

(2008) 08 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 3524 of 1997

Vice-Chancellor, Mahatma Phule Agricultural University and
Others

APPELLANT

Vs

Shantabai Genaba Chive and Another

RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 30, 6

Citation : (2009) 1 BomCR 191 : (2008) 110 BOMLR 2773 : (2009) 121 FLR
573 : (2009) 2 MhLj 151

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : Neeta Karnik, for the Appellant; N.A. Kulkarni, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—The judgment challenged in this petition had been delivered by the Member, Industrial Court, Pune on 31.3.1997 in complaint (ULP) No. 579 of 1993. By this judgment, the Industrial Court has allowed the complaint filed by the workman and has held that the petitioners have committed an unfair labour practices under Items 6 and 9 of Schedule IV of the MRTU & PULP Act. The petitioners have been directed to regularise the workman by making her permanent from 15.12.1993 i.e. the date of filing of the complaint and to pay her the difference in wages from that date.

2. The undisputed facts in the present case are as follows:

The petitioner recruited the workman in 1981. A common seniority list was released on 19.1.1983. The workman was at serial No. 221 in this list. In 1987, 31 employees were regularised in service. During the period between 3.9.1990 and 3.4.1993, several other daily rated workmen were regularised. According to the petitioner, these regularisations were effected in accordance with the group-wise seniority list maintained by the petitioners after discussions with the Labour

Welfare Committee. The common seniority list of 1986 was rearranged into group-wise seniority lists and regularisation and permanency was granted to the workmen on those lists in accordance with their seniority.

3. Aggrieved by the decision of the petitioners in promoting her juniors, the workman filed complaint (ULP) No. 579 of 1993 alleging unfair labour practices under Items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act. The contention raised by the workman in her complaint was that she had completed 240 days in service since her appointment in 1981 but had been continued as a temporary daily rated employee. She further contended that by continuing her on a temporary basis for years together, the petitioners had deprived her of the benefits granted to permanent employees such as the time-scale, paid holidays, uniforms, leave, bonus, etc. She further contended that the petitioners continued her as a temporary workman with the object of depriving her of the status and privileges of permanent employees. She therefore sought directions from the Court for regularising her on the establishment from 1981. She further sought the difference in wages payable to her on account of her regularisation in service.

4. The petitioners through their written statement opposed the complaint and contended that because of the group-wise seniority lists being maintained, persons who were made permanent were in other departments and not the garden department where the workman was employed. It was also contended that the petitioners had no authority to create any new permanent post and it was for the Government to sanction the creation of such posts.

5. Evidence - both oral and documentary was led before the Industrial Court. The workman examined herself while the Office Superintendent of the Establishment department of the Petitioners was examined on behalf of the petitioners. The workman in her cross-examination has admitted that during the 10 years prior to her evidence being recorded, the employees of the petitioners were made permanent section-wise and in accordance with their seniority. Thus, it has been admitted that the section-wise seniority lists were maintained and those who were made permanent were granted these posts in accordance with their respective seniority. She, however, has denied the suggestion that employees have not been promoted on the basis of the common seniority list. The witness of the Petitioners has admitted that the Petitioners had directed the Establishment department to maintain a common seniority list of class IV workers. However, he continued to insist that permanency was granted in accordance with the Department-wise seniority lists maintained by the petitioners.

6. The Industrial Court has concluded that the Respondent workman has completed 240 days in service with the petitioners. It has been held that after 1981, the respondent workman was in continuous employment and that juniors to her had been made permanent, contrary to the seniority list. The Industrial Court, therefore, concluded that the petitioners have committed an unfair labour practice under Items 6 and 9 of Schedule IV of the MRTU & PULP Act. As regards

Items 5 and 10, the Industrial Court observed that the workman had not proved any unfair labour practice under these items.

7. Mrs. Karnik, learned advocate appearing for the petitioners, submits that the Industrial Court has misdirected itself by considering the seniority list of 1986 which was a common seniority list. She submits that pursuant to negotiations with the Labour Welfare Committee, group-wise or department-wise seniority lists were maintained. Fortuitously, according to Mrs. Karnik, the sanctioned posts fell vacant in certain departments and the seniority lists pertaining to those departments were considered and employees were regularised. She further takes exception to the order of the Industrial Court as it has been observed that the workman is found at serial No. 130 in the seniority list of 1986. The learned advocate submits that this is factually incorrect since the workman is placed at serial No. 221. She further submits that no juniors in the Establishment department, where the workman was employed, have been made permanent overriding the claim of the workman. It is only those who were employed in other Departments where the sanctioned posts fell vacant who were made permanent. She relies on the judgment of the Supreme Court in the case of Mahatma Phule Agricultural University and Ors. v. Nashik Zilla Sheti Kamgar Union and Ors. 2001 III CLR 4. She points out that this judgment was in respect of the petitioner university and all the directions regarding permanency and payment of benefits of permanency contained in that judgment have been followed scrupulously by the Petitioners.

8. Mr. Kulkarni on the other hand submits that the petitioners cannot claim that there were no sanctioned posts available for making workmen permanent. He submits that the seniority list of 1986 which is a common seniority list must be considered. If that list is taken into account, the petitioners have committed unfair labour practices by regularising persons who are listed below the workman in the seniority list. He submits that the Petitioners cannot claim that they were unable to create posts in view of the judgment of the learned Single Judge of this Court (Khanwilkar, J.) in Divisional Manager, Forest Development Corporation of Maharashtra Ltd., Nashik v. Chimna Arjun Jadhav 2001 III CLR 57 wherein it has been held that the Industrial Court can u/s 30 of the Act take such positive action as is required including directing the petitioners to create posts in order to reinstate a workman or to regularise him in service after completion of 240 days.

9. In my opinion, there is no need for me to consider the judgment in the case of Divisional Manager, Forest Department Corporation (supra) because of the judgment of the Supreme Court in Mahatma Phule Agricultural University's case (supra). The decision was rendered in respect of the Petitioner-University. The facts involved in that case were similar to the facts in the present case. The workman had claimed in a complaint filed under the MRTU & PULP Act u/s 6 of Schedule IV that they should be made permanent and that they should be paid wages, etc. as if they were permanent. The Supreme Court while considering the submissions of both the parties held that the status of permanency could not be

granted to the workman. The Supreme Court further held that the workman could at best claim benefits of permanency but not permanency itself since it involves creation of posts which had not been sanctioned. The Supreme Court therefore concluded that about 2000 workmen who were not covered by the award of the Industrial Tribunal of 1.4.1985 would be entitled to the same wages on the basis of equal pay for equal work. Permanency was denied to the workmen in that case.

10. In view of this decision, it is obvious that the workman would not be entitled to permanency unless the post itself is sanctioned. Admittedly, the workman has been made permanent in 2000 and in fact she has since retired. The question therefore is whether she would be entitled to any monetary relief from the year 1993 the date from which the Industrial Court granted her permanency, till 2000. With respect, I agree with the view taken by Khanwilkar, J. in Divisional Manager, Forest Development Corporation of Maharashtra Ltd. (supra). However, in the present case, the Supreme Court, in respect of the same University, has held that unless the posts are sanctioned by the State Government, the workmen cannot be made permanent. Therefore, it would not be appropriate to go beyond this judgment in the case of Mahatma Phule Agricultural University's case (supra). The workmen would not be entitled to monetary benefits until she was made permanent against a sanctioned post.

11. In the result, the petition succeeds. The impugned judgment and order is quashed to the extent that it grants permanency from 1993. In any event, the petitioners have already extended the benefits from the year 2000 to the workmen.

12. Rule made absolute accordingly. No order as to costs.