

SUPREME COURT OF INDIA

Pandurang Sitaram Jadhav

Vs.

State of Maharashtra

C.A.No.10064-10075/2010

(Sanjay Kishan Kaul and M.R.Shah,JJ.,)

25.09.2019

JUDGMENT

Sanjay Kishan Kaul,J.,

1. We are faced with eleven appeals filed by eleven daily wage workers of the Regional Dairy at Konkan, Maharashtra who claim permanency of their status.

2. The appellants filed complaints before the Industrial Court, Maharashtra at Kolhapur under Section 28 read with Items 5,6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as 'the said Act') claiming that they had been working with the respondent for periods more than 24Q days continuously over a long period of time and have not been given regular status. status of these complainants is set out in the judgment of the Tribunal itself and would show the position qua these appellants:

Sr. No.	Complaint No.	Date of appointment	Date of completion of 240 days as per written statement
1.	951/2001	16.10.1984	11.12.1984
2.	952/2001	13.10.1983	11.12.1984
3.	953/2001	1.09.1983	18.11.1985
4.	954/2001	5.9.1986	21.9.1988
5.	957/2001	1.7.1986	29.9.1989
6.	958/2001	26.6.1987	29.9.1989
7.	959/2001	14.11.1986	3.9.1987
8.	960/2001	18.11.1986	25.11.1987
9.	961/2001	1.11.1985	23.11.1986
10.	926/2001	16.9.1987	13.10.1988
11.	4/2002	16.10.1984	19.10.1986

3. The complaints in the case were filed as noticed above, in the year 2001 though these complainants had been working from the year 1983 onwards and last of such person had started working in the year 1987. In terms of the order of the Tribunal dated 28.4.2004 these complaints were allowed. It was noticed that the appellants were being denied the benefits of permanency including yearly increments, bonus, provident fund, retirement benefits etc. as were admissible to the regular employees. The plea of the respondent/State of the absence of any sanctioned posts was noticed as also the ban on recruitment by the State Government. But the permanency was granted considering that the appellants were not new appointees and had been working even as on that date for the last 12 to 20 years. It was thus, felt that the responsibility lay on the respondent to send proposal to the Government for sanction of the posts. The fact that these persons had continued as daily rated employees for years together itself showed, it was held, that there was requirement of permanent posts and this methodology could not be utilized to deprive the appellants of the benefits of permanency.

4. The respondent No.2 before us, the Regional Dairy Development Officer, filed Writ Petition Nos.4141-4152/2006 assailing the said order and those Writ Petitions were dismissed by the learned Single Judge vide order dated 10.7.2007. The respondents, however, succeeded in the further appeal through Letters Patent Appeal NO.14-25/2008 which were allowed by the Division Bench of the Bombay High Court in terms of the impugned order dated 31.7.2008.

5. A perusal of the aforesaid order shows that what has weighed with the Division Bench is

there being no stated regular process for making the appointment and the absence of sanctioned posts. In view thereof, various standing orders issued under the Industrial Employment (Standing Orders) Act, 1946 would not come to the aid of the appellants. We may also note that this is from the context of the State of Maharashtra in exercise of powers under Section 15 of that Act having framed the Bombay Industrial Employment (Standing Orders) Rules, 1959 and the Rules prescribing model standing orders in Schedule I thereto.

6. We have heard learned counsel for the parties.

7. The factual matrix shows that for decades together these appellants have been performing the job of the regular employees and this is not a seasonal requirement or a temporary requirement. No doubt there was no regular process by which these appointments were made. But then there was absence of such a regular process in respect of other employees of the same establishment working in different units who have been beneficiaries of similar orders passed by the Industrial Tribunal where the High Court dismissed the Writ Petitions filed by the respondents and even this Court dismissed the Special Leave Petitions refusing to entertain the same. There are more than one batch of such cases as apparent from the record.

8. We may also notice the gravamen of the reasoning of the Division Bench is the judgment of this court in *Secretary, State of Karnataka & Ors. v. Umadevi & ors.*¹. However, the ratio of that judgment has to be understood in its perspective. The directions issued by the High Court under Article 226 of the Constitution of India for absorption, regularization of permanent continued status in the absence of recruitment was frowned upon as the recruitment was not in terms of the Constitutional scheme. Thus, if an employee is continuing under the cover of an interim order granted by this Court it would not entitle any right of absorption to make the service permanent.

9. The aforesaid aspect and the judgments stand further clarified and elucidated in *Maharashtra State Road Transport Corporation and Anr. v. Casteribe Rajya Parivahan Karmchhari Sanghtana*². The said judgment of this Court deals with a State Act and opined that the powers of the Industrial and Labour Court are wide which concludes the issue of according permanent employment affected by the unfair labour practice. Such power was not to be affected by Umadevi's case (supra) as that was a case limited to the scope of powers being exercised under Articles 32 and 226 of the Constitution of India for regularization and matter of public importance. Thus, the power to take affirmative action under Section 3Q (1) (b) remained intact. Section 3Q(1)(b) is extracted hereunder:

"Section 3Q. Powers of Industrial and Labour Courts (1) Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order-

(a) xxx xxx

(b) direct all such person to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to

the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;"

10. Thus the finding of unfair labour practice of engaging persons on contract basis over a long period of time was held to be an aspect which could be enquired into by the Labour Court.

11. Our attention was also drawn to the earlier judgment of this Court in *U.P. State Electricity Board v. Pooran Chandra Pandey & Ors.*³ which propounds the same proposition albeit in a different factual and regulatory framework.

12. In view of the afore said facts as also the legal pronouncements made subsequently, we have no doubt that these appellants before us would be entitled to the benefit of regularization and mere delay in preferring the claim would not come in their way except that the benefit of regularization would arise from the date the complaints were filed.

13. The finding of an unfair labour practice by the Tribunal has in fact been confirmed by the learned Single Judge in the present case and the only two reasons for interference by the Division Bench relating to Umadevi's case (supra) have already been explained in the aforesaid subsequent judgments.

14. We thus, direct the respondents to regularize the appellants accordingly and the necessary orders be issued within three months from the date of the order.

15. The benefits which the appellants would be entitled should also be remitted to the appellants within the same period from the date of the complaints, though the earlier period would be counted for the purpose of calculation of benefits without the appellants being monetarily entitled for that period.

16. The appeals are allowed leaving the parties to bear their own costs.

Judgment Referred

¹(2006) 4 SCC 0001

²(2009) 8 SCC 50056

³(2007) 11 SCC 0092