SUPREME COURT OF INDIA

Mahatma Phule Agricultural University

Vs.

Nasik Zilla Sheth Kamgar Union

C.A.Nos.8640-8659 of 1997

(S. Rajendra Babu and S.N. Variava JJ.)

24.07.2001

JUDGMENT

S.N. Variava, J. –

1. Leave granted in SLP(C) Nos. 418-421/1999 and SLP(C) Nos. 9023-9023/1998.

2. All these Appeals are against the Judgment of the High Court dated 16th September, 1997.

3. Briefly stated the facts are as follows:

> "Civil Appeals Nos. 4461-4470 [arising out of SLP(C) Nos. 418-421/1999 and SLP(C) Nos. 9023-9032/1998] are filed by two Unions. Civil Appeal Nos. 1103-1117 of 1999 are filed by State of Maharashtra. All the other Appellants are Agricultural Universities in the State of Maharashtra. These Universities are established and function under the provisions of *The Maharashtra Agricultural Universities (Krishi Vidyapeeth) Act, 1983*. The State Government controls these Universities and is responsible for funding them. The Universities own large tracts of land which are used for agricultural education and research activities. For their agricultural activities these Universities had engaged daily wage labourers. These workmen were not granted the same wages and not given the benefits available to permanent workmen. It is stated across the bar that there were approximately 4,000 such daily wage labourers."

4. Approximately 2000, out of the 4000 labourers, raised an industrial dispute which was referred to the Industrial Tribunal under Section 10(1)(d) read with Section 12(5) of the Industrial Disputes Act. The said reference was numbered as (IT) No. 48 of 1981. In this reference the workmen claimed permanency, pay scales on the basis of permanency, dearness allowance and enhanced dates of daily wages, house rent allowance, either a vehicular transport or transport allowance and concessional rates of agricultural produce like foods, vegetables, eggs, milk etc. On 20th February, 1985 an Award came to be passed by

the Tribunal. By this Award claim for permanency and wages on the basis of permanency was disallowed. However, the following reliefs were granted:

> "18. For the reasons discussed above, I make the award, as under:-
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> (i) With effect from 1st February, 1985, workmen of Party No. 1 working on daily wages, for whom the present dispute is raised, should be paid by Party No. 1, as daily-wages, an amount equal to 1/30 of the amount of basic starting wages and dearness allowance, payable to a confirmed permanent workman of the same or similar grade and category as his monthly wages. For the month of February, that amount should be worked out by dividing the monthly wages (i.e. basic starting wage, in the wage-scale and dearness allowance) of a permanent workman of corresponding category by the total number of days for that month of February, in that year. Each workman, who has actually worked for six days in a week should be paid the wages at the above rate, for that day, which would be the day of weekly-off for that workman.
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> (ii) Paid weekly-off should be given on the Sundays following the Second and Fourth Saturday in each month, if work is refused to the workman concerned by Party No. 1, on the Second or Fourth Saturday and if the workman concerned have actually worked for five days in that week.
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> (iii) Leave (including maternity leave, sick leave etc.) which is at present being granted to the permanent workmen, should be granted and extended by the Party No. 1 to the workmen, who have completed 240 days of actual uninterrupted work in a period of 12 months for a consecutive period of three years.
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> (iv) Each Watchman, working on daily wages basis, in the employment of Party No. 1, should be provided with a three cell torch, if he is assigned duty, during night-time and such watchman, to whom duty during night-time is assigned, should be provided cells for that torch at the rate of six cells for each month, during the period, during which the said watchman works during the night-time.
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> (v) Party No. 1 should follow the instructions, in Clause 2(g) of the letter dated 24th March, 1964, from the Government of Maharashtra, to the Director of Agriculture, if the conditions specified in that letter and in particular in the said Clause 2(g) of that letter, are specified and fulfilled.
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> (vi) The Party No. 1 should prepare a provisional seniority list of workmen, working on daily wage basis, including female workers and display the same, for the information of the workers concerned and call for objections and suggestions in respect of that seniority list, and give opportunity to the workers and their Union to substantiate their objections etc., and should finalise the seniority list, after taking into consideration those objections etc., and duly dealing with those objections.

(vii) If any of the workmen are at present, or would be, at any time, in future, during the period of the operation of this Award, entitled to get wages etc., at higher-rates, under law or agreement, etc., than those, to which he would be entitled to, in the present Award, wages at those higher-rates, would be payable by the Party No. 1 to those workmen.

(viii) Facilities and benefits etc. which are being extended, at present, to those workmen, on daily wages, by Party No. 1, should not be and would not be curtailed or abridged in any way and should be continued to be extended to those workmen.

(ix) The rest of the demands are rejected."

This Award was not challenged.

5. Thereafter approximately 127 other daily wagers raised an industrial dispute making the same demands. The reference was numbered as (IT) No. 27 of 1984. This culminated in an Award dated 1st April, 1985. By this Award it was directed that all workmen, out of these 127 workmen, who had completed 6 months of service as on 1st January, 1978 should be treated as permanent employees and all employees completing 6 months of service in future should be made permanent. The other demands were also allowed. It is an admitted position that this Award was also not challenged. In fact, the Universities implemented the Award and made the 127 persons involved therein as permanent employees. In these Appeals we are thus not concerned with these workman.

6. As stated above the Award dated 20th February, 1985 in (IT) No. 48 of 1981 was not challenged. However a restrictive interpretation, as set out hereafter, was given to that Award by the University. The workmen, therefore, filed an Application under Section 33-C(2) of the Industrial Disputes Act to have the amounts, payable as per the Award, computed.

7. Further as the benefits granted under this Award were not being granted, even in the limited manner, to the daily wagers who had not raised a dispute, various complaints under the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter for sake of convenience referred to as the MRTU & PULP Act) were made. We have not been shown all the complaints. We have been shown one or two of these complaints. These complaints are of unfair labour practices under Items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act. We have been fairly told that some of the complaints were only under Item 6 of Schedule IV of the MRTU & PULP Act. A number of Orders came to be passed in these complaints. In some of these Order, all daily wagers who had completed 1,000 days, were granted permanency and all benefits of permanency. In some other Orders daily wagers who had completed 6 months were granted permanency and the benefits of permanency. In other Orders various other periods were fixed for granting permanency.

8. In the meantime, the proceedings under Section 33-C(2) of the Industrial Disputes Act ended in a Judgment dated 27th April, 1994. By this Judgment the Appellant Universities

were directed to pay as per the Award dated 20th February, 1985. The amounts payable to each workman as on that date was computed and set out. The Appellant Universities were thus directed to pay a sum of Rs. 4,16,97,937.98.

9. The Appellant Universities filed a large number of Petitions before the High Court. By these Petitions they challenged the Judgment dated 27th April, 1994 awarding a sum of Rs. 4,16,97,937.98 and the various orders passed in the complaints under the MRTU & PULP Act. Thus to be noted that, even now, the Appellant Universities have not challenged the Award dated 20th February, 1985 in (IT) No. 48 of 1981 or the Award dated 1st April, 1985 in (IT) No. 27 of 1984.

10. All these Petitions came to be disposed of by the impugned Judgment dated 16th September, 1997. As stated above the challenge before the High Court was two fold i.e. a challenge to the computation of the sum of Rs. 4,16,97,937.98 and the other to the various Orders passed in complaints under the MRTU & PULP Act. Before the High Court the decision of this Court in Civil Appeal Nos. 5726-5727 of 1994 (arising out of SLP @ Nos. 4658/93 and 5717/93) dated 18th August, 1994 was cited on behalf of the Universities. In this decision it has been held by this Court that even though the workmen may be working for a long period of time or more than 240 days, still they would not acquire a permanent status to be absorbed as regular employees. It was held that for absorption as regular employees existence of posts is mandatory and if no post exists, then even though, the workers may have worked for a long period of time they cannot be regularised or made permanent. The High Court held as follows:-

> "6. Undisputedly the workers covered by the various complaints are working in various projects of the Vidyapeeth on a temporary basis. They are working as such for a considerable period. It is not disputed before us that these workers so covered have also completed 240 days. What is apparent is that the Vidyapeeth is continuously extracting work from them. Not granting status of a permanent employees has certainly deprived them of the benefit. Such inaction on the part of the Government of not sanctioning posts could not be innocuous. When the result of inaction is definite and explicit the object of not doing it can be safely inferred. As such the act is squarely covered by Item 6 of Schedule IV of the M.R.T.U. and P.U.L.P. Act.
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> 7. In view of the above decision of the Supreme Court, even if the employees so covered may not be entitled to status of a permanent employee, however, they cannot be deprived of the privileges and benefits of the permanent employee as envisaged by the Item 6 of Schedule IV. They are, therefore, entitled to wages and other benefits applicable to the permanent employees. In view of this, we are not in a position to sustain the order of the Industrial Court directing the Vidyapeeth to confirm these employees within a stipulated period. Order to that extent is modified. As observed, however, the employees so covered by various complaints are entitled to the benefits including wages applicable to the permanent workmen. It is reported that the employees are struggling for this legitimate demand since long. Some of the petitions filed by the employees are also for the implementation of the order of the Industrial

> Court. In view of this, subject to modification as indicated above, we confirm the orders of the Industrial Court and direct the Respondent Vidyapeeth to clear all the dues of the workers who are eligible and covered by various complaints within a period of six weeks from today. The amount due and payable to the workers shall carry an interest at the rate of 6% from the date of the order of the Industrial Court."

11. The various Universities have filed these Civil Appeals impugning this Judgment. State of Maharashtra has also filed Civil Appeal Nos. 1103-1117 of 1999. Civil Appeals Nos. 4461-4470 [arising out of SLP (C) Nos. 418-421/1999 and SLP (C) Nos. 9023-9032/1998] have been filed by the workmen impugning the said Judgment to the extent that demand for permanency is rejected.

12. Mrs. Jaisingh, in support of Civil Appeal Nos. [arising out of SLP (C) Nos. 418-421/1999 and SLP (C) Nos. 9023-9032/1998] submitted that the workmen were entitled to be made permanent. She however fairly conceded that there were no sanctioned posts available to absorb all the workmen. In view of the law laid down by this Court status of permanency cannot be granted when there are no posts. She however submitted that this Court should direct the Universities and the State Governments to frame a scheme by which, over a course of time, posts are created and the workmen employed on permanent basis. It was however fairly pointed out to Court that many of these workmen have died and that the Universities have by now retrenched most of these workmen. In this view of the matter no useful purpose would be served in undergoing any such exercise.

13. To be seen that, in the impugned Judgment, the High Court notes that, as per the law down by this Court, status of permanency could not be granted. In spite of this the High Court indirectly does what it could not do directly. The High Court, without granting the status of permanency, grants wages and other benefits applicable to permanent employees on the specious reasoning that inaction on the part of the Government in not creating posts amounted to unfair labour practice under item 6 of Schedule IV of MRTU & PULP Act. In so doing the High Court erroneously ignores the fact that approximately 2,000 workmen had not even made a claim for permanency before it. Their claim for permanency had been rejected by the Award dated 20th February, 1985. These workmen were only seeking quantification of amounts as per this Award. This challenge, before the High Court, was only to the quantification of the amounts. Yet by this sweeping Order the High Court grants, even to these workmen, the wages and benefits payable to other permanent workmen.

14. Further, Item 6 of Schedule IV of the MRTU & PULP Act reads as follows:

> "6. To employ employees as "badlis," casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges or permanent employees."
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> The complaint was against the Universities. The High Court notes that as there were no posts the employees could not be made permanent. Once it comes to the conclusion that for lack of posts the employees could not be made permanent how

could it then go on to hold that they were continued as "badlis," casuals or temporaries with the object of depriving them of the status and privileges of permanent employees. To be noted that the complaint was not against the State Government. The complaint was against the Universities. The inaction on the part of the State Government to create posts would not mean that an unfair labour practice had been committed by the Universities. The reasoning given by the High Court to conclude that the case was squarely covered by Item 6 of Schedule IV of the MRTU & PULP Act cannot be sustained at all and the impugned Judgement has to be and is set aside. It is however clarified that the High Court was right in concluding that, as per the law laid down by this Curt, status of permanency could not be granted. Thus all Orders wherein permanency has been granted (except Award dt. 1st April 1985 in (IT) No. 27 of 1984) also stand set aside.

15. The facts still remain that the Award dated 20th February, 1985 in (IT) No. 48 of 1981 has never been challenged. This Award has not been fully implemented by the Appellant Universities. Mr. Bodbe insisted that the Award was implemented. He submitted that this was a one time Award which did not provide for paying 1/30 of the wages and the other benefits for ever. He submitted that this Award was not to operate for subsequent periods when the minimum wages, under the Minimum Wages Aft, became more than what was provided in the Award. He submitted that, therefore, the Universities have paid, as per this Award, till the minimum wages became more than what was Awarded. He submitted that thereafter the Universities are paying the minimum wages as prescribed in the Minimum Wages Act.

In support of his submission he relied upon Para 7 of the Award whcih reads as follows:

"Demand No. 2 - Wage-scales.

7. There is thus no guarantee that there would be any appreciable increase in the near future in the Party No. 1's income from various sources available to it. Consequently, it would have to be concluded that Party No. 1 would not be able to bear any burden, which would go on increasing every year. If the 2,000 or so workmen who according to Party No. 2, in view of their length of service deserve to be made permanent, are accordingly made permanent and if consequently wage-scales providing for annual increments are required to be made applicable to all of them, the annual wage-bill is bound to go up on progression, due to the requirement of granting the annual increments and the resultant increase in other amounts in many cases. It is not shown that any section of the Party No. 1 could be treated as a Factory and an Establishment, so as to enable the application of Industrial Employment Standing Orders Act to the workmen working atleast in those sections, if some of the workers for whom present Reference is made are working in those sections. Even in that event, distinction between casual and temporary workmen may make some difference. Similarly, the party No. 1, which is essentially on Educational Institute, cannot be treated on par with the Maharashtra Farming Corporation or Government Department. Even under

the Kalelkar Award, even status of being on regular temporary establishment can be claimed only after five years. The University cannot, moreover, be treated on par with Government in respect of the availability of funds and of the sources and avenues open for raising the same. Thus, it does not appear that any status of permanence which would entail and involve the granting of annual increments envisaged by wage-scales, can be accorded to the workmen, as demanded."

He submitted that this makes it clear that the Court was taking into consideration the fact that the Universities would not be able to bear increasing burden as they would not have funds, sources and avenues open for raising the same. He submitted that this Award does not provide for paying daily wages on the basis of 1/30 of the increased basic starting wage.

16. We are unimpressed with this submission. Para 7, relied upon, was in respect of a demand for wage scale on the basis of permanent status. That demand had been turned down in Para 7. Apart from the demand for wage scale on permanent (status) there was also a separate demand to increase the rate of daily wages. While the demand for wage scale on permanent status had been refused the rates of wages have been increased as set out hereinabove. This increase is not a one time increase based on the pay at that time. It is a permanent increase which would go on varying as the basic starting wages and the dearness allowance kept on changing. This amount equal to 1/30 is based on the basic starting wage and dearness allowance whatever it may be at any given point of time. It is clear that the Universities have not made payment till date on this basis. We thus find no infirmity in the Order Dt. 23rd July, 1984. The Universities have to pay on the basis calculated therein. In order to leave no room for ambiguity we clarify that the amount of Rs. 4,16,97,937.98 was the amount payable as on 23rd July, 1984. As the Universities have not paid the amounts now due would be much larger. This action of Universities in not making payment on this basis definitely amounts to unfair labour practice in Item 9 of Schedule IV. As set out hereinabove most of the complaints were also in respect of unfair labour practice under Item 9 of Schedule IV. It must be held that to that extent there had been an unfair labour practice. The Universities are now directed to forthwith work out the wages due to the workmen as per the Award dated 20th February, 1985 and to make the payments of those amounts.

17. As set out hereinabove, the Award was in respect of approximately 2,000 workmen. As regards the other remaining workmen (except for 127 workmen covered by the Award dated 1st April, 1985) who are not covered by the Award the principles of equal pay for equal work would apply. Neither Mr. Bobde nor Mr. Ashwini Kumar could dispute that as between daily wagers the principles of equal pay for equal work would apply. Therefore, the rest of the workers would also become entitled to payments and benefits as given under the Award dated 20th February, 1985 in (JT) No. 48 of 1981. There is no justification in the Universities in not making payments and giving those benefits to the remaining workers on the same basis. We, therefore, direct that the benefits of the Award dated 20th February, 1985 in (IT) No. 48 of 1981 be given even to the workmen who were not covered by the said Award (except the 127 workmen covered by Award dt. 1st April, 1985 in (IT) No. 1984). Even in

respect of these workmen Universities shall forthwith work out the amounts payable and pay the same.

18. As we have been told that most of the workers have been retrenched we clarify that the Universities, may also have to now re-calculate and pay retrenchment compensation on the basis of the Order.

19. It was submitted by Mr. Bobde that the Universities have no funds to make payments. He submitted that it is the State Governments who would have to make payment. The State Government is also present before this Court. There can be no justification in the State Government not making available the required funds. The argument that the financial burden would be too much is best met by the under-quoted observation of this Court in *Chandigarh Administration v. Rajni Vali reported in*[1]:

> "The contention like the one raised by the appellants in this case that the Chandigarh Administration will find it difficult to bear the additional financial burden if the claim of Respondents 1 to 12 is accepted, raised in different cases of similar nature, has been rejected by the Supreme Court. The State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources. It is for the Administration to find out ways and means of securing funds for the purpose."
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> These Universities are imparting education. For the purpose of the education it is necessary for them to maintain the agricultural fields and to carry on experiments. To maintain agricultural fields they required daily wagers. As the daily wagers were required the State Government cannot say that they would not pay the daily wagers what is due to them.

20. All the Civil Appeals stand disposed of with the above observations. There will be no order as to costs.

21. In view of the Judgment delivered today in Civil Appeal Nos. 8640-8659 of 1997 and connected matters we do not propose to take any action in this Contempt Petition. We, however, clarify that the Petitioner/Respondent will be at liberty to adopt appropriate proceedings if our Judgment is not complied with within a reasonable time.
Order accordingly.

[1] *2000(2) SCC 42*