IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3373 OF 2002

The Deputy Director and Ors. } ....***Petitioners***

: Versus :

Vijaya Balbhim Mali }....***Respondent***

ALONGWITH

WRIT PETITION NO. 3374 OF 2002

The Deputy Director, Social Forestry
Division and anr. } ....***Petitioners***

: Versus :

Ramjan Daud Mulani }....***Respondent***

ALONGWITH

WRIT PETITION NO. 3377 OF 2002

The Deputy Director, Social Forestry
Division and Ors. } ....***Petitioners***

: Versus :

Dhanaji S. Deshmukh }....***Respondent***

ALONGWITH

WRIT PETITION NO. 3379 OF 2002

The Deputy Director, Social Forestry
Division and Ors. } ....***Petitioners***

: Versus :

Mahadeo Bhimrao Bobade **}....*Respondent***

ALONGWITH

WRIT PETITION NO. 3538 OF 2002

The Deputy Director, Social Forestry

Division and Ors. **} ....*Petitioners***

: Versus :

Ramahari J. Pawar **}....*Respondent***

ALONGWITH

WRIT PETITION NO. 3537 OF 2002

The Deputy Director, Social Forestry

Division and Ors. **} ....*Petitioners***

: Versus :

Dada R. Mane **}....*Respondent***

ALONGWITH

WRIT PETITION NO. 3376 OF 2002

The Deputy Director, Social Forestry

Division and Ors. **} ....*Petitioners***

: Versus :

Raju Mohammad Shaikh **}....*Respondent***

ALONGWITH

WRIT PETITION NO. 3536 OF 2002

The Deputy Director, Social Forestry

Division and Ors. } ....*Petitioners*

: Versus :

Jagdish S. Gunge }....*Respondent*

ALONGWITH
WRIT PETITION NO. 3535 OF 2002
WITH
CIVIL APPLICATION NO. 1325 OF 2016

The Deputy Director, Social Forestry

Division and Ors. } ....*Petitioners*

: Versus :

Ajinath Mahadev Godase }....*Respondent*

ALONGWITH

WRIT PETITION NO. 3534 OF 2002

The Deputy Director, Social Forestry

Division and Ors. } ....*Petitioners*

: Versus :

Rajaram S. Raichure }....*Respondent*

ALONGWITH

WRIT PETITION NO. 3375 OF 2002

The Deputy Director, Social Forestry

Division and Ors. } ....*Petitioners*

: Versus :

Manik Vithoba Khankal }....***Respondent***

ALONGWITH

WRIT PETITION NO. 3378 OF 2002

The Deputy Director, Social Forestry

Division and Ors. } ....***Petitioners***

: Versus :

Gangadhar A. Jadhav }....***Respondent***

ALONGWITH

WRIT PETITION NO. 3533 OF 2002

The Deputy Director, Social Forestry

Division and Ors. } ....***Petitioners***

: Versus :

Shivaji Ramchandra Oval }....***Respondent***

ALONGWITH

WRIT PETITION NO. 3380 OF 2002

The Deputy Director, Social Forestry

Division and Ors. } ....***Petitioners***

: Versus :

Parmeshwar Vishnu Gaikwad }....***Respondent***

ALONGWITH

WRIT PETITION NO. 3532 OF 2002

The Deputy Director, Social Forestry

Division and Ors. } ....*Petitioners*

: Versus :

Hanamant Vasant Patil }....*Respondent*

ALONGWITH

WRIT PETITION NO. 3371 OF 2002

The Deputy Director, Social Forestry

Division and Ors. } ....*Petitioners*

: Versus :

Bhagwat Pandhari Gaikwad }....*Respondent*

ALONGWITH

WRIT PETITION NO. 3372 OF 2002

The Deputy Director, Social Forestry

Division and Ors. } ....*Petitioners*

: Versus :

Subhash Ramchandra Mane }....*Respondent*

Mr. Vaishali S. Nimbalkar, AGP *for the State-Petitioners.*

Mr. Drupad Patil *with Mr. B.G. Ligade for the Respondents in WP-3374-2002, 3377-2002, 3379-2002, 3538-2002, 3537-2002, 3376-2002, 3536-2002, 3535-2002, 3534-2002, 3375-2002, 3378-2022, 3533-2022 and 3532-2002.*

Mr. Rajaram V. Bansode, *with Ms. Sheetal M. Ubale, for Respondents in WP-3371-2002 and WP-3380-2002.*

CORAM : SANDEEP V. MARNE, J.

Judgment Reserved on : 12 September 2024.
Judgment Pronounced On : 20 September 2024.

JUDGMENT :

1) These petitions are filed by Petitioner No.2 through the Deputy Director, Social Forestry Division, Solapur challenging the Judgment and Order dated 31 March 2001 passed by the Industrial Court, Solapur, by which complaints filed by the Respondents have been partly allowed and Petitioners are directed to consider the length of continuous services put by them till amendment of complaints on 21 July 1999 for the purpose of grant of benefit of permanency. Petitioners are accordingly directed to issue orders for permanency of the Respondents with continuity of service i.e. consequential benefits, without backwages.

2) Afforestation of barren lands is a program undertaken by the Government of India, which later assumed the name '*Social Forestry*'. The program was soon implemented by various State Governments, including the State of Maharashtra through its Department of Revenue and Forests. The scheme for social forestry included *inter-alia* the activity of plantation on the lands made available by Gram Panchayats, Public Works Department and other private institutions. For the purpose of undertaking the work of plantation, grass cutting and maintenance of trees/plants, workers were engaged on daily wage basis, as and when needed. Under the

program, Petitioners implemented Social Forestation Scheme on the concerned land for three years, whereafter the land was returned to the respective owners.

3) In the above background, Respondents were engaged as daily wage workers under the social forestry program during various years ranging from 1985 to 1991. In the year 1992, Petitioner issued orders transferring the services of Respondents from one village to another. In case of Respondent-Vijaya Balbhim Mali (Writ Petition No. 3373 of 2002) who was working since the year 1990, transfer order was issued on 30 January 1992 from Matsya Beach to Akole Budruk. Respondents got aggrieved by their respective transfer orders and instituted complaints of unfair labour practice before the Industrial Court, Solapur challenging the transfer order. In their complaints, Respondents filed applications for temporary injunction. The complaint as well as application for temporary injunction were resisted by Petitioners by filing their Written Statement contending that Respondents were engaged merely as '*seasonal workers*' during monsoon season for undertaking the work of plantation, grass cutting and maintenance of plants. That the work is not of regular nature. The Industrial Court passed interim order dated 17 February 1992 directing Petitioners to maintain *status-quo* in respect of the services of the Respondents until further orders.

4) It appears that though the complaints were filed challenging mere transfer orders, that too of temporary workers, the complaints remained pending for a considerable period of time and in the

meantime, services of the Respondents were continued. It appears that Respondents sought inspection of records relating to their services. Accordingly, the person appointed by the Court to carry out inspection and submitted his report in respect of each of the complainants to certify their services prior to filing of complaints. On 21 July 1992, Respondents filed applications for amendment of Complaints by incorporating their grievances relating to grant of permanency. The amendment was allowed by order dated 12 January 2000. Thus, Respondents claimed the relief of permanency in the amendment application on the strength of completion of 240 days of service, from the year of initial engagement.

5) Both the sides led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, the learned Member, Industrial Court proceeded to allow the complaint partly directing consideration of services of the Respondents upto the date of filing of application for amendment dated 21 July 1999 for grant of permanency in service. The Industrial Court has accordingly directed Petitioners to issue orders granting permanency with continuity of service and consequential benefits without backwages. Aggrieved by judgment and order dated 31 March 2001 passed by the Industrial Court, Petitioners have filed the present petition. By order dated 22 July 2002, this Court has admitted the petitions by granting stay to the order passed by the Industrial Court.

6) Ms. Nimbalkar, the learned AGP appearing for the Petitioner would submit that the Industrial Court has erred in

allowing the complaints by granting the relief of permanency in Respondents' favour. She would submit that Respondents did not work against any sanctioned posts and were utilized only as per need during monsoon season. That the project itself did not contemplate permanent engagement of staff. That the land on which plantation program is implemented is ultimately returned to the concerned Gram Panchayat or the landowner and that therefore it cannot be stated that any particular personnel is needed on a permanent basis for implementation of the program. That the initial engagement of Respondents was not made after following process of selection. That they do not fulfill any of the criteria for grant of permanency. That the Industrial Court erred in not appreciating that none of the Respondents had completed continuous service of five years before filing of the complaint. Their services rendered during pendency of the complaint on account of grant of interim order by the Industrial Court cannot be a reason for treating their employment as continuous and such services, which are attributable to interim order, are required to be ignored. That each of the Respondents have been paid compensation at the time of termination of their service and such compensation amounts have been accepted by them. That therefore no case was made out for grant of any relief to the Respondents. Ms. Nimbalkar would further submit that Respondents have otherwise not put in continuous service and are not entitled to be granted benefit under the Kalelkar Award. She would rely upon judgment of this Court in ***Yeshwant Shripad Patil Versus. Plantation Officer***[1]. She would accordingly pray for setting aside the impugned Judgment and Order passed by the Industrial Court.

[1] **Writ Petition No.180 of 2005 decided on 11 May 2018.**

7) Mr. Drupad Patil, the learned counsel appearing for the Respondents in Writ Petition Nos. 3374 of 2002, 3377 of 2002, 3379 of 2002, 3538 of 2002, 3537 of 2002, 3376 of 2002, 3536 of 2002, 3535 of 2002, 3534 of 2002, 3375 of 2002, 3378 of 2022, 3533 of 2022 and 3532 of 2002 would oppose the petitions and support the order passed by the Industrial Court. He would submit that the Industrial Court has rightly awarded the relief of permanency in favour of the Respondents who have rendered more than five years of continuous service without intervention by the Court. He would submit that the interim order of *status-quo* granted by the Industrial Court was qua transfers and that the same did not restrain Petitioners from terminating services of Respondents. That services of Respondents were continued by Petitioners on their own because of their need and such continuation was not attributable, in any manner, to the interim order of status-quo granted by the Industrial Court. That the Petitioners were well aware of the fact that the interim order of status-quo did not contemplate continuation of services of the Respondents, which is the reason why their services were terminated during pendency of complaints. He would therefore submit that Petitioners are entitled to be granted permanency for having completed more than five years of service as rightly directed by the Industrial Court. He would submit that if the total length of service of Respondents is taken into consideration, it is clear that some of them have rendered services in excess of 15-16 years. That Petitioners cannot exploit the services of the Respondents without granting them the benefit of permanency. He would rely upon judgment of this Court

in ***State of Maharashtra and others Vs. Ramesh Dhadu Dhangar***[2], which, according to Mr. Patil, fully covers the present case. He would therefore pray for dismissal of the petitions.

8) Mr. Bansode, the learned counsel appearing for the Respondents in Writ Petition Nos. 3371 of 2002 and 3380 of 2002 would adopt the submissions of Mr. Patil. Additionally, he would rely upon judgment of this Court in ***Conservator of Forest, North Division Forest, Chandrapur Versus. Shri. Umeshwar Keshav Kathwate***[3].

9) Rival contentions of the parties now fall for my consideration.

10) The Industrial Court has granted the relief of permanency in Respondents' favour by considering of five years of service rendered by them prior to the date of filing of application for amendment i.e. 21 July 1999 for the purpose of grant of relief of permanency. It must be observed at the very outset that the judgment of the learned Member of the Industrial Court is not very happily worded, and this Court has at times found it slightly difficult to comprehend the exact reasoning adopted by the learned Member while granting the relief in Respondents' favour. While directing computation of five years of service for permanency, the learned Member has not even clarified the exact significance of completion of five years of service for grant of relief of permanency. Furthermore, why 5 years of service prior to date of filing of amendment application (*21 July 1999*) is directed to be computed is again not clarified. Be that as it may. Since the length of

[2] ***Writ Petition No. 657 of 2001 decided by Bench at Aurangabad on 27 June 2019.***
[3] ***Letters Patent Appeal No.380 of 2010 and 381 of 2010 decided on 27 November 2017 (Nagpur Bench)***

service of 5 years is directed to be considered, it appears that the same is done in the context of para 28 of the Kalelkar Award, which reads thus:

> "28. The benefits available to the daily rated employees under the Kalelkar Agreement (regarding availability of definite appointments on definite establishment). Such of the workmen on daily wages who have been working continuously for five years on such establishment shall be entitled, upon completion of five years, to have the posts held by them converted into posts on temporary establishment and such daily rated workmen shall be appointed on such converted posts. The post created on the converted establishment shall be personal to the incumbent and if the incumbents, for any reason leaves services, such post shall come to an end. Upon appointment on the converted temporary establishment, the workmen shall be covered by the Bombay Civil Service Rules."

11) Thus, para-28 of the Kalelkar Award contemplates grant of status as '***Converted Regular Temporary Establishments***' (**CRTE**) on completion of five years of continuous service. The grant of CRTE status under Kalelkar Award cannot be equated with grant of permanency in government service. In fact, Kalelkar Award has created special mechanism for conferring CRTE status on daily wages workers on account of absence of posts for grant of permanency to them. Therefore, instead of directing creation of posts for grant of permanency to such daily wage workers, the Award contemplates creation of posts personally to the workers which lapse with their retirement. This is the concept of award of CRTE status to the concerned daily wage workers. However, the Industrial Court in the present case, while adopting the criteria of completion of 5 years'

service under Kalelkar Award, appears to have directed grant of permanency and not grant of CRTE status.

12) I now proceed to decide whether Respondents made out any case before the Industrial Court for grant of either CRTE status or permanency in government service on the strength of daily wage services rendered by them. Ms. Nimbalkar has placed on record chart relating to the service details as well as the present status of Respondents. It would be relevant to reproduce the said chart as under :

अ. क्र.	मजुरांचे नाव	कधीपासुन कामावर घेण्यात आले	वय	कामाचा प्रकार सध्या (22 कार्यवाही नुसार)	औद्योगिक न्यायालय केस नं (ULP NO.)	WRIT PETITION NO.	औद्योगिक न्यायालय आदेशाचा दिनांक	शेरा
1	विजय बलभीम माळी	1/9/1990	56 वर्ष	सध्या कामावर नाही	43/1992	3373/2002	31/03/2001	डी. डी. क. 645254 दिनांक 15.02.01 अन्वये रुपये 9711/- नुकसान भरपाई देवून कमी केले सबब अपात्र.
2	सुभाष रामचंद्र माने	1/5/1989	68 वर्ष	सध्या कामावर नाही	49/1992	3372/2002	31/03/2001	डी. डी. क्र 550233 दिनांक 15.02.01 अन्वप रुपये 10458/ नुकसान भरपाई देवून कमी केले सबब अपात्र.
3	रमजान दाऊद मुलाणी	1989	56 वर्ष	सध्या कामावर नाही	44/1992	3374/2002	31/03/2001	डी. डी. क्र.645258 दिनांक 15.02.01 अन्यये रुपये 8964/- नुकसान भरपाई देवून कमी केले सबब अपात्र.
4	माणिक विठोबा खंकाळ	1989	62 वर्ष	सध्या कामावर नाही	51/1992	3375/2002	31/03/2001	डी. डी. क्र.645256 दिनांक 15.02.01 अन्यये रुपये 9711/- नुकसान भरपाई देवून कमी केले सबब अपात्र.
5	राजु	1991	58	सध्या	45/1992	3376/2002	31/03/2001	डी. डी.

	मोहम्मद शेख (मयत)		वर्ष	कामावर नाही				क्र.645260 दिनांक 15.02.01 अन्यये रुपये 8964/- नुकसान भरपाई देवून कमी केले सबब अपात्र.
6	धनाजी श्रीरंग देशमुख	1985	55 वर्ष	सध्या कामावर नाही	50/1992	3377/2002	31/03/2001	दैनंदिन मजुरांचे कामाचे दिवस कमी वर्ष भरल्याने त्यांना नुकसान भरपाई देण्यात आलेली नाही.
7	गंगाधर अनंत जाधव	1988	62 वर्ष	सध्या कामावर नाही	46/1992	3378/2002	31/03/2001	दैनंदिन मजुरांचे कामाचे दिवस/कमी वर्ष भरल्याने त्यांना नुकसान भरपाई देण्यात आलेली नाही.
8	भागवत पंढरी गायकवाड	1990	57 वर्ष	सध्या कामावर नाही	47/1992	3371/2002	31/03/2001	दैनंदिन मजुरांचे कामाचे दिवस/कमी वर्ष भरल्याने त्यांना नुकसान भरपाई देण्यात आलेली नाही.
9	परमेश्वर विष्णु गायकवाड	1989	54 वर्ष	सध्या कामावर नाही	48/1992	3380/2002	31/03/2001	दैनंदिन मजुरांचे कामाचे दिवस/कमी वर्ष भरल्याने त्यांना नुकसान भरपाई देण्यात आलेली नाही.
10	दादा रामचंद्र माने	1989	57 वर्ष	सध्या कामावर नाही	54/1992	3537/2002	31/03/2001	डी. डी. क्र.645257 दिनांक 15.02.01 अन्यये रुपये 9711/- नुकसान भरपाई देवून कमी केले सबब अपात्र.
11	हनुमंत वसंत पाटील	1988	62 वर्ष	सध्या कामावर नाही	53/1992	3532/2002	31/03/2001	डी. डी. क्र.645255 दिनांक 15.02.01 अन्यये रुपये 9711/- नुकसान भरपाई देवून कमी केले सबब अपात्र.
12	शिवाजी रामचंद्र ओवाळ		67 वर्ष	सध्या कामावर नाही	56/1992	3533/2002	31/03/2001	डी. डी. क्र.645259 दिनांक 15.02.01 अन्यये रुपये 8964/- नुकसान भरपाई देवून कमी केले सबब अपात्र.
14	राजाराम	1/7/1987	76	सध्या	59/1992	3534/2002	31/03/2001	डी. डी.

	बाबुराव रायचुरे		वर्ष	कामावर नाही				क्र.550225 दिनांक 15.02.01 अन्ययें रुपये 11205/- नुकसान भरपाई देवून कमी केले सबब अपात्र.
15	जगदीश एस. गुंगे	1992	54 वर्ष	सध्या कामावर नाही	57/1992	3536/2002	31/03/2001	डी. डी. क्र.550232 दिनांक 15.02.01 अन्ययें रुपये 10458/- नुकसान भरपाई देवून कमी केले सबब अपात्र.
16	रामहरी ज्योतीराम पवार	1/4/1988	55 वर्ष	सध्या कामावर नाही	58/1992	3538/2002	31/03/2001	डी. डी. क्र.557229 दिनांक 15.02.01 अन्ययें रुपये 11205/- नुकसान भरपाई देवून कमी केले सबब अपात्र.
17	महादेव भिमराव बोबडे	1/12/1988	64 वर्ष	सध्या कामावर नाही	52/1992	3379/2002	31/03/2001	डी. डी. क्र.550237 दिनांक 15.02.01 अन्ययें रुपये 11205/- नुकसान भरपाई देवून कमी केले सबब अपात्र.

13) Thus, Respondents joined services during various years from 1985 onwards and had approached the Industrial Court with regard to their limited grievance relating to their transfers. At the time when their respective ULP complaints were filed, the Respondents did not desire the relief of permanency. They were only aggrieved by orders transferring them from one place to another. In the context of the said grievance relating to transfer, interim reliefs were sought by Respondents in their respective Complaints seeking stay on transfers. The Industrial Court passed orders granting status-quo in each of the complaints. It would be relevant to reproduce one such interim order passed in the case of Vijay Balbhim Mali (Complaint ULP No.43/1992) :

(O R D E R)

I) The Respondents shall maintain status-quo as to the service of Complainant, until further order.

II) The notices also be issued to the Respondents.

14) Thus, on 17 February 1992, status-quo was granted with regard to the transfers of Respondents. Since there was neither any termination nor relief of permanency was sought, the interim order of *status-quo* was essentially restricted with regard to the place of posting of each of the Respondents. Though, Ms. Nimbalkar has sought to suggest that continuation of services of Respondents after 17 February 1992 was owing to status-quo order granted by the Industrial Court, I am unable to accept the said contention. The status-quo order was only with regard to the transfer of Respondents and did not prohibit Petitioners, in any manner, from terminating or discontinuing their services. This is clear from the fact that during pendency of the Complaints, Petitioners discontinued services of Respondents on 15 February 2002, during operation of order of status-quo. Petitioners thus rightly understood the exact effect of status-quo order and continued services of Respondents for their own benefit.

15) This is how services of Respondents were continued till February 2002 during pendency of their respective complaint. The complaints came to be amended by order dated 12 January 2000 whereby grievance relating to permanency came to be incorporated in the pending complaints. Ordinarily, the cause of action relating to transfer was distinct and independent from the cause of action of permanency and it was not advisable to mix the two independent causes of action in one complaint. However, the orders granting amendment have attained finality and the same were not questioned by the Petitioners. This is how in complaints, which were pending

since the year 1992 and which were restricted only with regard to the transfers, were amended in the year 2000 by incorporating the grievance relating to permanency.

16) Respondents thus continued working for Petitioners from the dates of their initial engagements till they were terminated on 15 February 2002. Thus, each of the Respondents rendered more than 10 years of service with the Petitioners. Infact one of the Respondents, Dhanaji Shrirang Deshmukh worked since 1985 till 2002 and rendered about 17 years of service. The issue for consideration is whether the Industrial Court is justified in granting the relief of permanency to the Respondents?

17) Since issue involved in the present Petitions relate to grant of permanency in Government service, reference to the landmark judgment of the Constitution Bench in ***Secretary, State of Karnataka & Ors. V/s. Umadevi***[4], which marks a watershed moment in development of law relating to regularization, would be necessary. The Constitution Bench held that mere continuance of an employee for a long period does not create any right of regularisation in the service. It is held thus:

> 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

[4] **(2006) 4 SCC 1**

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 instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

18) The sound exposition of law by the Apex Court in ***Umadevi*** now renders regularization of casual, ad-hoc, temporary or contractual employees impermissible even if they have rendered long years of service. However a one-time exception has been carved out by Apex Court in ***Umadevi*** for regularisation of irregularly appointed employees against sanctioned posts completing 10 years of service, In ***Umadevi*** period of 10 years' service is prescribed for one time exception only if the same is without intervention by Courts/Tribunal. Para 53 of judgment in ***Umadevi*** reads thus:

> 53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already

> made, but not subjudice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

19) Since the Petitions arise out of Orders passed by the Industrial Court, a brief reference to the powers and jurisdiction of an industrial adjudicator to grant regularisation de horse the judgment of Constitution Bench in ***Umadevi*** would also be necessary. The issue arose before the Apex Court in ***MSRTC Vs. Casteribe Rajya Parivahan Karmachari Sanghatana***[5]. In ***MSRTC*** (supra), the Apex Court held that the judgment in ***Umadevi*** does not denude the Industrial and Labour Courts of their statutory power under the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer where the posts, on which they have been working, exist. It further held that the provisions of MRTU and PULP Act enables an industrial adjudicator to give preventive as well as positive direction to an erring employer. In ***MSRTC*** the Apex Court has held in paragraph 32, 33 and 36 as under:-

> "32. The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing 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 is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

[5] (2009) 8 SCC 556

33. **The provisions of the MRTU and PULP Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi (3).** As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred to, considered or decided in Umadevi (3). Unfair labour practice on the 9 part of the employer in engaging 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 as provided in Item 6 of Schedule IV and the power of the Industrial and Labour Courts under Section 30 of the Act did not fall for adjudication or consideration before the Constitution Bench.

36. **Umadevi (3) does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist.** Umadevi (3) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and the PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

(emphasis supplied)

20) In ***Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India and another***,[6] the Apex Court took note of its judgments in ***UP Power Corporation vs. Bijli Mazdoor Snagh & Anr.***[7] and ***MSRTC*** and held that in absence of post, regularization cannot be directed. The Apex Court however has carved out certain exceptions to this general principle. The Apex Court in ***Hari Nandan Prasad*** proceeded hold in paragraph 34, 35, 39 and 40 as under:

[6] **(2014) 7 SCC 190**
[7] ***2007 5 SCC 755***

34 A close scrutiny of the two cases, thus, would reveal that the law laid down in those cases is not contradictory to each other. In U.P. Power Corpn.8, this Court has recognised the powers of the Labour Court and at the same time emphasised that the Labour Court is to keep in mind that there should not be any direction of regularisation if this offends the provisions of Article 14 of the Constitution on which the judgment in Umadevi (3) is primarily founded. On the other hand, in Bhonde case the Court has recognised the principle that having regard to the statutory powers conferred upon the Labour Court/Industrial Court to grant certain reliefs to the workmen, which includes the relief of giving the status of permanency to the contract employees, such statutory power does not get denuded by the judgment in Umadevi (3) case. It is clear from the reading of this judgment that such a power is to be exercised when the employer has indulged in unfair labour practice by not filling up permanent posts even when available and continuing to employ workers on temporary/daily-wage basis and taking the same work from them and making them do some purpose which was being performed by the regular workers but paying them much less wages. It is only when a particular practice is found to be unfair labour practice, as enumerated in Schedule IV of the MRTP and PULP Act, and it necessitates giving direction under Section 30 of the said Act, that the court would give such a direction.

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.
>
> 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.

21) Thus, in ***Hari Nandan Prasad***, the Apex Court ruled that if posts are not available, issuance of directions for regularisation would be impermissible and that such directions cannot be issued only on the basis of number of years put in by a daily wager. However the Apex

Court did carve out some exceptions such as similarly situated workmen being regularised in terms of a scheme. It thus held that by ordering regularization of similarly placed employee the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision. Thus, once an employer formulates a scheme for regularization and regularizes similarly placed employees in accordance with that Scheme, it is permissible for an industrial adjudicator to direct regularization of casual/daily wage worker who fulfills the criteria prescribed in the Scheme.

22) Thus an industrial adjudicator can grant the relief of permanency in terms of scheme formulated by the employer. It would therefore be necessary to consider whether any such scheme for regularization has been formulated by the State Government, under which Respondents can claim permanency.

23) The Forest Department has been engaging daily rated workers for implementation of various schemes including carrying out various activities inside forests. Large number of such daily rated workers were engaged by the Forest Department and the issue of granting them permanency was under consideration of the State Government. On 6 October 1995, the State Government created 10,160 supernumerary posts in respect of daily wage workers who had completed five years of continuous service as on 1 November 1994. On 31 January 1996, G.R. was issued by which, out of 10,160 supernumerary posts, 8038 posts came to be regularised w.e.f. 1

November 1994. Thus, as per the G.R. dated 31 January 1994, the State Government regularised the services of daily rated forest workers who had completed five years of continuous service as on 1 November 1994. For counting five years of continuous service, it was mandatory to render minimum 240 days of service in each year without considering the services rendered under the Employment Guarantee Scheme. The daily rated forest workers who were so regularised, were designated as '*Van Majur*' (**Forest Labourers**).

24) Thereafter, several Government Resolutions were issued on 16 March 1998, 29 January 2000 etc. granting absorption to additional daily rated forest workers. The State Government later decided to advance the cut-off date of '1 November 1994' and fix the new date as '30 June 2004' for determining the eligibility of daily rated forest workers for absorption in service. On 16 October 2012, G.R. was issued directing absorption of daily rated forest workers completing five years of service during the period from 1 November 1994 to 30 June 2004. Accordingly, the daily rated workers who were in service as on 1 June 2012 but who had completed five years of service during 1 November 1994 to 30 June 2004 were absorbed in service. This is how, those 546 daily rated workers came to be absorbed in service from 1 June 2012. It was found that additional daily rates workers were eligible for being absorbed but were left out and accordingly G.R. dated 10 May 2018 was issued directing absorption of 569 daily rated forest workers who had completed five years of service during 1 November 1994 to 30 June 2004.

25) As seen above, the daily rates workers in the Forest Department have been progressively absorbed in service. The criteria applied for their absorption is completion of five years of service. The earlier cut-off date was 1 November 1994 which was later advanced to 30 June 2004. However, for absorption of workers covered by cut-off date of 30 June 2004, other criteria made applicable was their continuance in service as on 1 June 2012. Perusal of the above Government Resolutions would show that the same were made applicable to various schemes implemented by the Forest Department including the Scheme of Social Forestry. In that view of the matter, the Government Resolutions would apply to the Respondents as well who have rendered services under the schemes implemented by the Social Forestry Scheme.

26) The Industrial Court has apparently not considered the G.R. dated 31 January 1996 while passing the impugned judgment and order dated 31 March 2001. It appears that the Industrial Court has taken into consideration the provisions of Kalelkar Award and has accordingly directed grant of permanency by taking into consideration five years of service prior to 21 July 1999 (amendment of complaint) for granting the benefit of permanency.

27) Perusal of various Government Resolutions discussed above would indicate that each G.R. refers to creation of particular number of posts for grant of benefit of absorption. It is therefore not known whether the Respondents were taken into consideration while

sanctioning various posts for their absorption in service. It appears that since complaints of Respondents were pending, their cases were not taken into consideration while sending proposals for sanctioning of posts for absorption of Van Majurs. The aforesaid Government Resolutions have been taken into consideration by this Court in its judgment in ***State of Maharashtra Vs. Dhanu Rama Ratod*** and ***State of Maharashtra Versus. Sitaram Lakaji Kamble***[8]. The said judgment has been reproduced by this Court in ***State of Maharashtra Vs. Ramesh Dhadu Dhangar*** (supra). It would therefore be appropriate to reproduce the entire judgment in ***Ramesh Dhadu Dhangar*** as under:

> 1. The petitioner-Social Forestry Division, Jalgaon, is aggrieved by the judgment delivered by the Industrial Court, Jalgaon, dated 4th September, 2000, vide which, Complaint (ULP) No. 852/1999 (old No. 210 of 1993) has been allowed and the respondent has been granted permanency on the post of Labour from the date of filing of the complaint.
>
> 2. This Court has dealt with identical matters, vide judgment dated 6th May, 2019 delivered in Writ petitions No. 2182 of 1999 and 2183 of 1999, the State of Maharashtra and another Vs. Dhanu Rama Ratod and, Sitaram Lakaji Kamble. It is observed in the said judgment in paragraphs No. 1 to 12 as under:
>
> > *" 1. In both these petitions, the petitioner State and the Department of Social Forestry are aggrieved by the judgment and order dated 03/12/1998 delivered by the Industrial Court in complaint (ULP) Nos. 408 and 409 of 1991. By the impugned judgments, the Industrial Court has granted permanency to the original complainant workers with immediate effect after completion of 240 days in continuous employment.*

[8] ***Writ Petition No. 2182 and 2183 OF 1999 decided on 6 May 2019.***

2. I have considered the strenuous submissions of the learned AGP on behalf of the petitioners and Shri Awate learned Advocate appearing for the identically placed respondent – original complainants.

3. In both these cases, the original complainants who were working on daily wages from 01/11/1985 and 01/07/1987, respectively, as watchman cum labourer. Both of them approached the Industrial Court by filing their ULP complaints invoking Items 5, 6, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971. They also invoked Standing Orders 4C and 4D of the Industrial Employment (Standing Orders) Act, 1946 seeking regularization on the principle of deemed permanency after completing 240 days in continuous employment. On the basis of the oral and documentary evidence and the pleadings of the parties, the Industrial Court concluded that these workers were entitled to be granted regularization as they had attained the deemed status of permanency on completing 240 days in continuous employment.

4. The learned Advocate for the respondent workers has strenuously supported the impugned judgments, notwithstanding the fact that this Court had stayed the impugned judgments by order dated 15/06/1999 and by a subsequent order dated 24/08/1999, the petitions were admitted. However, the services of the respondent workers were protected by the order of this Court.

5. The issue as to whether the deeming fiction of permanency under Standing Order 4C and 4D would be applicable to the state or the instrumentalities of the State, is no longer Resintegra. It has been held in the matter of Municipal Council, Tuljapur Vs. Baban Hussain Dhale in WP No. 1843/2015 and connected matters, decided on 26/02/2015, Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others, 2015 (5) Mh.L.J. 75, that the deeming fiction of permanency, on completion of 240 days in continuous employment, is not applicable to state instrumentalities. The power to create posts and grant financial sanctions is with the State. Merely because an employee completes 240 days in continuous employment, would not entitle him to regularization in the absence

of permanent posts. This deeming fiction flowing from the Industrial Employment (Standing Orders) Act, 1946 is applicable only to private sector industries or even some of the public sector industries who have adopted these standing orders.

6. Considering the conflict of views amongst two learned Single Judges of this Court at the Nagpur Bench, the matter was referred to the learned Division Bench at Nagpur in the Municipal Council Tirora and anr. Vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J.867. The learned Division Bench concluded that in the case of state instrumentalities, when the role of the Government is decisive in creating posts and adopting a procedure for regularization, Standing Orders 4C and 4D would not be applicable.

7. In so far as the issue as to whether Social Forestry Department is an industry or not, for the present, is a settled position, in so far as this Court is concerned. There is no dispute that the matter is referred to a larger bench in the case of State of U.P. Vs. Jai Bir Singh (2005) 5 SCC 1 for consideration as to whether Social Forestry Department could be termed as being an 'industry' under section 2(s) of the Industrial Disputes Act, 1947. As the legal position stands today, I am not required to consider the contention of the learned AGP that because the issue is pending before the Hon'ble Apex Court for the last 14 years and as a larger bench is still not constituted, this petition, alongwith many similar petitions, which are pending for final hearing for 13 years and the litigation dates back to 1988, should be kept pending. Nevertheless, the learned Division Bench of this Court (Coram : A. S. Oka and M.S. Sonak, JJ) have held that the Forest department is an industry, in Chief Conservator of Forests, Pune (T) and another Vs. Janabai Sonaba Sarpale, 2019 II CLR 28.

8. Notwithstanding the above, the State of Maharashtra has introduced two resolutions, dated 19.10.1996 and 16.8.2012. By the first G.R., all those daily wagers who have been working for 5 consecutive years with the Social Forestry Department, under any of its schemes, have been held eligible to be brought on regular establishment. Those workmen, in the instant case, who have

succeeded before the Industrial Court vide the impugned judgment, are held to have worked for 240 days in continuous employment, are in service and would be eligible for the benefits of the first G.R. Similarly, the second G.R. indicates that those workers, who have been working on daily wages from 1.12.1994 and who have worked for five consecutive years and have completed 240 days in continuous employment in each year in between 1.11.1989 to 31.10.1994, have been held to be eligible for regularisation since the State has created 5089 posts for absorbing such daily wagers working in the Social Forestry Department.

9. In view of the above, these petitions are rendered of an academic interest. Nevertheless, since the issue of creation of posts was the core issue before the Industrial Court, these petitions will have to be partly allowed in so far as the declaration of unfair labour practices against the department is concerned. It is settled position that when the power to create posts vests with the State Government and until such posts are created, the Social Forestry Department cannot grant regularisation, there cannot be a declaration of ULP against the department, in the absence of posts.

10. In view of the above, these petitions are partly allowed to the extent of quashing the declaration of ULP under items 6 and 9 of Schedule IV. So also, all those workman who have succeeded before the Industrial Court, vide the impugned judgment, shall be considered for service benefits, inclusive of monetary benefits and regularization, as per the G.Rs. Dated 19.10.1996, 16.10.2012 and 10.05.2018. The petitioners shall consider their cases in the light of the said two Government Resolutions and shall take a decision with regard to grant of the benefits under the said two Government Resolutions, inclusive of monetary benefits and regularization.

11. The proposals shall be prepared by the petitioners/competent authority and shall be submitted to the appropriate department of the State of Maharashtra on / or before 31.07.2019. Thereafter, the department would consider the cases of each of the daily wagers, who have succeeded before the Industrial Court, vide the impugned

> *judgment and the decision shall be announced on / or before the 15th day of October, 2019. Since there is a possibility that most of these successful workmen before the Industrial Court would have completed 58 years of age and may have crossed the age of superannuation, the petitioners shall not pray for extension of time and shall consider their cases in view of the order of this Court,expeditiously, with promptitude and by giving highest priority. Their age would not be an impediment.*
>
> *12. The impugned judgment of the Industrial Court, therefore, stands merged in the directions of this Court. Needless to state, all the successful daily wagers before the Industrial Court and under the two Government Resolutions, will be eligible for continuity of service, monetary benefits and all benefits incidental and consequential thereto*."
>
> 3. Considering the above, this petition is partly allowed and the directions set out in paragraphs No. 9, 10, 11 and 12, reproduced above, shall be made applicable even to this petition.
>
> 4. In so far as paragraph no. 11 is concerned, the proposals shall be submitted on or before 31st July, 2019, the same would be considered and the decision will be announced on or before 15th October, 2019.
>
> 5. Rule is made partly absolute in the above terms.

28) Thus, in ***Dhanu Rama Ratod*** and ***Ramesh Dhadu Dhangar***, this Court directed consideration of cases as per the G.R.s dated 19 October 1996, 16 October 2012 and 10 May 2018. In my view, similar course of action deserves to be adopted in the present cases as well.

29) Thus, the State Government has formulated a specific scheme for regularization of daily rated forest workers and therefore cases of

Respondents also need to be considered in accordance with that scheme. It therefore cannot be contended that the Respondents cannot be considered at all for grant of permanency to them. Instead of granting them permanency straightaway on completion of 5 years of service as directed by the Industrial Court (***possibly as per Kalelkar Award***) it would be appropriate to direct consideration of cases of Respondents in accordance with the scheme floated bide above referred GRs. As observed above, Kalelkar Award merely confers CRTE status and does not contemplate grant of regularization or permanency in contradistinction to the above referred GRs, which do provide for regularization in service. To this limited extent, the orders passed by the Industrial Court needs modification.

30) Accordingly, I proceed to pass the following Order :

(i) Writ Petitions are partly allowed to the extent of setting aside the direction of Industrial Court for grant of permanency by taking into consideration five years of service prior to 21 July 1999.

(ii) Instead, there will be a direction for consideration of cases of Respondents for regularisation as per the Government Resolutions dated 19 October 1996, 16 October 2012 and 10 May 2018.

(iii) Petitioners shall accordingly consider cases of each of the Respondents as has been directed by this Court in ***Dhanu Rama Ratod*** and ***Ramesh Dhadu Dhangar***.

(iv) The proposals in this regard shall be submitted on/or before 30 November 2024 and decision thereon shall be taken on/or before 31 January 2025.

(v) Those Respondents who fulfill the criteria of completion of five years of service as on 1 November 1994, prescribed in the G.R. dated 31 January 1996, shall be considered for absorption w.e.f. 1 November 1994. However, in the event if it is found that some of the Respondents do not fulfill the criteria laid down in the G.R. dated 31 January 1996, they shall be considered for absorption in terms of the G.R. dated 16 October 2012.

(vi) Considering the peculiar facts and circumstances of the present case, where Respondents were terminated in February 2002, the condition of being in service as on 1 June 2012 shall not be insisted upon in case of such Respondents, who complete five years of service as on 30 June 2004. However, they shall be treated as having been absorbed in service w.e.f. 1 June 2012 in the event they fulfill the criteria of completing five years of service during the period from 1 November 1994 to 30 June 2004.

(vii) Most of the Respondents have crossed the age of superannuation and they/their heirs shall accordingly be paid consequential monetary benefits with effect from the dates of their absorption till the date of attaining the age of superannuation. After their superannuation, they shall be granted consequential retirement benefits.

(viii) Within 3 months of passing orders in case of each Respondents, the Petitioners shall pay the consequential monitory benefits to them, by deducting the amount of compensation already paid to them.

31) With the above directions, all the Writ Petitions are partly **allowed and disposed of.** Rule is made partly absolute in all petitions. There shall be no order as to costs.

NEETA SHAILESH SAWANT

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[SANDEEP V. MARNE, J.]