

(2026) 08 BOM CK 3490

In the Bombay High Court

Case No : WRIT PETITION NO.2235 OF 2026 WITH WRIT PETITION (STAMP)
NO.10409 OF 2023

The Public Work Department & Ors.

APPELLANT

Vs

Vinayak Soma Lingwat

RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Constitution of India — Article 166
Model Standing Orders-Clause-4C
Industrial Employment (Standing Orders) Act, 1946

Citation : (2026) 08 BOM CK 3490

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

1) The four Petitions are filed by Public Works Department of Government of Maharashtra (PWD) challenging the Judgments and orders dated 20 February 2025 passed by the Industrial Court, Mumbai allowing the Complaints preferred by the Respondents and directing the Petitioner-PWD to make Respondents permanent in service with effect from 1 January 2019.

2) Writ Petition (stamp) No.10409 of 2023 is filed by the Petitioner-PWD challenging order dated 1 November 2019 passed by the Industrial Court on application of the Complainant (Vinayak Soma Lingwat) at **2026:BHC-AS:31957** Exhibit-U2, by which the Industrial Court has restrained the Petitioner-PWD from terminating the services of the Respondent-Complainant without following due process of law and also to provide the Complainant entry work and wages as on the date of filing of his Complaint till decision of main Complaint.

3) Petitioner No.1 is the Public Works Department of Government of Maharashtra engaged in activities of construction in highways, bridges, various Government buildings, roads, etc. Petitioner Nos.2 to 6 are officials of the Petitioner No.1. According to the Petitioner-PWD, it is required to hire services of various

personnel through contractors for carrying out various activities. According to the Petitioner, the Respondents are such contractual employees with whom there is no direct employer-employee relationship of PWD. It is the case of the Petitioner that the Respondents are engaged by respective contractors to whom various work orders are issued from time to time. The Respondents filed Complaints of unfair labour practices before Industrial Court, Mumbai, as under:

Name of the worker	Complaint (ULP) No.
Vinayak Soma Lingwat	421 of 2018
Vaibhav Chandrakant Palav	423 of 2018
Satish Marotrao Lokhande	422 of 2018
Sadanand Yashwant Gurav	424 of 2018

4) In the Complaints, the Industrial Court passed interim orders restraining the Petitioner-PWD from terminating the services of the Respondents without following due process of law and to provide them work and pay them wages during pendency of the Complaints. The **2026:BHC-AS:31957** Respondents sought relief of permanency in the services of Petitioner No.1 on completion of 240 days of service. The Complaints were resisted by the Petitioner-PWD by filing written statement, in which specific defence was raised that the Respondents were engaged merely on contract basis and that there was no employer-employee relationship between the parties. Parties led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, the Industrial Court has allowed the Complaints filed by the Respondents and has directed the Petitioner-PWD to make Respondents permanent in service with effect from date of completion of 240 days of service of each of them. Permanency is granted to all the Respondents w.e.f. 1 January 2019.

5) Ms. Nimbalkar, the learned AGP appearing for the Petitioner-PWD has submitted that the Industrial Court has grossly erred in allowing the Complaints filed by the Respondents. That there is absolutely no employer-employee relationship between the parties. That the Petitioners have not issued any orders /letters appointing the Respondents in service. That the Respondents did not produce any iota of evidence to show their appointments by the Petitioner-PWD. That they are engaged only through contractors as and when required. That the Industrial Court erroneously took into consideration reports called for relevant information for the purpose of assuming existence of employer-employee relationship. That it is well settled position that mere internal communications are not sufficient for making of an order by Government. In support, she relies on judgment of Mahadeo and Others V/s. Sovan Devi and Others 1. She submits that the Petitioners are in possession of various work orders issued by the Contractors, which **2026:BHC-AS:31957** could not be

proved before the Industrial Court. She submits that an opportunity be granted to the Petitioners to prove existence of contracts. She therefore submits that in case this Court is not inclined to set aside impugned orders on merits, at least the Complaints be remanded for fresh decision after granting of opportunity of leading evidence to the Petitioner-PWD.

6) The Petitions are opposed by Ms. Joshi, the learned counsel appearing for the Respondents. She submits that the Industrial Court has rightly allowed the Complaints filed by the Respondents. That the Respondents have been continuously working for several years with the Petitioner-PWD. That there is direct employer-employee relationship between the parties. That the Petitioner could not produce any evidence relating to engagement of Respondents through contractors. That therefore, the Industrial Court has rightly directed award of permanency to the Respondents on completion of 240 days of service. That the services of the Respondents are being exploited without paying them appropriate wages. In support, she has relied on judgments of the Apex Court in *Jaggo V/s. Union of India and Others*² and *Shripal & Anr. V/s. Nagar Nigam, Ghaziabad*³. She also relies on judgment of this Court in *State of Maharashtra and others V/s. Bhimabai Baban Golde*⁴. She prays for dismissal of the Petitions.

7) Rival contentions urged on behalf of the parties now fall for my consideration.

8) In the present case, there appears to be serious dispute about existence of any direct employer-employee relationship between the parties. Perusal of records of the Complaints produced alongwith compilation by Ms. Joshi would indicate that there is no direct appointment order/letter issued by the Petitioner-PWD appointing the Respondents in service even on temporary basis. In absence of any direct letter / order appointing the Respondents, reliance is placed on various reports called for by engineers relating to functioning of work force. It appears that some internal communications have taken place within the Department giving particulars of workers working for the Department. However, such internal communication does not automatically prove that there is direct employer-employee relationship between the parties. The Petitioner-PWD had raised a specific defence in the written statements that the Respondents are engaged through contractors and that they are not paid salaries directly by the Petitioner-PWD at any point of time. Once employer-employee relationship was disputed, ordinarily the burden was on the Respondents to prove that they were directly engaged by the Petitioners. The Respondents ought to have proved by producing some evidence that they are paid salaries directly by the Petitioner-PWD. It appears that the Petitioner-PWD did attempt to produce certain work orders to prove contractual engagements of the Respondents. However, it appears that the said work orders were not proved in evidence by the Petitioner-PWD.

9) Thus, the Industrial Court did not have any direct evidence either to infer existence of employer-employee relationship between the parties or to infer engagement of the Respondents through contractors. In the light of this position,

the Industrial Court thought it appropriate to rely **2026:BHC-AS:31957** upon inter-departmental communications/reports with regard to engagement of the workers for the purpose of proving existence of employer-employee relationship. In my view, existence of employer-employee relationship cannot be inferred merely on the basis of such internal reports. Reliance by Ms. Nimbalkar on judgments of the Apex Court in Mahadeo V/s. Sovan Devi (supra) is apposite in which it is held in paragraph 15 as under:-

15. It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right. This Court examine the said question in a judgment reported as Omkar Sinha v. Sahadat Khan [(2022) 12 SCC 228]. Reliance was placed in Bachhittar Sing V. State of Punjab [1962 SCC OnLine SC11] to hold that merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government, two things are necessary. First, the order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and second, it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up, the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. The said judgment was followed in K.S.B. Ali v. State of A.P. [(2018) 11 SCC 277], and Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [(2019) 20 SCC1]

10) Though internal communications may be considered as a collateral document of evidence for establishing that the Respondents did work on the establishment of the Petitioners, but the same cannot be the only document to infer that the Respondents were direct employees of the PWD. This is particularly because the reports by themselves do not state that the concerned workers were appointed directly by the PWD. They can work on the establishment as workers of the contractors also. Even if they are contractual workers, the reports may reflect their particulars. In my view, therefore, there needs to be proper adjudication of existence of employer-employee relationship between the Petitioners and **2026:BHC-AS:31957** Respondents.

11) As observed above, the Petitioner-PWD did attempt to produce some of the work orders to prove contractual engagement of the Respondents. However, the Petitioners did not diligently defend the Complaints by examining the witnesses for proving the said work orders. If existence of those work orders are proved, the case of the Respondents about existence of direct employer-employee relationship would automatically get destroyed. In my view, therefore, there needs to be a fresh adjudication, particularly about the claim of the Respondents being directly engaged by the Petitioner-PWD. The Industrial Court needs to examine whether there is any evidence of payment of salary by the Petitioner-PWD to the Respondents at any point of time. The Industrial Court also needs to examine whether salaries are paid by the contractors. In fact, Ms. Joshi is candid enough in admitting that salaries are paid to the Respondents in cash by the concerned officials. It is incomprehensible as to how individual officers can pay salaries in cash to the workers engaged by their offices. Such private arrangement would not bind the Government by establishing employer-employee

relationship. This is yet another reason why there needs to be re-examination of the entire issue afresh.

12) The Industrial Court also needs to examine whether the Respondents are working against any sanctioned posts or not. It is well established position that an industrial adjudicator cannot direct creation of posts on the establishment of Government or on the establishment of State instrumentalities. In Municipal Council Tirora and Anr. V/s. Tulsidas Baliram Bindhade 5th Division Bench of this Court, while **2026:BHC-AS:31957** answering a Reference, has held that the Industrial Court cannot grant permanency by invoking Clause-4C of the Model Standing Orders to the temporary employees employed in State Instrumentalities in absence of availability of posts. In paragraph 21 of the said judgment it is held as under:

21. Thus, in the light of this discussion, it follows that in absence of vacant sanctioned posts with the Municipal Council, a workman who has put in continuous service of 240 days or more in span of 12 months, cannot invoke Clause 4C of the MSO to claim either permanency or regularization. We accordingly answer the question referred. Registry to place the writ petitions before the learned Single Judge as per roster assignment for further consideration.

13) The judgment of the Division Bench in Municipal Council, Tirora has been followed by the Single Judge of this Court in Raigad Zilla Parishad V/s. Kailash Balu Mhatre and Ors.6in which this Court has held that regularization cannot be automatic on completion of 240 days of service under Clause-4C of Model Standing Orders in absence of sanctioned vacancies. In that case, this Court has adopted the formula of sending proposal to the State Government for sanction/creation of posts for considering regularization of temporary workers, who had rendered substantially long service.

14) Ms. Joshi has strenuously relied on judgments of the Apex Court in Jaggo V/s. Union of India and Shripal V/s. Nagar Nigam (supra). Ratio of these judgments would apply only if the Respondents are found to be working for a long duration against regularly sanctioned posts. Both the judgments cannot be read in support of an abstract proposition that on mere completion of 240 days of service, there can be automatic **2026:BHC-AS:31957** regularisation. Judgment of this Court in State of Maharashtra V/s. Bhimabai (supra) rendered in the peculiar facts of that case again cannot be read in support of an abstract proposition that in every case, where a temporary worker completes 240 days of service, an industrial adjudicator can direct his/her regularisation. The law is actually to the contrary. Clause-4(C) of the Model Standing Orders formulated under the provisions of Industrial Employment (Standing Orders) Act, 1946 does not empower the industrial adjudicator to direct regularization merely on completion of 240 days service when it is not established that regular vacancies exist for making them permanent. In the present case, an enquiry needs to be made as to whether the Respondents are working against regularly sanctioned posts or not. If it is found that their engagement are against sanctioned vacant

posts, continuous services rendered by them over long period of time would be a factor relevant for grant of regularization considering the ratio in paragraph 53 of judgment of the Constitution Bench in Secretary, State of Karnataka V/s. Umadevi and Ors.⁷as well as Jaggo V/s. Union of India and Shripal V/s. Nagar Nigam (supra). However, essential condition is that there needs to be availability of regular sanctioned posts for regularization. In rare cases where posts are not available but persons are found to be contractually engaged by Government or by its Instrumentality for considerable period of time, proposals can be directed to be sent for creation of posts.

15) In view of the above discussion, in my view, Complaints deserve to be remanded back for fresh adjudication by grant of opportunity to both the parties to lead further evidence for deciding the issue of direct engagement of the Respondents by the Petitioner-PWD. It appears that **2026:BHC-AS:31957** there was interim protection in favour of the Respondents during pendency of the Complaints. One such interim order dated 1 November 2019 is challenged in one of the Petitions by which, the Industrial Court had restrained the Petitioners from terminating the services of the Respondent-Complainant without following due process of law and also to provide him work and wages as on the date of filing of his Complaint till decision of main Complaint. Such interim protection needs to be extended till the Complaints are decided afresh.

16) Consequently, the Petitions succeed and I proceed to pass the following order:

(i) Impugned Judgment and orders dated 20 February 2025 passed by the Industrial Court in Complaint (ULP) Nos. 421 of 2018, 422 of 2018, 423 of 2018 and 424 of 2018 are set aside.

(ii) The Complaint (ULP) Nos. 421 of 2018, 422 of 2018, 423 of 2018 and 424 of 2018 are remanded for fresh adjudication by the Industrial Court.

(iii) The Industrial Court shall offer an opportunity to both the parties to lead additional evidence for deciding the issue of existence of direct engagement of the Respondents by the Petitioner-PWD and also about working of the Respondents against sanctioned available posts.

(iv) The remanded Complaints shall be decided afresh on **2026:BHC-AS:31957** their own merits as expeditiously as possible, preferably within a period of one year.

(v) All rights and contentions of the parties on merits are left open.

(vi) Till the Complaints are decided afresh, interim protection granted in favour of the Respondents shall continue to operate.

(vii) Since the Complaints are remanded by continuing the interim protection, Writ Petition (stamp) No.10409 of 2023 is dismissed.

17) With the above directions, the Writ Petition Nos.2235 of 2026, 9461 of 2025,

16109 of 2025 and 15245 of 2025 are partly allowed and Writ Petition (stamp) No.10409 of 2023 is dismissed. There shall be no order as to costs.

FOOTNOTES

1. (2023) 10 SCC 807
2. 2024 MhLJ Online (S.C) 79
3. Civil Appeal No.8157 of 2024 decided on 31 January 2025.
4. 2026 3 MhLJ 263.
5. 2016(6) Mh.L.J.867
6. 2022(2) Mh.L.J.146
7. 2006 IICLR 261-SC