Maharashtra State Co-Op. Cotton Growers Marketing Federation Ltd.

Vs

Shripati Pandurang Khade and Others

Maharashtra State Co-Op. Cotton Growers' Marketing Federation Ltd.

Vs

Vijay Madhavrao Patil and Another

Maharashtra State Co-Op Cotton Growers' Marketing Federation Ltd.

Vs

Dattatraya Beruji Hake and Another

Civil Appeals No. 3719, 3720 & 3721 of 1988

(M. M. Dutt, S. Natarjan JJ)

11.10.1988

JUDGMENT

DUTT, J. -

1. Special leave is granted. Heard learned counsel for the parties.

2. These appeals preferred by the appellant, the Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., are directed against the judgment of the Bombay High Court allowed the writ petition of the respondents and quashed the order of the Industrial Court Maharashtra (Kolhapur Bench), Kolhapur, dismissing the complaints filed by the respondents.

3. The Government of Maharashtra appointed the Maharashtra State Co-operative Marketing Federation, hereinafter referred to as "the Marketing Federation", the Chief Agent in the Cotton Monopoly Scheme under the provision of Section 42 of the Maharashtra Raw Cotton (Procurement Process of Marketing) Act, 1971. The activities of the Marketing Federation extended to various agricultural produce including foodgrains. In February 1984, the Government carved out the operation of the levy of cotton from the other activities of the Marketing Federation and assigned them to another society, namely, the Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., the appellant in all these appeals. By its order dated August 10, 1984 the Government directed the Marketing Federation to take the following actions :

> (i) In respect of the staff working under the Cotton Monopoly Scheme at present, the services of the seasonal staff working, if any, should be terminated with immediate effect and in any case not later than August 15, 1984.
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> (ii) So far as the regular staff is concerned, it is proposed that the services of the staff

working in the Cotton Department of the Federation at Bombay and in the mofussil areas would be placed at the disposal of the new organisation on "as is there is basis" as on July 1, 1984.

4. In a subsequent letter dated September 8, 1984 the Marketing Federation was directed to effect the transfer of the chief agency from the Marketing Federation to the appellant, inter alia, by transferring all the assets and liabilities under the scheme account and the cash and bank balance at Bombay and mofussil the scheme account as well as under the non-scheme account to the appellant, etc.

5. The respondents claimed that they were permanent employees of the Marketing Federation and in view of the directions contained in the said letter dated August 10, 1984 of the Government, the appellant should have appointed them on a permanent basis and not as seasonal employees. The case of the respondents was that they had been in the employment of the Marketing Federation since 1972 on monthly salaries with annual increments. Even though there was an award in their favour by the Industrial Tribunal declaring them as permanent employees, yet the Marketing Federation and the appellant failed and neglected to give them the permanent status. Accordingly, they made complaints before the Industrial Court complaining of unfair labour practices on the part of the Marketing Federation as also on the part of the appellant as contained in items 6 and 9 of Scheme IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Items 6 and 9 are as follows :

6. To employ employee as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.

9. Failure to implement award, settlement or agreement.

6. In this connection, we may refer to Section 5(d) of the said Act which provides that it shall be the duty of the Industrial Court to decide complaints relating to unfair labour practices except unfair labour practices falling in item 1 of Schedule IV.

7. The Industrial Court took the view that the complaints made by the respondents did not come under items 6 and 9, but they came under item 1 and, as such, it could not decide the complaints in view of Section 5(d). Further, it was held by the Industrial Court that there was no unfair labour practice on the part of the Marketing Federation or the appellant and that, in any event, the complaints were barred by limitation as the same were filed beyond 90 days from the date of the knowledge of the respondents that they were appointed by the appellant as seasonal employees. Upon the said findings, the Industrial Court dismissed the complaints of the respondents. Being aggrieved by the order of the Industrial Court, the respondents filed writ petitions before the High Court and, as stated already, the High Court allowed the writ petitions and quashed the order of the Industrial Court. Hence these appeals.

8. It has been already noticed that under the award of the Industrial Tribunal, the respondents were declared the permanent employees of the Marketing Federation. The appellant has prepared a seniority list for the year 1985-86 which shows that most of the respondents have been in the employment of the Marketing Federation since 1972. The said seniority list is Annexure 'D' to the writ petitions filed by the respondents in the High Court. The annual increment list, also prepared by the appellant, shows that the respondents have been in the service of the appellant on monthly salaries and they were given annual increments on November 1, 1985. In spite of the above facts,

the respondents have been shown in the seniority list and also in the annual increment list as temporary employees. In our opinion, there cannot be any doubt that there has been unfair labour practice on the part of the Marketing Federation as also on the appellant by continuing them as temporary employees. We are unable to accept the contention of the applicant that the award is not binding on the appellant. In view of the award, it must be held that the respondents were the permanent employees of the Marketing Federation, and that after the constitution of the appellant and the transfer of the employees of the Marketing Federation to the appellant, the appellant was bound to accept the respondents as permanent employees and not to treat them as seasonal employees or temporary employees. This act on the part of the appellant amounts to unfair labour practice.

9. We do not find any justification for the finding of the Industrial Court that the complaints made by the respondents do not come within the purview of items 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. No reason has been given by the Industrial Court why the complaints come within item 1 of Schedule IV and, as such, can be decided only by the Labour Court and not by the Industrial Tribunal. The complaints made by the respondents are clear and specific and there was no scope for categorising them as complaints under item 1 of Schedule IV.

10. With regard to the question of limitation, the Industrial Tribunal seems to think that as the appointment letters bear some dates in October 1984, the period of limitation will be computed from the respective dates of the appointment letters. It has been assumed by the Industrial Tribunal that the respondents came to know that they were being appointed as seasonal employees on the respective dated of their appointment letters. There is, however, no material on record to show on what dated the appointment letters were served on the respondents. In other words, there is nothing to show when the respondents received the appointment letters. In the circumstances, the Industrial Court was not at all justified in holding that the complaints filed by the respondents were barred by limitation. Even assuming that the complaints were barred by limitation, as held by the Industrial Court, the Industrial Court should have given an opportunity to the respondents for explaining the delay. No such opportunity has been given to the respondents. Accordingly, we are unable to subscribe to the view of the Industrial Court that the complaints filed by the respondents were barred by limitation.

11. Before parting with these appeals, we may dispose of a short contention of the appellant. The learned counsel for the appellant has placed much reliance upon a letter of the Government dated November 9, 1984 giving some directions to the appellant, as contained in paragraphs 1 and 2 of the said letter. Paragraphs 1 and 2 are as follows :

> 1. All staff recruited after July 1, 1972 specifically for the cotton scheme with prior approval of government wherever necessary or where the Government representative was associated with the selection/appointment of the candidates, should be immediately placed on deputation without payment of deputation allowance to the Cotton Growers Marketing Federation. Their salaries and allowances will be payable from the scheme as part of the commission payable to the Cotton Growers Federation till January 1, 1985.
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> 2. The Cotton Growers Federation Ltd. will finally absorb the above categories of staff after scrutiny as on January 1, 1985. Those out of the above staff who are not acceptable to the new Federation for some reason or the other, and so have to be

retrenched, will be retrenched by the Maharashtra State Co-operative Marketing Federation Ltd. and the cost thereof would be debited to cotton scheme account.

12. On the basis of the directions in paragraph 2 extracted above, it is submitted on behalf of the appellant that the appellant is at liberty not to absorb or accept the respondents in the appellant's concern. This contention, in our opinion, is without any substance whatsoever. There is a specific direction that the appellant shall finally absorb the staff of the Marketing Federation after scrutiny as on January 1, 1985. The appellant cannot refuse to absorb or accept a permanent employee of the Marketing Federation without any reason whatsoever. So far as the respondents are concerned, we do not find any reason why the appellant should not accept them as its permanent employees. The High Court has rightly directed the appellant and the Marketing Federation to process the cases of the respondents on the basis that they have put in more than 240 days of service and grant them all the benefit under the circular letter dated January 18, 1985.

13. For the reasons aforesaid, the judgment of the High Court is affirmed and the appeals are dismissed with one set of costs quantified at Rs. 5000.

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