment letters were issued to the workmen. There is no material on record to indicate that the workmen were being engaged only for the tenure of a particular project. In fact the evidence on record indicates that there were ongoing projects on which the Respondents were deployed by the Petitioner to fulfill the annual maintenance contracts undertaken by it for various parties. The Petitioner, therefore, cannot claim that merely because the project had come to an end, the workmen need not be made permanent. Though the maintenance contract with one party could have come to an end, the workmen were immediately deployed for another annual maintenance contract. This work was perennial in nature.

14. In the case of S.M. Nilajkar and Ors. (supra), the Supreme Court observed that the termination of service of an employee engaged in a scheme or project may not amount to retrenchment within the meaning of Sub-Section 2(oo)(bb) of the Industrial Disputes Act if the following conditions were satisfied namely;

(a). that the workmen was employed in a project or scheme of a temporary duration;

(b). the employment was on a contract and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project;

(c). the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract and;

(d). the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

15. The Supreme Court has held that it is for the employer to prove the above said ingredients so as to attract the provisions of Section 2(oo)(bb) of the Industrial Disputes Act and to exclude the termination of a scheme or project employee from the definition of retrenchment. In the present case there is no material whatsoever on record to establish that the workmen had been apprised that their term of employment was co-terminus with any project. The evidence led before the Industrial Court established that no appointment letters were issued to the workmen. They continued to be employed even after a particular project came to an end. There was no break in service whatsoever. Therefore, none of the aforesaid criteria are applicable to the facts and circumstances of the present case. Thus the contention of Mr. Cama that the Respondents were project workers is unsustainable. The evidence on record unmistakably established that the workmen were employed continuously for years together as temporary workmen and not as project workers as contended by the Petitioner.

16. As the Petitioner disputes the conclusions of the Industrial Court that it has committed unfair labour practices under Items 5, 6 and 9 of Schedule IV of the

MRTU & PULP Act, I will deal with each of these items separately.

ITEM 6 OF SCHEDULE IV OF THE MRTU & PULP ACT

17. Mr. Cama, the learned Counsel appearing for the Petitioner, has submitted that before a Court can draw the conclusion that an employer has indulged in an unfair labour practice under Item 6 of Schedule IV of the MRTU & PULP Act, it is necessary for the workers to prove that the employer had a motive to deprive them of the benefits of permanency. Besides this, he argued that in the present case the workmen have not proved that they have been engaged by the Petitioner for several years which is one of the criteria required for concluding that an unfair labour practice has been committed under Item 6 of Schedule IV of the MRTU & PULP Act. He further submitted that there were no pleadings in the complaints either in respect of the motive of the employer or with regard to whether any vacancies exist for making these workmen permanent. He relied on the judgments of this Court in the cases of Punjabrao Krishi Vidyapeeth, Akola v. General Secy., Krishi Vidyapeeth Kamgar Union and Ors. reported in 1994 I CLR 913, Maharashtra Association of General Workers v. Steelage Industries Ltd. and Ors. reported in 2005 III CLR 132, and Pune Municipal Corporation and Ors. v. Dhananjay Prabhakar Gokhale reported in 2006 II CLR 105, in support of his submission that there must be unambiguous pleadings in respect of the motive of the employer and the availability of vacancies. He has further submitted that the muster roll which the workmen relied on has been discarded by the Industrial Court and therefore there is no material on record to indicate that the workmen have put in long years of service.

18. Mr. Talsania, the learned Counsel appearing for the Respondents-workmen, submitted that Item 6 of Schedule IV of the MRTU & PULP Act must be read in two parts. According to him, the first part consists of the duty cast on the workmen to prove that they had been employed as badlis, casuals or temporaries for years together; the second part follows as a natural consequence, namely that, an inference must be drawn that the object of the employer was to deprive the workmen of their status and privileges of permanent employees once it is found that the workmen have proved the first part of the Item. He submitted that various defences can be raised by an employer to get out of the rigors of Item 6 of Schedule IV of the MRTU & PULP Act including the defences which have been raised in the present matter namely that the workmen were project workers and that there was no vacancy for the workmen to be made permanent. He pointed out that though there is a pleading about the workmen being project workers, there is no contention whatsoever regarding the non availability of vacancies. He submitted that the documents on record, which have been admitted by the Petitioner, conclusively proved that the workmen were engaged by the Petitioner for years together, without a break in service. He further pointed out that there is evidence on record to establish that the difference in wages payable to temporary workmen such as the Respondents herein and the permanent workmen is Rs. 10,000/-. Therefore, according to Mr.

Talsania, the object or motive of the employer to deprive the workmen of their permanent status is clear and unambiguous. He then submitted by relying on the judgment of the Supreme Court in the case of Chief Conservator of Forests and Anr. v. Jagannath Maruti Kondhare reported in 1996 I CLR 680, that it is not for the workers to prove that there exists a motive on the part of the employer to deprive them of their permanent status. He urged that an inference must be drawn as such a heavy burden cannot be cast on the workmen. They also relied on my judgment in the case of Pune Municipal Corporation and Ors. v. Ashok Sakharam Jadhav reported in 2002 I CLR 357, where I have followed the judgment in Kondhare's case. Mr. Talsania submitted that once an unfair labour practice on the part of the employer under Item 6 of Schedule IV of the MRTU & PULP Act is established, the Industrial Court is empowered to direct the employer to make the workers permanent, regardless of whether there are any vacancies. He has relied on the judgment of the Supreme Court in the case of Maharashtra State Road Transport Corporation and Anr. v. Casteribe Rajya P. Karmachari Sanghatana reported in 2009 III CLR 262, and on my judgment in the case of Parke-Devis (India) Ltd. v. Mahadev Bhiku Jadhav and Ors. reported in 2008 II CLR 638.

19. On a perusal of the evidence led before it, the Industrial Court has concluded that the workmen have been working continuously for several years with the Petitioner. Some of the documents filed before the Industrial Court were produced by the parties before me. These documents which were filed by the workmen at Exhibit "U-7" have been filed again by the employer at Exhibit "C-9". A perusal of these documents indicates that the workmen have in fact been working for years together with the Petitioner. There is no perversity as sought to be made out by Mr. Cama in this conclusion drawn by the Industrial Court that the workers were engaged by the Petitioner for years together as temporary workmen. In the case of Punjabrao Krishi Vidyapeeth, Akola (supra), a learned Single Judge of this Court, (Sirpurkar J., as he then was), has observed that there must be tangible evidence to show that the workmen had been employed as casuals, temporaries and badlis for years together, deliberately. It must be shown that there was an intention or mens rea on the part of the employer or a certain design to achieve the object of depriving them of their permanent status. The learned Judge has opined that the language of Item 6 speaks of a specific object and not merely the result of the action of the employer. It has been held that if the result of the action of the employer deprives the employees of the status and privileges of permanent employees, that by itself would not bring the act within the ambit of entry 6 as there has to be a definite object which must be proved by evidence.

20. In Kondhare's case, the Supreme Court noted the submissions of the employer's Advocate that the burden was cast on the workmen to establish that the object of the employer, in continuing them for years together as temporaries, was to deprive them of the status and privileges of permanent employees. However, the Supreme Court has accepted the submission of the workman that it

would be difficult for him to establish what object the employer had in such a matter as that would be within the realm of his subjective satisfaction, known only to him. The Court therefore held that if such a heavy burden was cast on the workman, the object of the MRTU & PULP Act of preventing unfair labour practices would be thwarted or get frustrated. It held further that a burden cannot be placed on a workman which he cannot reasonably discharge. It then observed that it would be permissible on the facts of a particular case to draw the inference mentioned in the second part of the Item, if badlis, casuals or temporaries are continued as such for years together.

21. In my view, in the present case there is tangible evidence in the form of documents to indicate that the workmen have been employed for years together with the Petitioner. It is undisputed that they were employed as temporary workmen. The fact that the difference in wages of temporary workmen and permanent workmen is Rs. 10,000/-also cannot be disputed. Therefore an inference must be drawn that the mens rea or intention of the employer in continuing such workmen for years together as temporary workmen was clearly to deprive them of their permanent status. One of the reasons for depriving them of their permanent status is obviously because the salary payable to temporary workmen was Rs. 10,000/-less than that payable to permanent workmen. Therefore, the Industrial Court has not committed any error in declaring that the Petitioner had committed an unfair labour practice under Item 6 of Schedule IV of the MRTU & PULP Act.

ITEM 5 OF SCHEDULE IV OF THE MRTU & PULP ACT

22. It was the case of the workmen before the Industrial Court that 13 other workmen who were similarly situated, performing the same work as themselves, had been made permanent in the Supply Division. The Industrial Court on the basis of the evidence, both documentary and oral, has concluded that the workmen had established their case that an unfair labour practice under Item 5 of Schedule IV of the MRTU & PULP Act had been committed by the Petitioner.

23. Mr. Cama has argued in this respect that no details were provided by the workmen in respect of Item 5 of Schedule IV of the MRTU & PULP Act. He pointed out that before an inference can be drawn that the employer has committed such an unfair labour practice, the workmen must establish the favoritism or partiality of the employer towards one set of workmen, regardless of their merit. He submitted that the workmen had furnished no details in the pleadings regarding Item 5 of Schedule IV of the MRTU & PULP Act. According to him, even assuming the workers whose names have been mentioned in the complaint have been made permanent, they were conferred this status because they were working in the Supply Division which is completely different from the Contract Division. They were found to be suitable for the post and therefore they were accorded the status of permanency. He submitted that the present workmen are not entitled to parity as they do not belong to the Supply Division but were engaged in the Contract Division. The two Divisions are mutually exclusive and therefore no

comparison can be drawn between the workers of the Supply Division and the Contract Division.

24. On a perusal of the complaints, I find that the workmen had in fact named the 13 workmen who had been made permanent. They were also Voucher Staff and were performing the same duties as the Respondents-workmen. This pleading has been supported by the evidence of the witness for the workmen. The employer's witness on the other hand has stated that he is not personally aware of any of the relevant details.

25. In my opinion, the workmen have established a case under Item 5 of Schedule IV of the MRTU & PULP Act. The Industrial Court has drawn proper inferences in this regard which need not be interfered with under the writ jurisdiction of this Court.

ITEM 9 OF SCHEDULE IV OF THE MRTU & PULP ACT

26. The case of the Respondents is that each of the workman had completed 240 days in service. They were entitled to permanency in view of the provisions of Standing Order 4C of the Model Standing Orders. The Respondents have contended that there was a breach of the Standing Orders, which form a part of the contract service, resulting in an unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act. Mr. Cama has argued the pleadings in the written statement about the workmen having completed 240 days in service and the evidence on record fell woefully short of establishing this fact. He pointed out that the muster roll which was produced by the workmen has not been accepted by the Industrial Court. Therefore, no particulars of the workmen having completed 240 days in service have been placed on record, nor had they been proved.

27. The pleadings in the written statement indicate that it was the contention of the Petitioner that the Certified Standing Orders are applicable to the workmen and not the Model Standing Orders. These Certified Standing Orders are framed under the Bombay Industrial Relations Act which is applicable to the Supply Division. If it is to be accepted that the workmen were employed in the Supply Division, then certainly the Certified Standing Orders would be applicable. However, Mr. Cama has been at pains to point out that the Respondents-workmen were not employed in the Supply Division but the Contract Division. The workmen proceeded in their complaint on the footing that they are employed in the Contract Division and that the Model Standing Orders framed under the Industrial Employment Standing Orders Act are applicable to them. Under Standing Order 4C, a badli or temporary workman who has put in 240 days of uninterrupted service in the aggregate in any establishment, which is not a seasonal establishment, during the preceding 12 calendar months shall be made permanent in that establishment irrespective of whether or not his name was on the muster roll of the establishment throughout the period of his service during the preceding 12 calendar months. An employer is expected to maintain a

waiting list of temporary workmen under Standing Order 4D. Whenever vacancies which arise in the establishment are required to be filled, the persons included in the waiting list must be given preference after taking into consideration the nature of work done by them while employing.

28. Thus, what is material is whether the workmen have completed 240 days in 12 calendar months. The Industrial Court has held that the services of the workmen have been utilized by the Petitioner for long. An inference has been drawn by the Industrial Court that the workman had been continued without any interruption in service by the Company and therefore they had completed 240 days in service in the 12 months prior to the filing of the complaints. The Petitioner has not produced the muster rolls on record. The muster rolls would have been the best evidence available. The muster rolls were in custody of the Petitioner, despite which they were not produced in Court. It appears that an application for production of the muster rolls was made by the workmen before the Industrial Court, which was granted by the Industrial Court. However, the Petitioner chose not to produce the records. The witness of the Respondents has stated in his evidence that he and his 20 colleagues were working with the Company for 20 years without a break on work which is of a permanent nature. No suggestion has been put to this workman in his cross-examination that he had not completed 240 days in service in 12 months. In fact, the suggestion was that in spite of having completed 240 days in 1988 neither he nor the other workmen had filed a complaint for permanency. Thus, there is a tacit admission on the part of the Petitioner that the workmen had completed 240 days in service.

29. Mr. Cama has argued that unless there is evidence on record that the workmen had completed 240 days during the 12 calendar months preceding the filing of the complaint, the workmen are not entitled to permanency under Standing Order 4C. He has placed reliance on the judgment of the Division Bench of this Court in the case of Pune Municipal Corporation and Ors. (supra) and the judgments of the Supreme Court in the case of D.G.M. Oil and Natural Gas Corporation Ltd. and Anr. v. Ilias Abdul Rehman reported in 2005 I CLR 488, and in the case of Mohan Lal Vs. Management of Bharat Electronics Ltd., , and in the case of Bhogpur Co-operative Sugar Mills Ltd. v. Harmesh Kumar reported in 2007 I CLR 227.

30. The documents on record and the oral evidence led by the parties unmistakably prove that the workmen had worked for 240 days in service in 12 months, soon after they were employed. Under Model Standing Order 4C, the Manager or the person authorised is duty bound to issue an order in writing making any workman, who had completed 240 days of uninterrupted service in the previous 12 calendar months, permanent. The moment a workman completes 240 days of service in a span of 12 calendar months, he must be made permanent by issuing a written order. The contention of the workmen in the complaint was that the Company had failed to comply with the provisions of Model Standing Order 4C and had, therefore, committed an unfair labour practice

under Item 9 of Schedule IV of the MRTU & PULP Act. To establish this unfair labour practice it is not necessary for the individual workman to demonstrate that he had worked for 240 days in the 12 months immediately preceding the filing of the complaint. He must establish that he had completed 240 days of service in 12 calendar months, despite which no order of confirmation had been issued. The employer cannot take the benefit of his own wrong of not issuing such a letter immediately. The workmen had completed 240 days. There is evidence on record that the workmen had completed 240 days in the past. Therefore, they would certainly be entitled to permanency from the dates that they have completed 240 days in service.

31. The Division Bench in the case of Pune Municipal Corporation (*supra*) was considering a matter where the workman contended that the Corporation had committed an unfair labour practice under Item 6 of Schedule IV of the MRTU & PULP Act, as he was not made permanent although he had completed 240 days in service. It was argued before the Division Bench that in view of the Model Standing Order 4C, he would be entitled to permanency. The Division Bench, however, noted that there was an agreement between the Corporation and the Union, of which the workman was a member, that the employees would be entitled to permanency on completion of continuous service of five years with the Corporation. The Division Bench observed that in view of Standing Order 32, since there was an agreement governing the issue of permanency, that would prevail over the Model Standing Orders. This Judgment, in my opinion, is not applicable to the present case since the Model Standing Orders govern the employees working in the Contract Division of the Petitioner. The judgment in the case of Mohan Lal (*supra*) also has no application to the facts in the present case. The Supreme Court in the case of Bhogpur Co-operative Sugar Mills Ltd. (*supra*) has observed that a workman, who contends that the provisions of Section 25F of the I.D. Act had been violated, must prove that he was in continuous service of 240 days during the 12 months preceding the order of termination.

32. In the case of D.G.M. Oil and Natural Gas Corporation Ltd. and Anr. (*supra*), the Supreme Court observed that while calculating the continuous service for the purposes of Section 25F of the I.D. Act, the number of days of work put in by a workman in broken periods in different departments of the Company and at different places cannot be taken as conjoined. These observations were made in view of the fact the workman himself contended that he had worked under different administrations of the employer in projects at Baroda and Mhesana. It is in these circumstances that the Court held that the Units could not be considered as a single Unit or Department under the Corporation. Mr. Cama has attempted to submit that since the Respondents were working on different projects, the number of days they had put in on each project cannot be clubbed together for determining whether each of them had completed 240 days of service in 12 calendar months. In my opinion, this judgment has no application to the facts and circumstances of this case as I have already held that the workmen were not

project workers and were directly employed by the Petitioner to work on its maintenance contracts which were perennial in nature.

33. In my view, the Judgments in the case of Pune Municipal Corporation (supra), D.G.M. Oil and Natural Gas Corporation Ltd. and Anr.(supra), Mohan Lal (supra) and Bhogpur Co-operative Sugar Mills Ltd. (supra) have no application in the facts of the present case. As observed earlier, there is sufficient evidence on record to indicate that the workers had completed 240 days in service, much prior to the filing of the complaint. The Petitioner has not complied with the provisions of Model Standing Order 4C by issuing an order in writing, making them permanent in service immediately on completion of 240 days. Therefore, in my opinion, the workman had amply proved that the Petitioner had committed an unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act.

34. The next issue is whether the workmen can be made permanent without there being any vacancies. Mr. Cama has submitted that there are no vacancies in the Contract Division and, therefore, in view of various Judgments of the Supreme Court, the workmen would not be entitled to permanency. In the case of Maharashtra State Road Transport Corporation and Anr. (supra), the Supreme Court has observed that permanency can be granted when the posts exist. The Supreme Court was, however, considering a case of a Public Corporation and held that, "there is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive, it is also true that the status of permanency cannot be granted by the Court when no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the Courts." These observations, in my opinion, would indicate that it is only in the case of Government or Public Corporation that the question of sanctioned and vacant posts would arise. The present Petitioner is a Public Limited Company and not bound by any executive fiat regarding the number of posts which can be created in any Department. Once the Court concludes that the Petitioner has committed unfair labour practices under Items 6 and 9 of Schedule IV of the MRTU & PULP Act, the Court can always grant appropriate reliefs in terms of Section 30(1) of the MRTU & PULP Act. The Court is empowered to take such affirmative action as is necessary to effectuate the policy of the Act. The policy of the Act is to prevent unfair labour practices. By declaring that the Petitioner has committed unfair labour practices, as aforesaid, the Industrial Court has rightly granted the further consequential relief of directing the Petitioner to confer the status of permanency on the employees from the date each of them completed 240 days of uninterrupted service.

35. The Industrial Court has drawn proper and legal inferences and conclusions and, therefore, there is no need to interfere in the findings of facts recorded by the Industrial Court. The Writ Petitions are, therefore, dismissed.

36. Rule discharged in both the Writ Petitions.

37. No orders as to costs.