IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8801 OF 2003

Medical Superintendent, Rural Hospital
and anr. } ....*Petitioners*
: Versus :
Rajashree Lakshman Yadav } ....*Respondent*

WITH
WRIT PETITION NO. 8566 OF 2003

Medical Superintendent, Rural Hospital
and anr. } ....*Petitioners*
: Versus :
Shobatai Malhari Khade } ....*Respondent*

WITH
WRIT PETITION NO. 8524 OF 2003

WITH

CIVIL APPLICATION NO. 2768 OF 2011

Medical Superintendent, Rural Hospital
and anr. } ....*Petitioners*
: Versus :
Meghana Bhimrao Mane } ....*Respondent*

WITH
WRIT PETITION NO. 8480 OF 2003

Medical Superintendent, Rural Hospital
and anr. } ....*Petitioners*
: Versus :
Anil Pandurang Dhebe } ....*Respondent*

WITH
WRIT PETITION NO. 8421 OF 2003

The Civil Surgeon, Civil Hospital,
Satara and anr. } ....*Petitioners*
: Versus :
Dhanashri Bharat Sankpal } ....*Respondent*

WITH
WRIT PETITION NO. 8576 OF 2003

The Civil Surgeon, Civil Hospital,
Satara and anr. } ....*Petitioners*
: Versus :
Rajaram Chagan Awale } ....*Respondent*

WITH
WRIT PETITION NO. 8562 OF 2003

Medical Superintendent, Rural Hospital,
Mahabaleshwar } ....*Petitioners*
: Versus :
Laky Nandu Chavan } ....*Respondent*

WITH
WRIT PETITION NO. 8558 OF 2003

The Medical Superintendent, Rural
Hospital, Patan and anr. } ....*Petitioners*
: Versus :
Balasaheb Vishnu Kharmate } ....*Respondent*

Ms. Vaishali Nimbalkar, *AGP for State-Petitioner.*

Mr. Suresh Pakale, Senior Advocate *with Mr. Nilesh Desai, for Respondents.*

CORAM : SANDEEP V. MARNE, J.

Reserved on : 20 June 2024.

Pronounced on : 26 June 2024.

JUDGMENT :

A. THE CHALLENGE

1) The State Government has filed these eight petitions through the Medical Superintendents/Civil Surgeons of respective Hospitals and Deputy Director of Health Services, Pune challenging the common Judgment and Order dated 19 June 2022 passed by the Member, Industrial Court, Satara in eight Complaints filed by Respondents alleging unfair labour practices in the matter of their temporary appointments in various hospitals. The Industrial Court has directed continuation of services of Respondents with further directions to grant of benefit of permanency to them.

B. FACTS

2) Briefly stated, facts involved in these eight petitions are that the State Government through its Health Department has set up various rural and other hospitals for providing healthcare related services. It appears that some para-medical, clerical and Class-IV posts were lying vacant in those

hospitals due to variety of reasons such as not availability of regular employee, promotion of regular employee, deputation of regular employee for training, absence/leave of regular employee, etc. In the above background, it appears that Petitioner No.2-Deputy Director of Health Services, Pune entertained direct applications made by various candidates seeking their appointments during the years 2000-2001. It appears that Respondents accordingly submitted direct applications for appointment on various posts such as Junior Typist, Laboratory Technician and on various Class-IV posts such as Sweeper. It appears that the concerned hospitals were in need of staff. It appears that some of the posts in those Hospitals were being manned by temporary employees and the Medical Superintendent of the concerned Hospitals had made correspondence with Petitioner No.2 for deployment of fresh staff on vacant posts. This is how applications made by Respondents were entertained by Petitioner No.2 and they came to be granted temporary appointments on various posts such as Junior Clerk, Laboratory Technician, Pharmacist, sweeper, etc for a period of three months by various orders issued in the year 2000/2001. The appointment for three months was by giving break of one day at interval of 29 days.

3) It appears that though initially appointments were made only for a period of 3 months, the same were continued on 2/3 occasions by issuing fresh appointment orders for further period of three months. The employees submitted undertakings in September 2001 accepting temporary nature of their appointments. When their services were discontinued either on availability of regular employees or otherwise, Respondents approached Industrial Court, Satara by filing eight Complaints (bearing Nos. 142/2001, 143/2001, 144/2001, 145/2001, 246/2001,154/2001, 1/2002 and 20/2002)

under Section 28 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**) seeking continuation of their appointments and claiming permanency. Industrial Court granted interim orders in favour of Respondents, on account of which their appointments were continued by issuing fresh appointment orders. This is how Respondents continued to work during pendency of their Complaints. The Complaints were resisted by Petitioners by filing Written Statement. Both the sides led evidence.

4) The Industrial Court proceeded to allow the Complaints filed by the Respondents by common judgment and order dated 19 June 2002 and directed that services of the Respondents be continued with further direction to grant them the benefit of permanency after completing the necessary procedure. Petitioners have filed these petitions challenging the common judgment and order dated 19 June 2002 passed by the Industrial Court. By orders passed on 9 March 2004, six of the present Petitions came to be admitted by refusing interim relief. By Orders dated 23 March 2004 and 7 June 2004, the other two Petition also came to be admitted by this Court. This is how no interim relief was granted while admitting the petitions. It appears that on account of non-grant of interim relief, services of the Respondents have been continued by the Petitioners during pendency of the petitions.

C. SUBMISSIONS

5) Ms. Nimbalkar, the learned AGP appearing for Petitioners would submit that the Industrial Court has erred in directing continuation of

services of Respondents and to grant them the benefit of permanency ignoring the fact that their initial appointment itself was made for temporary period of only three months. That Respondents are back door entrants and were not subjected to any selection process at the time of their initial engagement. That they were granted break of one day at the end of each period of 29 days and their appointments automatically came to an end after three months. That between two spells of three months, there are further breaks in services of the Respondents. That they rendered hardly one year service by the time complaints were filed before the Industrial Court.

6) Ms. Nimbalkar would further submit that posts in government service cannot be filled up by making permanent irregularly appointed candidates, who have worked temporarily for one or two years. That the Model Standing Orders do not create a right in temporary employee to claim permanent status in government service. That the Apex Court in its judgment in ***Secretary, State of Karnataka V/s. Uma Devi***[1] has frowned upon regularisation of temporary employees only for the reason of long continuation in service. That the Division Bench of this Court in ***Municipal Council, Tirora V/s. Tulsidas Baliram Bindhade***[2] has held that Clause-4C of the Model Standing Orders cannot be invoked to claim permanency in government service. That mere completion of 240 days of service is not a *carte blanche* to the employee to claim permanency in service. She would submit that the impugned orders passed by the Industrial Court are in the teeth of the ratio laid down by the Division Bench in ***Municipal Council, Tirora*** (supra) and that therefore the same are liable to be set aside. Relying

[1] (2006) 4 SCC 1
[2] 2016(6) Mh.L.J. 867

on judgment of this Court in ***Sandip Baliram Sandbhor V/s. Pimpri Chinchwad Municipal Corporation***[3], Ms. Nimbalkar would submit that regularisation cannot be granted to back door entrants only by invoking sympathy. She would also rely upon judgment of the Apex Court in ***Executive Engineer, ZP Engg. Divn. V/s. Digambara Rao***[4].

7) Mr. Pakale, the learned senior advocate appearing for the Respondents would oppose the petitions and support the orders passed by the Industrial Court. He would submit that initial appointments of Respondents were made against vacant sanctioned posts. That they possessed qualifications needed for appointment on those posts. That the only possible flaw in their initial appointments was non-conduct of regular selection process. That the conduct of selection process was not in the hands of the Respondents, who accepted the appointments as were offered to them. That the nature of job performed by Respondents is of regular nature. He would submit that even as per judgment in ***Uma Devi*** (supra), Respondents deserved to be regularised in service. That ***Uma Devi*** otherwise does not circumscribe power of industrial adjudicator to grant regularisation under the provisions of labour laws as held by the Apex Court in its judgment in ***Hari Nandan Prasad V/s. Employer I/R to Management of FCI & Anr.***[5] He would also rely upon the judgment of this Court in ***The Chief Officer, Alibag Municipal Council V/s Smt. M.N. Patil***[6]**.** Mr. Pakale would submit that by now Respondents have rendered over 24 years of continuous service with the Petitioners and it would be iniquitous to treat

[3] 2016(3) Mh.L.J. 562
[4] (2004) 8 SCC 262
[5] (2014) 7 SCC 190.
[6] Writ Petition No. 3983 of 2007 decided on 20 February 2024.

them as temporary despite completion of such long spell of service. He would submit that this Court must take into consideration the factum of continuation of Respondents against sanctioned vacant posts while considering their entitlement for regularisation in service. That some of the employees are now reaching the age of retirement and grave injustice would be caused to them if they are not regularised in service. Mr. Pakale would therefore pray for dismissal of petitions.

D. REASONS AND ANALYSIS

8) In these eight Petitions, the State Government has questioned correctness of the common judgment and order passed by the Industrial Court holding that Petitioners have committed unfair labour practices by not continuing the services of Respondents and by not granting them the benefit of permanency. The Industrial Court has accordingly granted twin reliefs of continuation of employment and permanency to the Respondents. The net result of the order of the Industrial Court is that Respondents will have to be treated as permanent government servants from the date of the Court's Order. The issue is whether such directions could have been granted by the Industrial Court in the facts and circumstances of the case.

9) To decide the issue of grant of benefit of continuance in service and permanency to Respondents, it would be first necessary to consider the circumstances in which their initial engagements were made. The details of initial engagements of Respondents, as deciphered from various orders and communications produced with the Petition, are as under:

Sr.	Name	Date of application	Date of Order of initial Appt.	Details of appointment	Pay Scale and Period of Appointment
1.	Smt. Meghana Bhimrao Mane WP 8524 /2003	15-10-2000	27-03-2001	**Pharmacist** in Rural Hospital, Mahabaleshwar against vacant post	Rs.4500-7000 3 months
2.	Smt. Shobhatai Malhari Khade WP 8566/2023	07-12-2000	11-12-2000	**Laboratory Technician** in Kutir Hospital, Karad against vacant post	Rs.5000- 8000 90 days
3.	Shri. Laky Nandu Chavan WP 8562/2003		18-09-2001	**Sweeper** Rural Hospital, Mahabaleshwar against absence period of Shri. Lad (leave vacancy)	Rs. 2550-3200 3 months
4.	Shri. Rajaram Chagan Awale WP 8576/2003	30-09-2000 12-04-2001	30-12-2000 (terminated on 09-03-2001) 16-04-2001 09-07-2001	**Junior Clerk** General Hospital, Satara against leave vacancy of Shri. Kachare **Junior Clerk** in General Hospital, Satara against leave vacancy of Smt. Aaranke **Junior Clerk** in General Hospital, Satara against post of Shri. Bhujbal who was deputed for training	Rs.3050-75-3950-80-4590 90 days
5.	Smt. Dhanashri Bharat Sankpal WP 8421/2003	18-09-2000 01-10-2000	14-03-2001	**Junior Clerk** in General Hospital, Satara Against post vacated due to promotion of M. T. Kachare as Sr. Clerk	Rs.3050-75-3950-80-4590 3 months
6.	Shri. Anil Pandurang Dhebe WP 8480/2003	06-02-2001	06-02-2001	**Laboratory Technician.** Rural Hospital, Pimpode, Dist. Satara. Against vacant post during training period of R. B. Ombase (for 1 year)	Rs. 5000-8000 90/60/29 days
7.	Shri. Balasaheb Vishnu Kharmate WP 8558/2003	02-02-2001 21-06-2001	02-02-2001 04-07-2001	**Laboratory Technician** Yerawada Mental Hospital against post vacated by Shri. Panse during training period (for 1 year) **X-Ray Technician**, Rural Hospital, Somardi Dist Satara against training period of Shri. Somase	Rs. 5000-8000 3 months Rs. 5000-8000 3 months

8.	Rajashree Lakshman Yadav WP 8891/2003	05-10-2000	07-02-2001	**Junior Clerk** in Rural Hospital, Mahabaleshwar. Against Vacant post	3050-4590 90 days

10) The above chart would indicate that except Smt. Meghna Mane and Smt. Rajashree Yadav, all other 6 Respondents were initially engaged because the permanent employees were temporarily not available due to deputation for training, leave, absence, etc. Smt. Meghna Mane and Smt. Rajashree Yadav appear to have been engaged as Junior Clerks possibly as regular employees were not available to fill up the vacant posts. From the above chart, it appears that services of most of the Respondents were terminated as the regular employees became available after their return from training, leave, etc. To illustrate, Shri. A. P. Dhebe was appointed during training period of regular Laboratory Technician Shri. Ombase, who returned on completion of training in January 2001. Hence Shri. A. P. Dhebe was terminated by order dated 1 February 2002 w.e.f. 31 January 2002. However the Industrial Court granted *status quo* order on 29 November 2001. Therefore, Shri. Dhebe was required to be continued by order dated 7 February 2002 despite there being no post available for his continuation. Similarly, Shri. Rajaram Chagan Awale was appointed against leave vacancy of Kachare, who returned from leave in March 2001 and accordingly Shri. Awale was terminated by order dated 09 March 2001. He was again appointed against leave vacancy of Smt. Aaranake on 16 April 2001. On return of Smt. Aaranke from leave, his services were again terminated on 15 June 2001. He was again appointed on 09 July 2001 against vacancy created by deputation of Shri. Bhujbal for training. However, due to interim order

passed by the Industrial Court, he was continued in service. Similar is the case of Shri. Balasaheb Vishnu Kharmate, who was engaged during training period of regular X-Ray Technician Shri. Somase. This is how grant of interim orders by the Industrial Court ensured continuation of services of Respondents, whom Petitioners did not desire to continue.

11) By the time the Complaints were filed by the Respondents in the years 2001-02, they had rendered services of hardly one or two years. The relief of permanency was claimed on the strength of completion of 240 days of service. The Industrial Court appears to have upheld the claim of permanency by recording a finding of fact that Respondents have rendered 240 days of continuous service in a year and were therefore entitled to the benefit of permanency under Clause-4C of the Model Standing Orders formulated under the provisions of the Bombay Industrial Employment (Standing Orders) Rules, 1959, which reads thus:

> **4.C.** A badli or temporary workman who has put in 190 days' uninterrupted service in the aggregate in any establishment of seasonal nature or 240 days "uninterrupted service" in the aggregate in any other establishment, during a period of preceding twelve calendar months, shall be made permanent in that establishment by order in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of the said twelve calendar months.

12) The Industrial Court has recorded following findings while allowing the complaints filed by Respondents:

> i) The respondent has opposed the claim of the complainants. It is the defense of the respondent that the appointment orders which were issued to these complainants were issued on ad hoc basis. The work was allotted to these complainants as per the availability of the work. The period of the employment was also mentioned in their appointment orders. The

relationship such as 'employer-employee' was in existence for the period which was mentioned in their appointment orders. So they are not entitled for continuation or permanency. The respondent has not terminated services of these complainants. The question of the termination of services of these complainants does not arise at all. As soon as these complainants have completed period mentioned in their appointment orders, there will be automatic termination of the services and the after date which is mentioned in appointment order, the question of the continuation of the complainant in employment does not arise at all. While opposing the claim of the complainants, the respondents also relief on undertaking given by these complainants. It is argued that while joining their duties, these complainants have given undertaking that they will not claim permanency and they will not claim any lien on that post. In pursuance to the above undertakings, these complainants are not entitled for permanency.

ii) The above arguments are opposed by the complainants. It is argued on behalf of the complainants that the posts on which these complainants were appointed are of a permanent nature. The work done by these complainants is also of a permanent nature. The posts on which these complainants were working are the permanent vacant posts. The work is continuously available with the respondent to allot to these complainants. Though the respondent was knowing these factual aspects; still with an intention to deprive all these complainants from the benefits of permanency, the respondents have issued temporary orders. The work done by these complainants is of a permanent nature.

iii) There is much force in the arguments advanced on behalf of the complainants. It is evident and it is also admitted position between parties that the on which all these complainants were working are sanctioned a permanent vacant posts. Those posts are vacant and are in existence since the last four to five years. It is also not much disputed by the respondent that the work done by these complainants is not of a permanent nature. The respondents could not show any acceptable, reasonable cause for not giving permanent orders to these complainants. It is admitted position that since last, two to three years, these complainants are working with the respondent. The witness of the respondent has admitted in his cross-examination that there are sanctioned vacant posts with the respondent and these complainants are working in sanctioned vacant posts The intention of giving temporary orders is clear from the above facts that with an intention to deprive all these complainants, all these complainants were appointed temporarily and for a specific period. These complainants are appointed years together as temporary. So it is an unfair labour practice under Item 5,6,7,&10 of Schedule-IV of MRTU & PULP Act. 1971.

iv) It is argued on behalf of the complainants that these complainants have completed 240 days continuous service in each year, so as per the clause

4(B) of the Model Standing orders' these complainants are entitled for the permanency. The work done by these complainants is of permanent nature. To the contrary it is the defence of the respondent that these complainants have not completed 240 days continuous service.

v) Though the respondent has taken defence in arguments that these complainants have not completed 240 days continuous service; still in Cross-examination in Complaint ULP Nos. 140/2001 & 154/2001, the witness has admitted that these complainants have completed 240 days continuous service. In respect of other complainants, the complainants have called documents from the possession of the respondent, but the respondent has not produced any documents to show that these complainants have not completed 240 days continuous service. All relevant and necessary documents pertaining to the completion of 240 days continuous service are in possession of the respondent. Though the complainants have specifically pleaded in their arguments that they have completed 240 days continuous service; still the respondent has not filled any documentary evidence to disprove the allegations of the complainants. The respondents have filed documents in Complaint ULP No.145/2001. I have gone through those documents. Those documents are in respect of the working days of the complainant. It is evident that the complainant has completed 240 days continuous service. From the above discussion, I come to the conclusion that these complainants have completed 240 days continuous service in each year and they are entitled for permanency.

vi) The respondent relied on G.R. dated 1.3.2000 bearing No.B.G.T./ 1000/प्र.क्र.१३/२००० / अर्थसंकल्प. १९. By relying on above G.R., it is argued on behalf on the respondent that the respondent is not competent to appoint the employee on the vacant posts as permanent employee. After the date of 1.3.2000 the Government has banned the new recruitment, so also complainants are not entitled for permanency or continuation in employment. Learned Advocate Shri. B.S.Ghugare who appeared on behalf the complainants rightly brought to my notice that from the above referred G.R., the Government has banned the recruitment on the posts which become vacant due to the resignation, superannuation and death only. These vacancies cannot be filled by recruiting fresh employees. In the present matter, it is found that these complainants were appointed on clear vacancies. Those vacancies did not occur due to the resignation, superannuation or death. These vacancies are sanctioned vacancies by the respondent. So the above G.R. will not come in picture.

vii) The complainant has rightly relied on a case decided by our Honourablr High Court as between **‘PRAVIN KRISHNA JADHAV and others. V RASHITRIYA CHEMICALS AND FERTILIZERS LTD.** in the year 2000 (2001(88)FLR 260) W.P. No.2093 of 1998. The complainant has also rightly relied on a case decided by the Honourable

High Court of Allahabad in the year 1998(1999 I CLR 735) (C.M.W.P.No.35845 of 1991) as between (**REPTAKOS BRETT & CO.-PETITIONER) V. (THE LABOUR COURT(VTH).KANPUR AND ORS. RESPONDENT.)** The respondent relied on unreported case decided by our Honourable High Court. It is a writ petition No.632/89 decided on 6.3.1990. By relying on above case, it is argued on behalf of the respondent that the Honourable High Court has held that the ad hoc appointments are temporary appointments and the employees are not entitled for continuation. The ratio laid down in above case is not applicable to the present set of the facts. In above case the employee challenged the formation of the Selection Committee′ in above writ petition. Here that is not an issue before me in this case, so above case is not applicable.

From the above discussion, I come to the conclusion that the complainants have prove the case of unfair labour practices on the part of the respondent. Hence I pass following order.

13) Perusal of the above findings recorded by the Industrial Court would indicate that there is no discussion by the Industrial Court as to why the benefit of permanency is granted to the Respondents. The Industrial Court has dealt with the factual dispute about rendering of 240 days of service by the Respondents in a year and has recorded a finding of fact that they indeed rendered 240 days of continuous service in a year. While it is not necessary to delve deeper into correctness of the said finding of fact in exercise of writ jurisdiction, the important issue that arises for consideration is whether mere completion of 240 days of continuous service in a year would automatically entitle a temporary employee to claim permanency in government service? Before the question is answered, it would be necessary to continue to consider the findings of the Industrial Court on the issue of relief of permanency.

14) In para-6(iii) of its judgment, the Industrial Court has held that the post on which Respondents were engaged are permanent vacant posts. This finding appears to have been recorded on the basis of evidence of Dr. Pratap, a witness examined by the Petitioners. He gave admissions during the course of his evidence that the posts on which Respondents were working, were permanent posts. That they had educational qualifications required for the post and that the work done by them was of permanent nature. Based on the admissions given by the Petitioners' witness, the Industrial Court has recorded a finding of fact that the posts on which Respondents were engaged were permanent vacant posts. I find this finding recorded by the Industrial Court to be erroneous, for the reasons more elaborately recorded in latter portion of the judgment. The Industrial Court has held that '*the Respondents could not show any acceptable and reasonable cause for not giving permanent orders to these complainants*'. Even if the posts were permanent sanctioned vacant posts, the recruitment to the same would be governed by the provisions of Articles-14 and 16 of the Constitution of India. The recruitment to the post ought to be done in accordance with the provisions of the Recruitment Rules by convening selection process by permitting eligible candidates to participate in the same. Merely because Petitioners granted temporary appointments to the Respondents against permanent vacant posts, the same does not amount to unfair labour practice as erroneously held by the Industrial Court. In fact till the posts are filled up on regular basis, it is open for the Government to make temporary arrangements. Merely because such temporary arrangements are made, the same does not create any indefeasible right in favour of temporary employees to claim themselves to be permanent appointees.

15) The Industrial Court considered the contention of completion of 240 days continuous service in a year and has held in para-6(v) that '*from the above discussion, I come to the conclusion that these complainants have completed 240 days continuous service in each year and they are entitled to claim permanency'*. Thus mere completion of 240 days of service in a year is held to be good reason for directing permanency in favour of the Respondents.

16) The issue of grant of benefit of permanency by invoking Clause-4C of the Model Standing Orders in government employment came up for consideration before the Division Bench of this Court in ***Municipal Council, Tirora*** (supra). The reference was made to the Division Bench in the light of cleavage of opinion expressed by two learned Single Judges about applicability of Clause-4C of the Model Standing Orders under the Industrial Employment (Standing Orders) Act, in respect of employees of Municipal Councils. The Division Bench has answered the reference by holding that in absence of vacant sanctioned posts in a Municipal Council, a workman who puts in 240 days of service or more in a span of 12 months cannot invoke Clause-4C of the Model Standing Orders to claim either permanency or regularisation. This Court held in Para 19 to 21 as under:

> 19. In this reference, the position emerging before us is similar. There is no conflict between the provisions of M.S.O. 4C and the provisions of the section 76 of the 1965 Act. In the event of the appointment having been made validly, it may be possible to invoke the provisions Cl. 4C of M.S.O.A. view to the contrary would result in regularizing/validating a void act. Cl. 4C neither permits nor contemplates the same. As held in the above judgments, if the appointment is not made in accordance with the constitutional scheme, it is void ab initio and, therefore, there can be no claim to its regularization or for grant of permanency in any manner. This is all the

more so as Cl. 32 of the M.S.O. clarifies that the Standing Orders are not to operate in derogation of any other law i.e. section 76 of 1965 Act. Definitely any interpretation of Clause 4C conducive to defeating the Constitutional mandate is unwarranted. **Violation of Clause 4C of the MSO may tantamount to an unfair labour practice under item 9 of Sch. IV of the 1971 Act but unless and until, other additional factors are proved on record, finding of indulgence in an unfair labour practice under Item 6 of Sch. IV thereof cannot be reached.** As explained by the Hon'ble Apex Court in case of Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana, (supra), existence of a legal vacancy must be established and as discussed above, the power to recruit with the employer must also be demonstrated. In absence thereof, workman cannot succeed in proving the commission of unfair labour practice under Item 6 by the employer. These two ingredients, therefore, also must be established when benefit of Cl. 4C is being claimed. **Unless availability of a vacancy is shown or then power with the employer to create the post and to fill it is brought on record, mere continuation of 240 days cannot and does not enable the workman to claim permanency by taking recourse to Cl. 4C read with Item 9 of Sch. IV of 1971 Act.** Clause 4C does not employ word "regularisation" but then it is implicit in it as no "permanency" is possible without it. Conversely, it follows that when a statutory provision like section 76 disables the employer either from creating or filling in the posts, such a claim cannot be sustained. This also nullifies the reliance upon the judgment of learned Single Judge in case of Maharashtra Lok Kamgar Sanghatana v. Ballarpur Industries Limited (supra) where the employer was a private Company not subjected to such regulatory measures by any Statute and enjoyed full freedom to create the posts and to recruit. One of us (B.P. Dharmadhikari, J.) is party to the judgment of this Court in Raymond UCO Denim Private Ltd. v. Praful Warade (supra) which again needs to be distinguished for the same reasons. The judgment of learned Single Judge in case of Indian Tobacco Company Ltd. v. Industrial Court (supra), judgment of Hon'ble Apex Court affirming it or then judgment of Hon'ble Apex Court reported at Western India Match Company Ltd. and Workmen are all considered therein and are distinguishable as the same do not pertain to the province of public employment or consider inherent Constitutional restraints (the suprema lex-see Mahendra L. Jain v. Indore Development Authority (supra) and Cl. 32 of the MSO. For same reasons, law laid down by the Full Bench judgment of this Court in 2007 (1) Mh.L.J. (F.B.) 754 : 2007 (1) CLR 460 Gangadhar Balgopal Nair v. Voltas Limited does not advance the cause of workmen. The Division Bench of this Court in May and Baker Ltd. v. Kishore Jaikishandas Ichaporia (supra) while construing section 10A(3) held that the expression "other law" would not refer to the Model Standing Orders or the Certified Standing Orders since they are laws made under the provisions of Parent Act itself and not under any other law. The Model Standing Orders and Certified Standing Orders, held the Division Bench, "are laws no doubt

but they are laws made under the provisions of the Act". They were held not to be provisions under any other law. This discussion therefore shows how these words "in derogation of any law for the time being in force" in Cl. 32 of MSO need to be understood and does not help Adv. Jaiswal or Adv. Khan.

20. In Vice-chancellor, Lucknow University v. Akhilesh Kumar Khare (supra) relied upon by Adv. Parihar, Hon'ble Apex Court follows its Constitution Bench in Umadevi (III) and while rejecting relief of regularization to the daily wagers who were engaged in public employment without proper procedure, grants them compensation of ? 4 Lakh each by way of compassion. This judgment does not consider any welfare labour legislation and, therefore, cannot provide direct answer to the reference made. Judgment of this Court taking similar view in the light of 1971 Act in the case of Punjabrao Krishi Vidyapeeth, Akola v. General Secretary, Krishi Vidyapeeth Kamgar Union (supra) is already considered above. The Division Bench of this Court in State of Maharashtra v. Pandurang Sitaram Jadhav (supra) finds that the respondents before it were employed as daily wagers in the establishment of the Government Milk Dairy for a longer period of 12 to 20 years. There were no sanctioned posts and vacancies in existence in the concerned department. Respondents failed to demonstrate that their appointments were made in accordance with the procedure prescribed for selection. The Division Bench finds it wholly unjust to direct the appellant State Government to grant permanency to the respondents. It points out that the provisions of Model Standing Orders are subject to the Rules regulating selection and appointment so also subject to the constitutional scheme of public employment. Respondents daily wagers are declared to possess no legal right to claim permanency. Order passed by the learned Single Judge to the contrary have been quashed. State Government is held obliged to make appointments in adherence to the constitutional scheme of Public employment. Respondents Daily Wagers appointed without following the prescribed procedure for selection by passing public participation did not acquire any legal right to claim permanency. It is apparent that no inconsistency exists and cannot be worked out in State of Maharashtra v. Pandurang Sitaram Jadhav as also Pune Municipal Corporation v. Dhananjay Prabhakar Gokhale(supra) on one hand and Ballarpur Industries Limited v. Maharashtra Lok Kamgar Sanghatana (supra) on the other hand. Status of employer, nature of employment and inherent Constitutional limitation on public employer or absence of such fetters on any private employer or absolute freedom available to it to create post/s and recruit, are some of the distinguishing features which prohibit this exercise.

21. **Thus, in the light of this discussion, it follows that in absence of vacant sanctioned posts with the Municipal Council, a workman who has put in continuous service of 240 days or more in span of 12 months,**

> **cannot invoke Clause 4C of the MSO to claim either permanency or regularization.** We accordingly answer the question referred. Registry to place the writ petitions before the learned Single Judge as per roaster assignment for further consideration.

17) The judgment of the larger Bench in ***Municipal Council, Tirora*** has been followed by the Single Judge of this Court (*Ravindra Ghuge, J.*) in ***Raigad Zilla Parishad V/s. Kailash Balu Mhatre and Ors***.[7], in which this Court held that regularization cannot be automatic on completion of 240 days of service under MSO 4C in absence of sanctioned vacancies. However instead of completely rejecting the claims of daily workers, this Court directed the Zilla Parishad to send a proposal to the State Government for sanction of vacancies for the purpose of consideration of cases of the concerned employees for grant of benefit of permanency.

18) Mr. Pakale has contended that the judgment in ***Municipal Council, Tirora*** does not apply to the present case in view of admission given by the Petitioner's witness that Respondents were appointed against permanent sanctioned posts and that therefore there is no necessity of creation of posts for grant of permanency to the Respondents. Firstly, the finding of appointment against sanctioned vacant post itself is erroneous as discussed in the latter part of the judgment. Assuming that couple of Respondents were initially engaged against vacant sanctioned posts of Junior Clerk, in my view, no right is created in their favour to claim regularization in the light of the background in which their illegal appointments were made by the office of Petitioner No. 2. This is discussed more elaborately in paragraphs to follow.

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[7] Writ Petition No. 407 of 2018 decided on 5 January 2022.

19) The judgment of the Constitution Bench in ***Umadevi*** marks a watershed moment in the development of law relating regularization of services. In paragraph 43 of the judgment the Apex Court has held as under:-

> "**43.** Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumen-

> talities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

20) The sound exposition of law by the Apex Court in ***Umadevi*** now renders regularisation of casual, ad-hoc, temporary or contractual employees impermissible even if they may have rendered long years of service. Only a one-time exception is carved out in ***Umadevi*** for regularisation of irregularly appointed employees against sanctioned vacant posts completing 10 years of service without intervention by Courts/Tribunals. Thus, applying the ratio of ***Umadevi***, Respondent would have no semblance of right for regularisation of their services.

21) Appointments to government service are governed by the provisions of Articles- 14 and 16 of the Constitution of India. The post cannot be filled up *dehors* the Recruitment Rules without convening selection process by considering competing claims of the eligible candidates. Thus a pure back door entrant who secures temporary employment without participation in selection process and who completes 240 days of service in a calendar year, does not automatically become entitled to the relief of regularisation of service under clause 4C of the Model Standing Orders. Reliance by Ms. Nimbalkar on judgment of this Court in ***Sandip Baliram Sandbhor*** (supra) in this regard appears to be apposite. Single Judge of this Court has dealt with cases of class IV employees engaged in services of Municipal Hospital for regularization. This Court held:

> **35. An entry into a public employment must conform to Articles 14 and 16 of the Constitution and one of the cardinal principle is that there has to be a public participation at the time of entry in public service. A clandestine and back door entry in the public service is violative of Articles 14 and 16 and no rights will therefore flow from**

> **such an entry.** There are however cases where there is an exploitation of workforce by a public body by keeping such workers temporary for years with an object of depriving them the status of permanency. Such unfair labour practice, as indicated under Item 6 of Schedule IV of Act of 1971, is itself a negation of Article 14 of the Constitution. Once such an exploitation is proved, then the power of the Industrial adjudicator to take an affirmative action is not taken away. This however would depend on facts and circumstances of each case. In the case of ***Hari Nandan Prasad*** (supra), the Apex Court has indicated few of the parameters and has left it to facts and circumstances of each case. The Apex Court had deliberately kept this issue to be decided in the facts and circumstances of the case. Therefore, not only it is hazardous but also it will be impermissible to put this exercise in a mathematical formula. Whether an order of regularization would advance justice or defeats it, and will be contrary to the employer's right, would depend from case to case. Ultimately, the balance will have to be achieved between the rights of citizens for access to public employment vis-a-vis the need to prevent exploitation of the work force. **The steps taken by the industrial adjudicator should be in furtherance of the equality doctrine.**
>
> **36**. Mr. Vaidya relied upon various decisions, which arose from a factual situation wherein there was a clear exploitation by the employer. There were factual findings rendered in those cases by the Industrial adjudicators that the employees were working for decades and the employer had an intention to keep them temporary to deprive them of a permanent status had indulged in unfair labour practice. It is in the circumstances where there was an unfair labour practice akin to Item 6 of Schedule IV of Act of 1971 that the Apex Court has approved the direction to grant permanency in public employment. No decision is shown wherein absence of such factual situation and in the absence of an unfair labour practice under Item 6 or akin to Item 6, that a direction for regularization of a back door entry has been approved. **Because in a particular facts and circumstances of the case, the Courts have approved the direction of industrial adjudicator, even though the entry in services of the concerned employees is in contravention of Article 16, does not mean that it is open to the industrial adjudicator to direct regularization in public services in every case ignoring the decision in the case of Umadevi (3) and the constitutional scheme for entry in a public employment.**
>
> *(emphasis supplied)*

22) Mr. Pakale has relied upon judgment of the Apex Court in ***Hari Nandan Prasad*** (which has been dealt with in ***Sandip Baliram Sandbhor)*** in support of his contention that jurisdiction and powers of an industrial

adjudicator to grant relief in term of labour/industrial laws are not restricted by judgment in ***Umadevi***. In ***Hari Nandan Prasad***, the Apex Court has held that though powers of industrial adjudicator are wide, a balancing act needs to be done while settling industrial disputes on principles of fair play and justice. The Apex Court has held:

> 35. We are conscious of the fact that the aforesaid judgment is rendered under the MRTP and PULP Act and the specific provisions of that Act were considered to ascertain the powers conferred upon the Industrial Tribunal/Labour Court by the said Act. **At the same time, it also hardly needs to be emphasised that the powers of the industrial adjudicator under the Industrial Disputes Act are equally wide.** The Act deals with industrial disputes, provides for conciliation, adjudication and settlements, and regulates the rights of the parties and the enforcement of the awards and settlements. Thus, by empowering the adjudicator authorities under the Act to give reliefs such as reinstatement of wrongfully dismissed or discharged workmen, which may not be permissible in common law or justified under the terms of the contract between the employer and such workmen, the legislature has attempted to frustrate the unfair labour practices and secure the policy of collective bargaining as a road to industrial peace.
>
> 37. At the same time, the aforesaid sweeping power conferred upon the Tribunal is not unbridled and is circumscribed by this Court in New Maneck Chowk Spg. & Wvg. Co. Ltd. v. Textile Labour Assn. [AIR 1961 SC 867 : (1961) 1 LLJ 521] , LLJ p. 526 in the following words: (AIR p. 870, para 6)
>
> > "6. … **This, however, does not mean that an Industrial Court can do anything and everything when dealing with an industrial dispute.** This power is conditioned by the subject-matter with which it is dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial law relating to that matter as laid down by the legislature or by this Court."
>
> 38. **It is, thus, this fine balancing which is required to be achieved while adjudicating a particular dispute, keeping in mind that the industrial disputes are settled by industrial adjudication on principles of fair play and justice**.
>
> 39. On a harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give

> direction for regularisation only because a worker has continued as daily-wage worker/ad hoc/temporary worker for number of years. **Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily-wager, etc. may amount to back door entry into the service which is an anathema to Article 14 of the Constitution.** Further, such a direction would not be given when the worker concerned does not meet the eligibility requirement of the post in question as per the recruitment rules. **However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision**.
>
> 40. The aforesaid examples are only illustrative. It would depend on the facts of each case as to whether the order of regularisation is necessitated to advance justice or it has to be denied if giving of such a direction infringes upon the employer's rights.
>
> *(emphasis and underling supplied)*

23) Thus the judgment in ***Hari Nandan Prasad*** cannot be read to mean that an industrial adjudicator can direct regularisation absence of availability of post or of a back door entrant only on the length of service. In rare cases, where a scheme is formulated for regularisation and similarly placed employees are regularised that regularisation would be permissible.

24) Reverting to the facts of the present cases, details of initial engagements of Respondents discussed above would leave no manner of doubt that initial engagements of most of them were made only because the permanent staff was temporarily not available owing to deputation for training, leave, absence etc. The Industrial Court has not at all taken into consideration this vital aspect while erroneously directing continuation of

Respondents in service and granting them the benefit of permanency. The Industrial Court ought to have appreciated that granting the relief of continuation and permanency to the Respondents would result in a position where two persons would work on one sanctioned post. This is exactly what has happened in the present case as some of the Respondents such as Shri. Anil Pandhurang Dhebe, Shri. Rajaram G. Awale and Shri. Balasaheb Vishnu Kharmate, who were initially engaged for three months on account of regular incumbents being deputed for training or on leave, have continued to hold the posts even after the regular incumbent resumed duties at the end of the training or leave. To illustrate, Shri. Anil Pandurang Dhebe was engaged only because the regular Laboratory Technician, Shri. R.B. Ombase was deputed for training of one year. The order dated 1 February 2002 would indicate that Shri. R.B. Ombase, the regular Laboratory Technician, who was sent for training of one year, completed the training on 31 January 2002 and reported for duties on 1 February 2002 in the Rural Hospital, Pimpoda, District-Satara. Services of Shri. Dhebe were terminated by order dated 1 February 2002 as Shri. Ombase reported for duties. From 1 February 2002 onwards, Shri. Dhebe was not in service. He had approached the Industrial Court which had granted the order of *status-quo* in his favour on 29 November 2001. On the strength of the said *status-quo* order dated 29 November 2001, Shri. Dhebe was required to be granted appointment by order dated 7 February 2002 towards deference to the order passed by the Industrial Court. This is how Shri. Dhebe reported for duties on 11 February 2002. The interim order of the Industrial Court thus resulted in a situation where one post of Laboratory Technician sanctioned in Rural Hospital, Pimpode being occupied by two individuals. The State Government was

required to bear salaries of two individuals on account of interim order granted by the Industrial Court.

25) In the aforesaid manner, almost each of the Respondents got continued in service on account of interim order granted by the Industrial Court resulting in a situation where two individuals worked against one sanctioned post. Another glaring illustration is of Smt. Dhanashree Bharat Sankpal, who was initially engaged on 14 March 2001 as Junior Clerk in General Hospital, Satara against the post becoming vacant on account of promotion of Shri. M.P. Kachare from the post of Junior Clerk to Senior Clerk. By order dated 9 March 2001, Shri. M.P. Kachare, Junior Clerk working in General Hospital, Satara was promoted as Senior Clerk and came to be posted in Aundh Chest Hospital, Pune and was relieved w.e.f. 9 March 2001. Merely because the post of Junior Clerk became vacant due to promotion of Shri. Kachare on 9 March 2001, Petitioner No.2 issued order dated 14 March 2001 appointing Smt. Dhanashree Bharat Sankpal as Junior Clerk in the General Hospital, Satara for a period of 90 days. This is the extent of irregularities committed by the office of Petitioner No.2, who went on making temporary appointments merely because the post became vacant due to promotion, training, leave, absence etc. Petitioner No. 2 was under obligation to fill up the vacant post of Junior Clerk in General Hospital, Satara on regular basis. However even if it is assumed that Petitioner No. 2 was right in making temporary engagement to take care of exigency due to delay in regular appointment, no right got created in favour of Smt. Dhanashree Bharat Sankpal either to continue as temporary appointee and in any case to claim permanency.

26) What is more glaring is the admitted position that none of the Respondents participated in the selection process. Rather, no selection process was ever implemented by Petitioner No.2 while issuing blatant, illegal and irregular orders of temporary engagements of Respondents. Perusal of Complaints filed by Respondents would indicate that there is no averment of conduct of any selection process before their engagements. Respondents went on making vague applications to Petitioner No.2, who offered them engagements without conducting any selection process. Some of the blatant examples in this regard are to be found in the case of Shri. Anil Pandurang Dhebe, who made application to Petitioner No.2 on 6 February 2001 and was appointed on the same day as Laboratory Technician. Similar is the case of Balasaheb Vishnu Kharmate, who made application on 2 February 2001 and was engaged as Laboratory Technician on same day at the Yerwada Mental Hospital against the post vacated by Shri. Panse, who was deputed for training for one month. The Industrial Court thus did not pay any heed to this admitted position that all the eight Respondents are back door entrants into the Government service, who did not apply in pursuance of any advertisement, nor participated in any selection process. Their initial entry into service is *dehors* the constitutional requirement under Articles 14 and 16.

27) The exact reason why office of Petitioner No.2 decided to offer engagements to Respondents is difficult to fathom. It is possible that activities of hospital would have been affected if alternate arrangements were not made to man the temporarily vacated posts. However grant of such temporary appointments created no right in favour of the appointees, who knew every well that the appointments were mere stop gap arrangements till

the regular incumbents reported back for duties or regular appointees were mase. This is the reason why many of them submitted specific undertakings about temporary nature of their appointments with no right of regularisation,. Mere deputation of regular staff for training was not a valid reason for making temporary appointments. The consequences of illegal actions by the Office of Petitioner No.2 coupled with erroneous orders passed by the Industrial Court has resulted in a situation where two persons have occupied one sanctioned post in government service.

28) Though Mr. Pakale has repeatedly highlighted some admissions given by the witness of the Petitioners about Respondents working against sanctioned vacant post, the admissions given by such witness, will not be an indicator to decide whether the posts occupied by Respondents were indeed vacant sanctioned post or not. As observed above, initial engagements of most of the Respondents were against posts temporarily vacated by regular incumbents due to deputation for training, leave, absence etc. Therefore, appointments of such Respondents cannot be treated as the ones made against sanctioned vacant posts. It is therefore held that the appointments of Respondents were not made against sanctioned vacant posts. So far as the initial engagements of some of the Respondents such as Meghana Bhimrao Mane or Rajashree Laxman Yadav are concerned, though the post of Junior Clerk may have been vacant at the time of their initial engagements, no selection process was initiated for filling up the post of Junior Clerk in Rural Hospital, Mahabaleshwar. The said two Respondents made applications on plain paper to Petitioner No.2, their applications were entertained and they were offered temporary engagements without implementing any selection process. Such illegally made

engagements would not confer any right on the said two Respondents to either continue in government service or claim the benefit of permanency.

29) Respondents were engaged initially for a period of 3 months by giving them breaks after each spell of 29 days. They had rendered hardly one or two years of service when the filed complaints before the Industrial Court. No right got created in their favour to seek the benefit of permanency when their complaints were decided by the Industrial Court. In my view, therefore the relief of permanency granted to the Respondents by the Industrial Court of completion of 240 days of service is wholly unsustainable.

30) Mr. Pakale has relied on judgment of this Court in ***Chief Officer, Alibaug Municipal Council*** (supra). However the facts in the said case were entirely different. The Respondents therein were initially engaged as Badli Safai Kamgars and upon sanction of 13 posts in 1997, Standing Committee of the Municipal Council adopted a resolution for their regularisation and a proposal to that effect was sent to the State Government, which was rejected. Their services were terminated by withdrawing pay scales and they were reinstated as daily wage workers. The Industrial Court allowed their complaints on the ground of completion of 240 days of service under MSO 4C. This Court held that regularisation as per clause 4C of MSO was impermissible but did not disturb the relief of regularisation as Respondents therein complied with one time exception in para 53 of ***Umadevi*** as the appointment was held to be against sanctioned posts and completion of 10 years of service (without Court intervention) as on the judgment in ***Umadevi***. The judgment in ***Chief Officer, Alibaug Municipal Council*** is thus clearly distinguishable as initial engagements of

Respondents were not against sanctioned posts, they did not complete 10 years of service without Court's intervention and their initial appointments were made only to meet temporary exigencies of service such as regular incumbent's deputation on training, leave, absence, etc. Therefore Respondents are not entitled to the benefit of one time exception in para-53 of the judgment in ***Umadevi***.

31) Before parting, a quick reference to the recent judgment of the Apex Court in ***Vinod Kumar & Ors. vs. Union of India & Ors***.[8] would be necessary. The Apex Court had an occasion to once again visit the issue of regularisation of service of government employees. The Apex Court has dealt with case of Accounts Clerks in the office of Divisional Regional Manager, who were appointed to ex-cadre posts after conducting selection process involving written test and viva voce interviews in pursuance of Notification dated 21 February 1991. After putting in considerable period of service, the Appellants approached Central Administrative Tribunal. Their original applications were dismissed by the Tribunal holding that their appointments were temporary and for specific scheme. After their Writ Petitions were dismissed by the High Court, the Appellants approached the Supreme Court. The Apex Court, after referring to its decision in ***Umadevi*** has held in paragraphs 5, 6, 7, 8 and 9 as under:

> "5. Having heard the arguments of both the sides, this Court believes that the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a

[8] SLP (C) Nos.2241-42 of 2016, decided on 30 January 2024.

substantive departure from the temporary and scheme-specific nature of their initial engagement. Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status.

6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgement in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. Paragraph 53 of the Uma Devi (supra) case is reproduced hereunder:

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8. In light of the reasons recorded above, this Court finds merit in the appellants' arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations.

9. Accordingly, the appeals are allowed. The judgment of the High Court is set aside, and the appellants are entitled to be considered for regularization in their respective posts. The respondents are directed to complete the process of regularization within 3 months from the date of service of this judgment."

32) I am afraid the judgment in ***Vinod Kumar*** again does not assist the case of Respondents. In ***Vinod Kumar***, the appointments were made after conducting selection process involving written test and viva voce interviews in pursuance of a Notification. In the present case, Respondents are back door entrants who are engaged without conducting any selection process.

33) Mr. Pakale has contended that by now it has been 23-24 years that Respondents continue to be in service and that they deserve to be regularised in service at least at some point of time if not from the date of completion of 240 days' of service. As observed above, Respondents do not satisfy the criteria of one time exception in para 53 of judgment in ***Umadevi***. Their continuation in service is owing to the interim and final orders passed by the Industrial Court. Since impugned Order of the Industrial Court is found to be erroneous, their continuation in service is actually void. They have earned salaries for continuation in service all these years and now it is not possible to recover the same. However to expect regularisation of their appointments on the strength of erroneous continuation in service is like adding premium to the illegality. Public exchequer is already bled by making two persons works against one post. Regularising services of Respondents would put additional burden on the public exchequer. In my view therefore, mere continuation in service during pendency of litigation would not be a fit ground to grant them regularisation.

34) After considering the overall conspectus of the case, I am of the view that the Industrial Court has committed error in allowing the Complaints filed by Respondents, who did not make out any case to seek either continuation of their services and in any case for seeking the benefit of permanency. Industrial Court ought to have been mindful of the fact that Respondents are back door entrants, who were engaged to meet temporary exigencies of service and who had put in hardly a year's service when they approached the Court. Their continuation in service has resulted in two incumbents working on one post. Sanctioned posts in government service cannot be filled by regularising such appointees.

35) The impugned judgment and order of the Industrial Court is thus indefensible and liable to be set aside.

E. ORDER

36) Writ Petitions accordingly succeed. The impugned Judgment and Order dated 19 June 2022 passed by the Member, Industrial Court, Satara is set aside and Complaints filed by Respondents are dismissed. Writ Petitions are **allowed**. Rule is made absolute. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]