

(2016) 11 BOM CK 0061

In the Bombay High Court

Case No : Writ Petition No. 6666 of 2006 With Civil Application No. 9699 of 2009

Zilla Parishad, Aurangabad

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-11-2016

Acts Referred:

Citation : (2017) 4 AIRBomR 45 : (2017) 3 ALLMR 122 : (2017) MCR 484 :
(2017) 2 MhLJ 837

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Writ Petition No. 6666 of 2006 With Civil Application No. 9699 of 2009.; Shri S.P. Shah a/w Shri P.V. Barde, Advocates, for the Petitioner; Shri S.P. Sonpawale, AGP, for the Respondent No. 1; Shri A.S. Shelke, Advocate, for the Respondent No. 2; Writ Peti

Final Decision : Partly Allowed

Judgement

Ravindra V. Ghuge, J. (Oral)—(A) Writ Petition No.6666 of 2006 :

The Petitioner/ Zilla Parishad is aggrieved by the judgment dated 01.07.2006 delivered by the Industrial Court, Aurangabad in Complaint (ULP) Nos.23/2000 and 101/2000 vide which both the complaints have been allowed and the Employees mentioned in Annexure-A to the Complaints, have been granted benefits of the Kalelkar Settlement coupled with the Bhole Commission Recommendations and accordingly, the Zilla Parishad has been directed to take these Employees on Converted Regular Temporary Establishment (CRTE) after completion of five years as daily wagers.

2. This Court, by order dated 14.12.2006, has elaborately dealt with the issue involved in this petition. The litigating sides were permitted to file their written notes of submissions and upon minutely considering the same, this Court admitted the petition and directed the Petitioner/ Zilla Parishad to bring the Employees on CRTE within a period of three weeks. The direction of the

Industrial Court to pay monetary benefits as per the Kalelkar Settlement from the date on which the Employees were deemed to have been brought on CRTE, was stayed pending the final hearing of this petition.

3. The Petitioner/ Zilla Parishad approached the Honourable Supreme Court by filing two Petitions for Special Leave to Appeal (Civil) Nos.2353435/ 2007 challenging the order of this Court dated 14.12.2006. By order dated 30.11.2007, the Honourable Supreme Court dismissed the said Special Leave Petitions and requested this Court to dispose of the writ petition within three months. The record reveals that the Petitioner/ Zilla Parishad, thereafter, has not taken the efforts to seek expeditious final hearing.

4. I have considered the strenuous submissions of Shri Shah along with Shri Barde, learned Advocates for the Petitioner/ Zilla Parishad, the learned AGP appearing for Respondent No.1/ State and Shri Shelke, learned Advocate appearing for Respondent No.2/ Union.

5. Shri Shah has vehemently submitted that the term with regard to employees working on "daily rated establishment" cannot be extended to daily wagers. On this ground alone, the Employees, who had preferred the ULP complaints, were not entitled to any benefits under the Kalelkar Settlement and/or Bhole Commission Recommendations. He then submits that the complaints were filed by an unrecognized Union and hence, the complaints were not tenable.

6. He has then drawn my attention to the grounds formulated by the Petitioner in the memo of the petition below paragraph 17 and has submitted that without sanction of the posts and without budgetary provisions, neither can daily rated employees be regularized, nor can they be given any monetary benefits.

7. Shri Shelke, learned Advocate for the Respondent/ Union, points out that this Court, at the stage of hearing the petition for admission, has passed a speaking order on 14.12.2006. The entire issues raised in this petition have been considered and the directions in paragraph 4 of the order were issued. These directions were not interfered with by the Honourable Supreme Court. Shri Shelke hastens to add that these directions have already been complied with by the Petitioner/ Zilla Parishad.

8. Shri Shelke then indicates from the order dated 03.02.2016 delivered by the learned Division Bench of this Court in Writ Petition No.5324/2009 in between Akhil Marathwada Zilla Parishad Kamgar Union v. State of Maharashtra and others that the said issue as to whether, daily wagers would be entitled for the benefits of the Kalelkar Settlement and the Bhole Commission recommendations, has been settled. The learned Division Bench has concluded that such daily wagers are entitled to such benefits.

9. Shri Shelke then submits that the proposal for bringing the daily wagers on CRTE and for further benefits, was forwarded by the Zilla Parishad in respect of 157 daily wagers. The employees in this petition are covered by the said

proposal. He, therefore, prays for the dismissal of this petition with costs.

10. Having considered the submissions of the learned Advocates for the respective sides, I have gone through the petition paper book with their assistance.

11. The terms set out in the Kalelkar Award and the Bhole Commission recommendations have been long standing and have been implemented for the past about more than four decades. The Government Resolution dated 10.07.1974 in fact promotes the Kalelkar Settlement and makes it mandatory to all such Establishments which are covered by the settlement that the daily wagers, who have been working for five years continuously are brought on CRTE and after completion of five years on CRTE, they are required to be regularized. There has been no change in this policy and the law applicable.

12. By the order of this Court dated 14.12.2006, the Employees have been brought on CRTE. The observations of this Court in paragraph 4 of the said order are reproduced herein below for clarity :

"4. Hence Rule. Rule made returnable early. Ad interim stay to the impugned order so far as it directs the petitioner to pay the benefits to the employees after they are brought on CRTE with effect from the date on which they have completed five years of continuous service. Though the consequential benefits flowing from the order are not payable to the respondent till the date of passing of the impugned order on 01.07.2006, the petitioner is liable to bring the respondent on CRTE with effect from the date of the impugned order i.e. 01.07.2006. The respondent would, therefore, also be entitled to the benefits flowing therefrom from the date of the impugned order i.e. 01.07.2006. This arrangement is an interim one and would however, not affect the rights of the parties. The petitioner is therefore directed to immediately bring the respondent on CRTE within a period of three (3) weeks from today and pay him all the consequential benefits within a period of one month from the date of this order."

13. Insofar as the submissions of Shri Shah are concerned that the daily rated establishment is not a specific department created under the law, it is an establishment in which the daily rated workers are utilized by a different State instrumentalities. For common understanding, it has been defined as daily rated establishment and the wages of these daily rated employees are accordingly paid. The Kalelkar Award is squarely applicable to such daily rated employees for the past about more than four decades.

14. Insofar as the submission of Shri Shah are concerned that an unrecognized Union could not have filed the complaints, I am unable to accept this submission for the reason that the complaints were filed under Items 5, 6 and 9 of Schedule IV of the MRTU & PULP Act, 1971. It is not the case of the Petitioner that there is a recognised Union and as such, the workers, not being the members of the recognised Union, could not have filed the complaints through an unrecognized Union.

15. Shri Shah has vehemently submitted that the case of these Respondents is covered by the judgment of the Honourable Supreme Court in the matter of Secretary, State of Karnataka v. Umadevi reported at AIR 2006 SC 1806 : 2006(4) SCC 1. I am unable to accept this submission as well since the Honourable Supreme Court has clarified in paragraphs 43 and 44 that where daily wagers are working beyond the period of 10 years, they should be regularized through a scheme to be introduced forthwith. Notwithstanding the same, the daily wagers in the instant case, are covered by the Kalelkar Settlement and as such, the submissions of Shri Shah cannot cause any dent on the case of the Employees.

16. The directions issued by the Industrial Court below paragraph 14 of the impugned judgment would clearly indicate that the Industrial Court has not directed the Petitioner to blindly regularize the daily rated employees. The directions issued by the Industrial Court read as under:

- "1. Both the Complaints ULP No.93/2000 and Com. ULP 101/2000 are allowed.
2. The respondents are declared engaged in unfair labour practices.
3. The respondent is directed to cease and desist from engaging in unfair labour practices.
4. The respondent is directed to take the employees named in annexure A annexed on both the complaint on CRTE w.e.f. the date on which they have completed their 5 years continuous service.
5. The respondents are further directed to pay all consequential benefits to the employees in accordance of their taking on CRTE within 4 months from this order.
6. In the circumstances of the case no order as to cost.
7. Copy of this order be kept in Com. ULP 101/2000 and original be kept in Com.ULP 93/2000."

17. It is, therefore, apparent that the Industrial Court's directions are perfectly in tune with the terms of the Kalelkar Settlement. The said directions, therefore, cannot be said to be perverse or erroneous.

18. The learned Division Bench of this Court in it's order dated 03.02.2016 in Writ Petition No.5324/2009 concerning similarly situated workmen has also settled the issue. Paragraphs 6, 7 and 8 of the said order read as under:

"6 We have considered the submissions of the learned counsel for the respective parties. The only issue before this Court in the present petition is, as to whether the benefit of the Government Resolution dated 10.7.1974 can be accorded to the petitioners. The factual matrix as is placed before this Court is not disputed by either of the parties. Petitioners are working since 1989/1991, continuously uninterrupted. The Government Resolution dated 10th July, 1974 is self explanatory. Coupled with the said Government Resolution, in respect of 21

petitioners, the Industrial Court has already passed an order directing the respondents to give the benefit of Kalelkar Award and Bhole commission. A judicial order is passed in respect of 21 employees. In the light of that, the parties cannot shrug off their liabilities. Even the Industrial Court has observed that not bringing the petitioners on CRTE would tantamount to an Unfair Labour Practise. The said Government Resolution and the similar stand taken by the Government in the instant writ petition was the subject matter of scrutiny in W.P. No. 2883 of 1992 decided by this Court. This court, after considering the case put forth by the State as well as the Zilla Parishad, had directed implementation of the Government Resolution dated 10th July, 1974. There is no reason for us to adopt a different course. The said judgment is exhaustive in nature, so also, the Government Resolution is self explanatory. Coupled with that, the orders of the Industrial Court also supports the case of the petitioners.

7. The present order would enure to the benefit of the petitioners before this Court. Though the proposal was submitted in respect of large number of workers, the Association has come before this Court representing the cause of 37 employees and out of those 37, 10 persons have either left the service or have retired. As such, the present order would enure to the benefit of 27 persons, a list of those 27 persons is placed on record and same is marked as "Annexure A1" to this petition.

8. In the light of above, Rule is made absolute in terms of prayer clauses (C) and D), with reference to "Annexure A1" only and not "Annexure A". There shall be no orders as to costs."

19. Considering the above, I do not find that the direction of the Industrial Court to bring the daily wagers on CRTE after having worked for five years continuously could be faulted. It is settled law that such daily wagers are not required to complete 240 days in continuous employment in each calender year and for five consecutive calender years so as to be entitled for the benefits under the Kalelkar Award. With the law in place, the impugned judgment cannot be termed as being perverse. This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

20. It needs mention that the representative of the Respondent/Union representing these Employees has filed an additional affidavit dated 28.01.2016 stating that 15 employees amongst those mentioned in Annexure-A to the complaints have passed away. Their names are set out below paragraph 6 of the additional affidavit at page 179. The Petitioner/ Zilla Parishad would be under an obligation to calculate the deemed dates for bringing these deceased employees on CRTE notionally and the deemed dates on which they would stand to gain the benefits of regularization as per the Kalelkar Award and accordingly, calculate their monetary benefits which shall be paid to the legal heirs of the deceased employees. For the said purpose, the Respondent/Union shall forthwith submit the names and addresses of the legal heirs of the deceased employees and shall ensure that there shall be no mistake in indicating the names of the legal heirs.

After receiving such list, the Petitioner/ Zilla Parishad shall comply with the directions set out herein above within six weeks.

21. The pending Civil Application does not survive and the same is disposed of.

(B) Writ Petition No.3385 of 2016 :

22. Insofar as Writ Petition No.3385/2016 is concerned, I have heard the learned Advocates for the respective sides finally at admission stage, with their consent, along with Writ Petition No.6666/2006. Hence, RULE. Rule made returnable forthwith.

23. In this second petition, the Industrial Court, by the impugned judgment dated 28.10.2014, has dismissed Complaint (ULP) No.60/2009 filed by the Employee, namely, Gangadhar Murlidhar Kadam. Considering my conclusions set out in the foregoing paragraphs, the law need not be repeated while deciding this second petition.

24. It is apparent from the complaint filed by the Employee Gangadhar Murlidhar Kadam that he was working as a daily wager with the same Zilla Parishad from 1989. The complaint was filed on 10.06.2009 after he realized that he was being deprived of the benefits which were extended to all other daily wagers under the Kalelkar Award. The Industrial Court has dismissed the complaint primarily on the ground that the Kalelkar Settlement is not mentioned in the complaint by the said employee. Nevertheless, the Industrial Court was aware as is seen from the impugned judgment that the claim of this employee was with regard to the Kalelkar Settlement.

25. In the light of the above, in my view, the Industrial Court should have called upon the Respondent/ Zilla Parishad to place the service details of the Employee (Gangadhar Kadam) on record for better assistance. It is not disputed even at this stage that the Employee is in employment of the Zilla Parishad from 1989 on daily wages.

26. Shri Munde, learned Advocate for the Respondent/ Zilla Parishad, has strenuously placed reliance upon the judgment of the Honourable Supreme Court in the matter of A.Umarani v. Registrar, Cooperative Societies, AIR 2004 SC 4504: 2004 (7) SCC 112. It is contended that in the light of this judgment all daily wagers and temporary employees, who have gained back door entries, should not be regularized in employment and they do not have any right of continuity. It appears that the Zilla Parishad has lost sight of the observations of the Honourable Supreme Court in paragraph 44 of the subsequent judgment in the matter of Secretary, State of Karnataka v. Umadevi (supra) which read as under:

"44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa (supra) AIR 1967 SC 1071, R.N.Nanjundappa (supra) AIR 1972 SC 1767, and B.N.Nagrajan (supra) AIR 1979 SC 1676, and referred to in paragraph 15 above,

of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

27. Nevertheless, the Kalelkar Award has been made applicable to the establishments like the Respondent/ Zilla Parishad in order to ensure that the daily wagers, who have been working continuously for five years, should be brought on CRTE and five years thereupon, should be brought on regular establishment. Had this aspect been kept in focus by the Industrial Court, I am of the view that the complaint at issue would not have been dismissed.

28. The learned Advocate for the Zilla Parishad has canvassed that this petition is not maintainable since the judgment dated 28.10.2014 delivered by the Industrial Court is challenged on 29.02.2016 by filing this petition. I do not find that the said submission needs any consideration since this petition has been filed within sixteen months from the date of the impugned judgment and it cannot be said that this petition suffers from inordinate delay and laches.

29. In the light of the above, this Writ Petition is partly allowed. Consequentially, the impugned judgment of the Industrial Court dated 28.10.2014 is quashed and set aside and Complaint (ULP) No.60/2009 is partly allowed by directing the Respondent/ Zilla Parishad to bring the Petitioner/ Employee (Gangadhar Kadam) on CRTE after his completion of working for five consecutive years.

30. Needless to state, further benefits under the Kalelkar Settlement/ Award would then be available to the Petitioner/ Employee which the Respondent/ Zilla Parishad shall accordingly, calculate and extend the same to him.

31. I am depriving the Petitioner/ Employee of any interest on the monetary benefits since he has filed his complaint after being in employment for twenty years and he, therefore, would not be entitled to interest.

32. Nevertheless, the Zilla Parishad will have to extend him the benefits available under the Kalelkar Award within a period of 16 (SIXTEEN) WEEKS from today,

failing which, interest at the rate of 3% per annum would be available to the Employee on the monetary benefits to which he is entitled to from the date of filing of his complaint which is 10.06.2009 till the actual payment.

33. Rule is made partly absolute in the above terms.