IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3913 OF 1990

...

Shri G.N. Mohite ...Petitioner

v/s.

Maharashtra Pollution Control
Board and another ...Respondents

...

Mr.Deshmukh i/b Mr.A.V. Anturkar for the Petitioner.

Mr.A.P. Vanarase AGP for the State.

Mr.D.T. Devale for Maharashtra Pollution Control Board.

WITH

WRIT PETITION NO.3542 OF 1991

...

Shri Baburao Dharbaji Wadde ...Petitioner

v/s.

State of Maharashtra
and another ...Respondents

...

Advocate for the Petitioner absent.

Mr.A.P. Vanarase AGP for the State.

Mr.D.T. Devale for Maharashtra Pollution Control Board.

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send copy to A.O. & file in file. Thanks, 20-1-09
Judgment & despatch

WITH

WRIT PETITION NO.3543 OF 1991

...

Shri A.P. Surve ...Petitioner

v/s.

Maharashtra Pollution Control

Board and another ...Respondents

...

Mr.Deshmukh i/b Mr.A.V. Anturkar for the Petitioner.

Mr.A.P. Vanarase AGP for the State.

Mr.D.T. Devale for Maharashtra Pollution Control Board.

WITH

WRIT PETITION NO.1170 OF 1991

...

Shri Vinayak Vishwanathrao

Shinde and others ...Petitioners

v/s.

Maharashtra Pollution Control

Board and another ...Respondents

...

Mr.Deshmukh i/b Mr.A.V. Anturkar for the Petitioners.

Mr.A.P. Vanarase AGP for the State.

Mr.D.T. Devale for Maharashtra Pollution Control Board.

WITH

WRIT PETITION NO.5234 OF 1992

...

Shri G.N. Mohite

and others ...Petitioners

v/s.

Maharashtra Pollution Control

Board and another ...Respondents

...

Mr.Deshmukh i/b Mr.A.V. Anturkar for the Petitioners.

Mr.A.P. Vanarase AGP for the State.

Mr.D.T. Devale for Maharashtra Pollution Control Board.

WITH

WRIT PETITION NO.37 OF 1989

...

Shri Ankush Sopanrao Fulse ...Petitioner

v/s.

Maharashtra Pollution Control

Board and another ...Respondents

...

Advocate for the Petitioner absent.

Mr.A.P. Vanarase AGP for the State.

Mr.D.T. Devale for Maharashtra Pollution Control Board.

...

ALONGWITH

HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2082 OF 1989

...

Suranjana Sharad Bhende ...Petitioner

v/s.

The Chairman, Maharashtra

Pollution Control Board & Anr. ...Respondents

...

None for the Petitioner.

Mr.D.T. Devale for Maharashtra Pollution Control Board.

Mr.S.M. Dixit for Respondent No.2.

WITH

WRIT PETITION NO.2003 OF 1990

...

Raghunath Shivram Adhav ...Petitioner

v/s.

The Chairman, Maharashtra

Pollution Control Board & Anr. ...Respondents

...

None for the Petitioner.

Mr.D.T. Devale for Maharashtra Pollution Control Board.

Mr.S.M. Dixit for Respondent No.2.

...

CORAM: D.K. DESHMUKH &

D.G.KARNIK, JJ.

DATED:13th January, 2004

P.C.

It is common ground before us that all the Petitioners have been, during the pendency of these petitions, promoted to the higher post of Sub Regional Officer by the Respondent/employer.

In this view of the matter, therefore, nothing survives in these petitions. All these petitions are disposed of with no order as to costs.

Parties to act on simple copy of the order duly authenticated by the Sheristedar/ Personal Assistant of the Court as a true copy.

...

TRUE COPY

(VIJAY P. KAMBLI)
PERSONAL SECRETARY,
TO HON'BLE JUDGE,
HIGH COURT, BOMBAY-400 032.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1561 OF 2000

1. Mr.Sudhir R.Koli.
2. Mrs.Saylee Patankar.
3. Miss Jyosthna Gaonkar.
4. Miss Reshma Parab.
5. Miss Priti Chaubal.
6. Miss Aparna Shinde.

All Mumbai Indian Inhabitants,
residing at C/o.G-2, Garden View,
ES Patanwala Marg, Byculla,
Mumbai-400 027. ... Petitioners.

Vs.

1. Maharashtra Pollution Control
Board, having its office at
Shree Chhatrapati Shivaji
Maharaj Municipal Market
Building, 4th Floor, Mata Ramabai
Ambedkar Road, Mumbai-400 001.
2. The Administrative Officer,
Maharashtra Pollution Control Board,

having his office at Shree
Chhatrapati Shivaji Maharaj
Market Building, 4th Floor,
Mata Ramabai Ambedkar Road,
Mumbai-400 001. ...Respondents.

....

Mr.C.U.Singh i/b.S.Udeshi & Co. for the Petitioners.

Ms.Rekha Panchal for the Respondents.

.....

CORAM : DR.D.Y.CHANDRACHUD, J.

Date of reserving the Judgment : 17th June 2004

Date of pronouncing the Judgment : 1st July 2004.

JUDGMENT:

1. The Maharashtra Pollution Control Board has been constituted in pursuance of the provisions of the Water (Prevention and Control of Pollution) Act, 1974, in order to exercise the powers conferred upon it and perform the functions assigned to it by the Act. Sub-section (3) of

Section 12 of the Act lays down that subject to such rules as may be made by the State Government, the Board may appoint such officers and employees as it considers necessary for the efficient performance of its functions. The Board is empowered by sub-section (3A) of the same section to frame regulations for determining the method of recruitment and conditions of service, including the scales of pay of its officers and employees. The regulations have to be approved by the State Government before they can take effect.

2. In the present case, the six Petitioners before the Court were Data Entry Operators on fixed term contracts during diverse periods of time when computerization of the office of the Board was in its nascent stages. There is no dispute about the position that the regular procedure for recruitment was not followed when the Petitioners came to be appointed on these fixed term contracts. There were no sanctioned posts as such of Data Entry Operators, no advertisements were issued before recruiting the Petitioners and no requisition was submitted to any Employment Exchange calling for the names of eligible candidates. The Petitioners

moved the Industrial Court on 29th August 1999 seeking the status of permanent workmen upon the completion of 240 days' service and for consequential benefits. The Petitioners claimed that before they were given the last break in service in July 1999, they had been engaged since January 1997, in the case of the first three Petitioners and since May, August and November 1997 for the rest. According to the Petitioners, they had been engaged on a contract basis under a sham and bogus arrangement and were given artificial breaks in service after the expiry of each fixed term. The Petitioners, however, stated that they had been in the employment of the Board right from 1994.

3. In the reply that was filed by the Respondent-Board, the claim by the Petitioners to the confermant of permanency was disputed. The Board disputed that the Petitioners were engaged since 1994. According to the Board, there were no sanctioned posts of Data Entry Operators on its establishment and the Petitioners were taken on a contract basis in consultation with the National Informatics Centre (NIC), Mumbai, in order to

coordinate computer related activities, to train the staff, to liaise with the Hardware Maintenance Agency and to interact with NIC for software development for the Board purely on a contract basis. Then again, it was stated, in July 1999, the Petitioners had been appointed temporarily in order to train newly appointed staff and that the Board was, therefore, under no obligation to confer permanency upon them.

4. The Industrial Court was approached in a complaint of unfair labour practices, the allegation being that the Respondent-Board was in breach of the provisions of Items 5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971. Item 5 is "To show favouritism or partiality to one set of workers, regardless of merits". Item 6 is "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 of permanent employees". Under Item 9, the unfair labour practice lies in a "Failure to implement award, settlement or agreement". Evidence was adduced before the Industrial Court

both on behalf of the Petitioners and on behalf of the Respondent-Board.

5. By a judgment and order dated 28th March 2000, the Industrial Court dismissed the complaint. The Industrial Court took due note of the fact that each of the Petitioners had been engaged on fixed term contracts upon applications submitted by them directly for employment and upon the Petitioners having learnt "from a stranger" that there were vacancies of computer operators with the Board. The Petitioners had executed bonds undertaking that they would not claim the benefit of permanency. The Sixth Petitioner who deposed on behalf of the Petitioners admitted that all the Petitioners were appointed for a particular period. In these circumstances, the Court was of the view that the case was squarely governed by the provisions of Section 2(oo)(bb) of the Industrial Disputes Act, 1947. There were no sanctioned posts of Data Entry Operators and the Petitioners were not recruited by following the regular procedure for recruitment. The Petitioners, were found to have been engaged upon the recommendations of the National Informatics Centre for imparting knowledge to the

direct recruits of the Board and until such time as the regular employees came to be duly trained in computer operations. The Industrial Court was of the view that the Petitioners having accepted the conditions of appointment, no unfair labour practice was established.

6. Counsel appearing on behalf of the Petitioners has urged that the Petitioners were entitled to permanency since within the meaning of Item 6 of Schedule IV, the Board has taken recourse to engaging the Petitioners temporarily for several years with a view to deprive them of the status and privileges of permanent employees. Reliance was sought to be placed particularly on the office orders dated 22nd July 1999 and 26th July 1999 which spelt out that during the period of their appointments, the Petitioners would be given a break of one day after every month and that in no case would any person be allowed to work for more than three months without a break. It was urged that these provisions were inserted in order to defeat the conferment of the benefit of permanency upon the Petitioners and that an unfair labour practice had been established. Moreover, it was

sought to be urged that the Industrial Court has lost sight of the fact that a Committee inter alia consisting of a representative of the National Informatics Centre had interviewed the Petitioners. Finally, it was sought to be urged that in view of the provisions of Model Standing Order 4-C framed in pursuance of the provisions of the Bombay Industrial Employment (Standing Orders) Rules, 1959, the Petitioners were entitled to the conferment of permanency upon their completing 240 days' of service. This, it was urged, was the necessary consequence mandated by law particularly by the provisions of Section 2A of the Act as amended in relation to the State of Maharashtra.

7. While considering the tenability of these submissions, it would be material to have regard to the salient parts of the evidence which has emerged on the record of the Industrial Court. The Sixth Petitioner who deposed on behalf of the Petitioners in support of the Complaint stated that each of the Petitioners had applied for engagement without any advertisement for employment having been issued by the Respondent-Board. According to the Petitioners, they learnt from "a stranger" that

there were some vacancies of Computer Operators with the Respondent-Board. There was no advertisement by the Board. The Petitioners accepted through their witness that they were appointed for a particular period; that no probation period was laid down in respect of their appointments and that they had not even signed the muster during their service tenure. The Petitioners accepted that they had executed bonds accepting that they would not claim the benefit of permanency. On behalf of the Respondents, the witness who deposed stated that the Board has certain sanctioned posts from Class I to Class IV which are approved by Government. For direct recruitment to Class I and Class II posts advertisements are issued, whereas for recruitment to Class III and Class IV posts, a list of candidates is called from the Employment Exchange and Social Welfare Office. Candidates are called for interviews, a written examination is held, if necessary, after which a selection list or panel was constituted. Employees are thereafter recruited in accordance with the provisions of the Maharashtra Civil Service Rules after ascertaining medical fitness and placing them on probation of a

period of one year. In so far as the Petitioners were concerned, it was stated that there is no post of a Data Entry Operator or Computer Operator in the office. Data Entry Operators, the witness stated, were engaged on a contract basis for imparting knowledge to the directly recruited employees of the Board till such period as the regular employees obtained knowledge of computer operations. The State Government, it was stated, had informed the Board that posts of Computer Operators and Data Entry Operators would not be approved and that training would have to be imparted by an outside agency to the employees of the Board. The National Informatics Centre which was assisting the Board in its computerization process had recommended the names of the Petitioners who had been interviewed by NIC and by the Chief Accounts Officer of the Board. In the course of cross-examination, the witness stated that no sanction has been taken from Government for engaging Data Entry Operators; that since Computer Operators were not available with the Employment Exchange, no communication had been issued to the latter; the salary which was offered to the Petitioners was in accordance with the directions

of NIC and that in place of the Petitioners no other Computer Operator had been engaged.

8. The evidence which has been adduced before the Industrial Court establishes that the Petitioners came to be engaged on fixed term contracts. Those were early days of computerization when the directly recruited employees of the Respondent-Board were still to be equipped with an adequate knowledge of information technology. The Petitioners were, therefore, recruited for a fixed term. No advertisement was issued, nor was the regular process for recruitment taken recourse to when the Petitioners were recruited. Undoubtedly, it is true, as was suggested to the Board's witness during the course of cross-examination, that the Petitioners were screened by NIC and by the Chief Accounts Officer of the Respondents. But that by itself does not establish that the Petitioners were engaged through a process of regular selection. Indeed, the evidence establishes that the appointment of the Petitioners was not in the course of regular selection. The Petitioners were appointed on a short term contract basis, the object being to train the regular employees of the

contractual basis in order to get specified programming work done in respect of action taken reports that were required to be submitted to the Supreme Court in a Public Interest Litigation and while preparing survey reports during the course of investigation in pollution matters. The services of these operators were discontinued since 1st March 2004 and no computer operator is in the service of the Board. The Board has stated that it does not have any post of Computer Operator or Computer programmer in its establishment and the Board is, therefore, not able to consider the reappointment of the Petitioners.

13. In the circumstances of the case, the Industrial Court was not in error in coming to the conclusion that there was no merit in the complaint preferred by the Petitioners. There is no merit in the Petition which is accordingly rejected. No costs.

.....

Board in the use of computers in the meantime. Counsel appearing on behalf of the Board has drawn the attention of the Court to a Government Resolution dated 1st December 1998 where the Government emphasised that it was not necessary to recruit fresh employees to work inter alia as programmers since existing employees could be trained for that purpose. The Resolution inter alia refers to the engagement of outside agencies as turnkey providers. This resolution undoubtedly is not prior to the initial engagement of the Petitioners, as was pointed out by Counsel appearing on behalf of the Petitioners during the course of his submission. That however, does not destroy the basic foundation of the case of the Respondents which is to the effect that engagement of the Petitioners was for a fixed term and on a contractual basis. This factual position has been accepted by the witness for the Petitioners who admitted that the Petitioners were appointed for a particular period under letters which were shown to her during the course of cross-examination. That being the position, the Industrial Court was correct in holding that in view of the provisions of Section 2(cc)(bb) of the Industrial Disputes

Act, 1947 this was not a retrenchment. Section 2(oo) provides certain exceptions to the otherwise wide and comprehensive definition of the term "retrenchment". One of those exceptions is the termination of the services of a workman as a result of a non-renewal of a contract of employment between the employer and the workman on its expiry or upon such contract being terminated under a stipulation contained in that behalf. These provisions have been interpreted by the Supreme Court in its decisions in **Uptron India Ltd. v. Shammi Bhan**, 1998 (6) SCC 538, **Harmohinder Singh v. Kharga Canteen Ambala Cantt.** (2001) 5 SC 540 and in **M/s.Haryana State F.C.C.W. Store Ltd. Vs. Ram Niwas**, AIR 2002 SC 2495. The dispensing of the services of the Petitioners does not attract the procedure for retrenchment prescribed by the Industrial Disputes Act, 1947 and the Industrial Court was, therefore, correct in coming to that conclusion.

9. In view of the evidence on the record, it is not possible to accept the contention of the Petitioners that they had been engaged as casual or temporaries for years with the object of depriving

them of the status and privileges of permanent employees, within the meaning of Item 6 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971. None of the Petitioners was recruited against a substantive post borne on the establishment of the Board. No advertisement has been issued before the Petitioners came to be recruited. The regular process of selection was not followed. The appointments issued to the petitioners were fixed term contract appointments at a stage when the work of computerization was in its initial stages and until the regularly recruited employees of the Board came to be trained in computers. Training and redeploying existing regular employees on computers is a permissible course open to an employer. When the employer as a part of this process engages outsiders on fixed term contracts until the regular staff is trained he cannot be regarded, in facts such as the present, to be engaging in an unfair labour practice. That being the position, no case under Items 5, 6 or 9 of Schedule IV of the Act has been established and the conclusion which has been arrived at by the Industrial Court does not warrant interference

under Article 226 of the Constitution.

10. There is, similarly, no merit in the submission that the Petitioners are entitled, as a matter of law, to permanency upon the completion of 240 days' of service in the establishment of the Respondents. Section 2A of the Industrial Employment (Standing Orders) Act, 1946 as amended in its application to the State of Maharashtra lays down that where the Act applies to an industrial establishment, the model standing orders for every matter set out in the Schedule as applicable to such establishment shall apply to such establishment from such date as may be notified by the State Government in the Gazette. Under the proviso, however, the Section is not to affect any Standing Order finally certified under the Act and which has come into operation before the Bombay Amending Act of 1957. Sub-section (2) of Section 2A then provides thus:

> "2A(2) Notwithstanding anything contained in the proviso to sub-section (1) model standing orders made in respect of additional matters included in the Schedule after the coming

into force of the Act referred to in that proviso (being additional matters relating to probationers or badlis or temporary or casual workmen) shall unless such model standing orders are in the opinion of Certifying Officer less advantageous to them than the corresponding standing orders applicable to them under the said proviso also apply in relation to such workmen in the establishments referred to in the said proviso from such date as the State Government may, by notification in the Official Gazette appoint in this behalf."

11. Item 10-C of the Schedule deals with the employment or re-employment of probationers or badlis or temporary or casual workmen, and their conditions of service. Schedule I to the Bombay Industrial Employment (Standing Orders) Rules, 1959 lays down the Model Standing Orders. Under MSO 3, workmen have to be classified as permanent workmen; probationers; badlis or substitutes; temporary workmen; casual workmen; and apprentices. A temporary workman is defined by MSO-3(2)(d) as a workman who has been appointed for a limited period

for work which is of an essentially temporary nature and who is employed temporarily as an additional workman in connection with temporary increase in work of a permanent nature. Under MSO 4-C, a badli or temporary workman who has put in 190 days' uninterrupted service in the aggregate in any establishment of a seasonal nature or 240 days' "uninterrupted service" in the aggregate in any other establishment, during the period of the preceding twelve calendar months, shall be made permanent in that establishment by an order in writing signed by the Manager. The petitioners who had been appointed under fixed term contracts in order to complete and fulfil specified items of work cannot possibly claim the benefit of permanency under Model Standing Order 4-C.'

12. An affidavit has been filed on behalf of the Board in these proceedings on 18th June 2004 wherein it has been stated that the Board has taken effective steps for imparting training to its officers and employees in computer operations since 1997-98. The Board has stated that in 2003-04 some computer operators came to be appointed on a

contractual basis in order to get specified programming work done in respect of action taken reports that were required to be submitted to the Supreme Court in a Public Interest Litigation and while preparing survey reports during the course of investigation in pollution matters. The services of these operators were discontinued since 1st March 2004 and no computer operator is in the service of the Board. The Board has stated that it does not have any post of Computer Operator or Computer programmer in its establishment and the Board is, therefore, not able to consider the reappointment of the Petitioners.

13. In the circumstances of the case, the Industrial Court was not in error in coming to the conclusion that there was no merit in the complaint preferred by the Petitioners. There is no merit in the Petition which is accordingly rejected. No costs.

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