

(2000) 07 BOM CK 0091
In the Bombay High Court
Case No : Writ Petition No. 264 of 1996

State of Maharashtra and Another

APPELLANT

Vs

Sarva Shramik Sangh and Another

RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2001) 91 FLR 255 : (2002) 4 LLJ 275 : (2001) 2 MhLj 528

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The petitioners, the State of Maharashtra, Forest Department and the Divisional Forest Officer, Ahmednagar have filed the present petition under Article 227 of the Constitution of India, challenging the judgment and order passed by the Industrial Court, Ahmednagar on July 14, 1992 declaring that the petitioners had engaged in an unfair labour practice within the meaning of Item 6 of Schedule IV of the Act, and directing them to cease and desist from engaging in such unfair labour practice and further directing the petitioners to confirm and make permanent all those employees named in annexure "A" to the complaint except the employees at serial Nos. 9. 41 and 44 and to pay them all the consequential benefits including their back wages.

2. The Respondent Union had filed a; complaint of unfair labour practice before the Industrial Court, Maharashtra, at Ahmednagar, complaining that the petitioners had engaged in an unfair labour practice within the meaning of item 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 by employing them and continuing them as casual/temporary employees for years together with the object of depriving them of the benefits of permanency. The petitioners filed their written statement and contested the complaint filed by the respondents. It was contended that the forest was not an industry as defined u/s 2(j) of the Industrial Disputes Act,

1947 and therefore, the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 were not applicable. It was further contended that the nature of the work was seasonal and there was no permanent employment available to the employees. It was further as usual contended that the posts were not sanctioned and therefore, the concerned employees could not be regularised in the department. On the basis of the pleadings the learned Member of the Industrial Court framed the following issues and answered the same in favour of the employees as under:

"1. Does the Complainant prove that the respondent has employed 46 workers named in Schedule "A", as casual or temporary for years with an object to deprive them from status and benefits of permanency and thereby has committed unfair labour practice under Item No. 6 of Schedule IV of the Act?

2. Does the Complainant prove that the said 43 workers have put in continuous service of 240 days during the period of 12 months and, therefore, they are entitled to be made permanent from the date on which they have completed continuous service of 240 days?

3. Does the complainant prove that said 46 workers are entitled to daily wage @ 1/26th of the monthly wages of monthly rated employees?

4. What order?

My answers on the above issues for the reasons given below are:

1. Yes.

2. The workers named in Schedule "A" of complaint petition excepting those cited at serial Nos. 9, 41 and 44 have completed 240 days continuous service in a year and they are entitled to be made permanent.

3. Determination not passed.

4. See final order."

Both the parties did not adduce any oral evidence. The petitioners had produced a chart which was exhibited as Exh.C 6 showing the initial dates of appointments of all these employees and the number of days put in by them in every year from their initial appointment. The chart was produced by the petitioners and it was a communication received from the Revenue and Forest Department, Mantralaya, Mumbai. The said chart was treated as an authentic document in respect of the working days of the employees by the Industrial Court and rightly so. On the basis of the said chart the learned Member of the Industrial Court has found that the concerned employees were continued as casual/temporary for years and that they had completed more than 240 days continuous employment in each year. The Industrial Court has found that all these employees were employed from 1981 and were continuously employed since then. The Industrial Court has concluded that the concerned employees were in employment for years together i.e. for a period of more than 6 years continuously. On the basis of their

continuous employment the learned Industrial Court has concluded that the work of nursery in the forest department was always available and therefore, it could not be said that the work was of casual/temporary or seasonal nature. The Industrial Court however, has held that the employees at serial Nos. 9, 41 and 44 had not put in continuous service of 240 days and therefore, it was held that they were not entitled to the benefits of the order along 2 with the other employees. It is thus clear that the Industrial Court has relied on the petitioners' own document showing the period of employment and therefore, I cannot find any fault with the said finding of fact of the learned Member of the Industrial Court. As far as the point of forest not being an industry, the learned Member of the Industrial Court has rightly placed reliance on the celebrated judgment of the Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . The petitioners' Forest Department answers all tests laid down by the Supreme Court and therefore, it cannot be said that it is not an industry. Shri Shelke, the learned advocate for the respondent union has relied on a recent Judgment of the Supreme Court which is *pari materia* with the facts in our case also. He has placed strong reliance on this judgment which is reported as Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare, etc. etc., . In that case also the Forest Department had challenged a similar order of Industrial Court granting permanency to similarly placed casual temporary employees in the Forest department. Even the question of the forest not being an industry was also agitated before the Supreme Court. Following the judgment of the Bangalore Water Supply and Sewerage Board's case the Supreme Court has held that it was open to the employees to invoke the provisions of the said Act ("M.R.T.U. and P.U.L.P. Act") and to approach this Industrial Court making grievance about the adoption of unfair labour practice by appellant (the State).

3. On the merits of the unfair labour practice the Supreme Court has observed in paragraphs 22 and 23 as under in Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare, etc. etc., :

"22. We have given our due thought to the aforesaid rival contentions and, according to us, the object of the State Act, *inter alia*, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on 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. We further state that the present was such a case inasmuch as from the materials on record we are satisfied that the 25 workmen who went to Industrial Court of Pune (and 15 to Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object as, it may be remembered that "the Panchgaon Parwati

Scheme" was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment pollution care work of Ahmednagar, whose need is on increase because of increase in pollution. Permanency is thus writ large on the face of both the types of work. If, even in such projects, persons are kept in jobs on casual basis for years the object manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants.

23. The final point which needs our determination is regarding the reliefs granted by the Industrial Court, which is to make the workmen, in both the matters, permanent with all benefits of a permanent worker, which would include payment of wages etc. at the rate meant for a permanent worker."

4. The facts in our case are also similar or more or less identical. The concerned employees in the complaint were employed in the year 1981 onwards and were continued in employment since then. From the chart produced by the petitioners themselves it was clear to the Industrial Court that the employees were employed as casuals/temporaries for years together and therefore, they were justified in making a grievance that the petitioners had engaged in an unfair labour practice as contemplated by item 6 of Schedule IV of the Act. There is no challenge to the fact that the employees had continued from 1981 on the basis of their own chart produced before the Industrial Court. All the contentions raised on behalf of the petitioners have been squarely covered by the aforesaid Judgment of the Supreme Court.

5. I, therefore, find no illegality or infirmity in the judgment and order of the Industrial Court and therefore, there is no reason to interfere with the same under Article 227 of the Constitution of India. The Industrial Court has not committed any error of law or fact and the findings are based on the documentary evidence produced by the petitioners themselves. There is absolutely no substance in the petition and the same is dismissed. Interim order passed by this Court on November 10, 1997 stands vacated. Rule is discharged.