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**(1994) 08 BOM CK 0015**

**In the Bombay High Court**

**Case No : Writ Petition No. 5704 of 1986**

Shivaji Ramsing Rajput and Others

APPELLANT

Vs

Ravalgaon Sugar Farm Ltd. and Others

RESPONDENT

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**Date of Decision : 19-08-1994**

**Acts Referred:**

Bombay Industrial Relations Act, 1946 — Section 3, 40  
Constitution of India, 1950 — Article 227

**Citation : (1995) 70 FLR 744 : (1996) 1 LLJ 42**

**Hon'ble Judges : B.N. Srikrishna, J**

**Bench : Single Bench**

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## **Judgement**

B.N. Srikrishna, J.—This writ petition under Article 227 of the Constitution of India impugns an order of the Industrial Court, Nashik, dated 2.5.1986 made in Complaints (ULP) Nos. 212 to 226 of 1984 under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. The relevant facts required for disposal of this writ petition are : The First Respondent is an Industrial Establishment covered by the Bombay Industrial Relations Act, 1946 and its employees are governed by a set of Certified Standing Orders which are determinative of relations between the Petitioners and the First Respondent by virtue of section 40 of the provisions of the Bombay Industrial Relations Act, 1946. It is not in dispute that such Standing Orders are prescribed under Chapter VII of the Bombay Industrial Relations Act.

3. The petitioners were all working as "seasonal permanent employees" within the meaning of Standing Orders. The petitioners allege that another 12 employees, very much junior to the petitioners, were also working as "seasonal permanent employees". In the off-season of the year 1984, on 1st October, 1984, the other 12 employees were employed as non-seasonal permanent employees. The petitioners moved their complaints by invoking items 5, 6 and 9 of Schedule IV of the Act and alleged that giving the status of non-seasonal

permanent employees to the other 12 junior employees situated on equal footing, for no good reason, was an unfair labour practice and sought for appropriate reliefs and directions that the petitioners also be made non-seasonal permanent employees.

4. Though the learned Judge of the Industrial Court did take a view that a case of unfair labour practice under Item 5 of Schedule IV of the Act was made out, he appears to have dismissed the complaints on the ground that the petitioners being seasonal permanent employees were not employees u/s 3(13) of the Bombay Relations Act. Without expressing any view on the merits of the case as to the unfair labour practice made out in the complaints of the petitioners, I am inclined to hold that the reasoning of the Industrial Court on this preliminary issue is erroneous. Since it is not disputed that the First Respondent is an industry covered by the provisions of the Bombay Industrial Relations Act and that the Standing Orders settled in accordance with Chapter VII of the said Act govern the industrial relations between the First Respondent and its employees, it would be incongruous to suggest that the "seasonal employees" within the meaning of the said Certified Standing Orders would not be employees within the meaning of section 3(13) of the Bombay Industrial Relations Act. Such a situation would be incongruous for the reason that unless the employees fall within the meaning of the defining section i.e. 3(13) of the Act, there cannot be a proceeding under Chapter VII of the said Act. The argument appears to be self-defeating and I am not impressed by it. Although the matter has been pending for quite some time, it is not possible for me to conclude the litigation here and now for two reasons. First, the lapse of time itself brings in qualitative changes in the work situation and as Mr. Rele, learned counsel for the First Respondent, rightly contended, the contemporaneous factual situation needs to be brought on record before the trial Court before a decision as to relief can be arrived at. Secondly the 12 persons, whose names are mentioned in the complaints in para 4(1) of the complaints, do not appear to have been made parties to the complaints. If the First Respondent does not have sufficient vacancies to absorb those 12 employees and the 15 Petitioners, the services of those 12 employees, or some of them, might have discontinued. It would not be possible to do so unless they are made parties to the complaints and they are heard by the Industrial Court. In the circumstances, therefore, a remand of the complaints becomes necessary.

5. Rule made absolute. The impugned order of the Industrial Court is hereby quashed and set aside. The complaints are remanded to the Industrial Court for a fresh hearing and disposal in accordance with law in the light of what has been held in this judgment. The petitioners shall implead the 12 concerned workmen as parties to the complaints. The Industrial Court shall thereafter hear and dispose of all the issues of facts and law urged before it by the parties other than the one concluded by this judgment, as expeditiously as possible, preferably within six months of the writ of this Court reaching the Industrial Court.

6. In the circumstances, there shall be no order as to costs.
7. Writ to be sent immediately.