IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1140 OF 2017

The State of Maharashtra, through
Directorate of Medical Education
and Research & anr. } ....*Petitioners*

: Versus :

Smt. Sunita Shankarrao Vhatkar }....*Respondent*

ALONGWITH
WRIT PETITION NO. 2300 OF 2017

The State of Maharashtra, through
Directorate of Medical Education
and Research & anr. } ....*Petitioners*

: Versus :

Smt. Rajshri Raj Bakare }....*Respondent*

ALONGWITH
WRIT PETITION NO. 2297 OF 2017

The State of Maharashtra, through
Directorate of Medical Education
and Research & anr. } ....*Petitioners*

: Versus :

Ms. Snehal Narayan Melge }....*Respondent*

ALONGWITH
WRIT PETITION NO. 2299 OF 2017

The State of Maharashtra, through
Directorate of Medical Education
and Research & anr. } ....*Petitioners*

: Versus :

Smt. Aundhakar Premlata Murlidhar }....*Respondent*

ALONGWITH
WRIT PETITION NO. 2302 OF 2017

The State of Maharashtra, through
Directorate of Medical Education
and Research & anr. } ....***Petitioners***

: Versus :

Smt. Manisha Namdev Deshmukh }....***Respondent***

ALONGWITH
WRIT PETITION NO. 2303 OF 2017

The State of Maharashtra, through
Directorate of Medical Education
and Research & anr. } ....***Petitioners***

: Versus :

Ms. Vandana Anandrao Patil }....***Respondent***

ALONGWITH
WRIT PETITION NO. 2295 OF 2017

The State of Maharashtra, through
Directorate of Medical Education
and Research & anr. } ....***Petitioners***

: Versus :

Shri. Prakash G. Kavathekar }....***Respondent***

ALONGWITH
WRIT PETITION NO. 2301 OF 2017

The State of Maharashtra, through
Directorate of Medical Education
and Research & anr. } ....***Petitioners***

: Versus :

Smt. Minakshi Bhikaji Patil }....***Respondent***

ALONGWITH
WRIT PETITION NO. 2298 OF 2017

The State of Maharashtra, through
Directorate of Medical Education
and Research & anr. } ....***Petitioners***

: Versus :

Shri. Shivaji Bapuso Shelar }....***Respondent***

ALONGWITH
WRIT PETITION NO. 2047 OF 2017

The State of Maharashtra, through
Directorate of Medical Education
and Research & anr. } ....***Petitioners***

: Versus :

Shri. Hemant Madhukar Kale }....***Respondent***

ALONGWITH
WRIT PETITION NO. 2296 OF 2017

The State of Maharashtra, through
Directorate of Medical Education
and Research & anr. } ....***Petitioners***

: Versus :

Smt. Prashanti Ashok Kamble }....***Respondent***

Mrs. Vaishali S. Nimbalkar, *AGP for the Petitioners.*

Mr. Pandit Kasar, *for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

Dated : 10 October 2024.

ORAL JUDGMENT :

1) These petitions challenge the order dated 15 March 2013 passed by the Member, Industrial Court, Kolhapur allowing the Complaints filed by Respondents and directing grant of permanency to them from the date of the order of the Industrial Court with consequential benefits.

2) Government of Maharashtra, Directorate of Medical Education and Research issued Government Resolution dated 8 May 2003 sanctioning staffing pattern for Rajshri Chhatrapati Shahu Maharaj Government Medical College, Kolhapur (***the College***), under which 274 regular posts and 113 contract posts were sanctioned. Those 113 contract posts included academic posts, technical posts and administrative posts. It appears that by subsequent GR dated 4 June 2003, the Government constituted Committee of five members for conducting selection process for filling up the contractual posts created for various Government Medical Colleges including including the College, Kolhapur.

3) Though 113 contract posts were sanctioned by the Government of Maharashtra on 8 May 2003, it appears that the College undertook the exercise of making contractual appointments in technical categories in January 2003 itself. It is the case of the Respondent-employees that they had registered their names with the Regional Employment Exchange, the College sent requisition to the Employment Exchange and names of the Respondents were accordingly sponsored. It is the case of the Respondents that a

Selection Committee was constituted and they were subjected to selection process before being selected for appointment. After their selection, appointment orders were issued in January 2003. It would relevant to refer to the appointment order issued to Smt. Sunita Shankarrao Vhatkar (***Respondent in WP-1140/2017***). She was appointed on contract basis as Lab Assistant for a period of 90 days on consolidated pay of Rs.3,000/- per month. Her appointment was extended by order dated 3 May 2003 for further period of 90 days. The last appointment order was issued in her favour on 20 January 2004 appointing her from 10 January 2004 to 9 December 2004.

4) In the above factual background, the Respondents approached the Industrial Court, Kolhapur seeking the benefit of permanency on completion of 240 days of service. They also filed applications for grant of interim relief to restrain the Petitioners from discontinuing their services. It appears that the Industrial Court passed orders dated 6 November 2004 directing the Petitioners to maintain ***status-quo*** in respect of the employment of the Respondents. This is how they continued in service of the College. The Complaints have been allowed by common judgment and order dated 15 March 2013 by the Industrial Court, Kolhapur directing grant of permanency from the date of the order of the Industrial Court. The benefit of permanency is granted on account of completion of 240 days of service. The order dated 15 March 2013 passed by the Industrial Court is subject matter of challenge in the present petition. By order dated 2 March 2017, the petitions are admitted and this Court stayed the judgment and order dated 15 March 2013 but continued the order of ***status-quo*** during

pendency of the present petitions. This is how Respondents continue to be in service of the College till date.

5) I have heard Ms. Nimbalkar, the learned counsel appearing fo the Petitioners and Mr. Kasar the learned counsel appearing for the Respondent-employees.

6) By now it is well settled position of law by judgment of Division Bench of this Court in ***Municipal Council Tirora V/s. Tulsidas Baliram Bindhade***[1] that permanency cannot be granted in the services of the Government and its Instrumentalities in accordance with Clause 4(C) of the Model Standing Orders and that the Industrial Adjudicator cannot indirectly create posts on establishment of the Government and its Instrumentalities by issuing order for permanency. This Court held in ***Municipal Council, Tirora*** in paras-19, 20 and 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**

1 2016 (6) Mh.L.J. 867

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 Icchaporia (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.
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> 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.
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> *(emphasis added)*

7) In view of law expounded by Division Bench of this Court in ***Municipal Council, Tirora*** permanency cannot be granted to Respondent-employees merely on the strength of completion of 240 days of service.

8) However, it appears that Petitioners themselves were considering regularizing services of employees working on contract basis in the college. As observed above, while sanctioning the staffing pattern vide G.R. dated 8 May 2003, the State Government bifurcated the posts on the establishment of the College into 274 regular posts and 113 contract posts, in addition to 227 posts to be utilized on deputation from the establishment of the Directorate of Health Services. Why such bifurcation was resorted to, is difficult to comprehend at this stage, particularly considering the fact that 113 contract posts sanctioned for the College are continued for over 21

long years by now. It appears that against those 113 contract posts, 92 employees still continue to work in the College. This appears to be the reason why the State Government considered converting those contract posts into regular posts and accordingly called for necessary information from the Directorate by letter dated 6 January 2009 which reads thus:

> शासन निर्णय क्र. एमई डी १००२/सी . आर . २१७/२००२/शिक्षण -१, दि . ८ मे , २००३ अन्वये शासकीय वैद्यकीय महाविद्यालय कोल्हापूरसाठी एकूण १०३ कंत्राटी कर्मचाऱ्यांची पदे निर्माण करण्यात आली आहेत. ही पदे नियमित आस्थापनेवरील नसून कंत्राटी स्वरूपाची आहेत. या पदांवर काम करणाऱ्या कर्मचाऱ्यांना या शासन निर्णयांमध्ये नमूद केलेले एकत्रित वेतन देण्यात येते. सदर कर्मचारी सातत्याने त्यांना नियमित करण्यासंदर्भात निवेदने देत आहेत, हे आपणास विधीत आहेच. त्यांच्या निवेदनाच्या अनुषंगाने शासनस्तरावर प्रस्ताव तपासण्यात येत आहे. कंत्राटी पदे नियमित स्वरूपात भरवयाची झाल्यास प्रथमतः या महाविद्यालयात तितक्या प्रमाणात पदनिर्मिती करावी लागेल. सबब शासनस्तरावर प्रस्तावावर विचारविनिमय करण्याच्या दृष्टीने खालील मुद्द्यांवरील माहिती तात्काळ सादर करावी.
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> १) सर्व कंत्राटी पध्दतीने भरण्यात आलेले सर्वच्या सर्व म्हणजे १०३ कर्मचारी सद्यःस्थितीत कार्यरत आहेत काय
> २) ही पदे नियमित करावयाची झाल्यास किमान वेतनश्रेणीमध्ये अंदाजे या पदांसाठी वार्षिक खर्च किती येईल
> ३) आता कंत्राटी कर्मचाऱ्यांवर वेतनापोटी होणारा वार्षिक खर्च किती, म्हणजेच नेमका किती अतिरिका बोजा शासनावर पडेल
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> ४) या कर्मचान्यांना सामावून घेण्यास आपल्या आस्थापनेवर किती रिक्त पदे उपलब्ध आहेत व त्यांचे समायोजन कशा प्रकारे होऊ शकेल, याबाबतचा तपशील
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> ५) २००३ च्या शासन निर्णयामध्ये करार पध्दतीने भरावयाची ही पदे विहित पध्दतीने भरावीत असे आदेशित केले आहे. प्रत्यक्षात या सर्व १०३ कर्मचाऱ्यांना नियुक्ती देताना कोणती विहित पध्दत अवलंबिली याचा स्पष्ट तपशील द्यावा.
>
> उपरोक्त माहिती शासनास उलट टपाली कळविण्यात यावी, ही विनंती.

9) It appears that the requisite information was provided by the College to the Directorate by letter dated 21 January 2009 which reads thus :

प्रति,
मा. संचालक,
वैद्यकीय शिक्षण व संशोधन,
मुंबई.

विषय :- कंत्राटी पध्दतीवरील वर्ग- ३ व ४ च्या कर्मचाऱ्यांनी सेवा नियमित करण्याबाबत.

संदर्भ :-१) शासनाचे पत्र क्र. डीएमआर २००५/प्र.क्र.८०/०५/वैसेवा-४, वैद्यकीय शिक्षण व औषधीद्रव्ये विभाग मंत्रालय, मुंबई ३२, दि. ६/१/०९

२) मुख्य प्रशासकीय अधिकारी संचालनालय यांचा दि. २०/०१/०९ चा दूरध्वनी संदेश

मा. महोदय,

आपल्या उपरोक्त दूरध्वनी संदेशानुसार कंत्राटी पध्दतीवरील वर्ग ३ व ४ कर्मचाऱ्यांना सेवा नियमित करण्याबाबतची माहिती खालीलप्रमाणे सादर करीत आहे.

१) कंत्राटी पध्दतीने मंजूर असलेल्या १०३ पदांपैकी सद्यः स्थितीत ९२ कर्मचारी कार्यरत आहेत.

२) कंत्राटी पध्दत नियमित करावयाची झाल्यास किमान वेतनश्रेणी प्रमाणे अंदाजे वार्षिक खर्च रुपये १२६३५४१२/- इतका होईल.

३) सध:स्थितीत कंत्राटी कर्मचाऱ्यांना वेतनापोटी वार्षिक खर्च रुपये ३९९०६००/- इतका आहे. म्हणजेच नेमका रुपये ८६४४८१२/- इतका अतिरीक्त बोजा शासनावर पडेल.

४) कंत्राटी कर्मचाऱ्यांना सामावून घेण्यास संस्थेच्या त्यास्थापनेवर खालीलप्रमाणे रिक्त पदे उपलब्ध आहेत.

अ .क्र	करारपध्दतीचे पदनाम	पदसंख्या	नियमित आस्थापनाची पदे		
			मंजूर पदे	भरलेली पदे	रिक्त पदे
१	२	३	४	५	६
वर्ग ३					
०१	पशु वैद्यकीय अधिकारी	०१	००	०२	००
०२	कार्यालयीन अधिक्षक	०२	०२	०२	०२
०३	निम्नश्रेणी लघुलेखक	१०	०४	०३	०१
०४	वरीष्ठ लिपीक.	०३	१०	१०	००
०५	भांडारपाल	०९	०३	०३	००

०६	क .लिपिक	०९	१०	०१	०९
०७	सहायक ग्रंथपाल	०२	००	००	००
०८	प्रयोगशाळा तंत्रज्ञ	२५	१२	०७	०५
०९	प्रयोगशाळा सहायक	११	३४	१७	१७
१०	वैद्यकीय सा. कार्यकर्ता	०८	०३	०३	००
११	वायरमन	०१	००	००	००
१२	दुरध्वनी चालक	०३	००	००	००
१३	वाहन चालक	०३	०१	०१	००
	एकुण	८७	७९	४७	३२
			वर्ग - ४		
०१	प्रयोगशाळा परिचर	०८	१४	१३	०१
०२	पहारेकरी / माळी	०८	००	००	००
	एकुण	१६	१४	१३	०१
	एकुण-(**वर्ग -३ + ४)**	१०३	९३	६०	३३

वर नमूद केलल्या विवरणपत्रातील रकाना क्र. ६ मध्ये रिक्त पदाचर कंत्राटी पध्दतीवरील तेवढ्याच कर्मचाऱ्यांना समायोजित करता येऊ शकेल उर्वरित कंत्राटी कर्मचाऱ्यांना समायोजित करण्यासाठी नवीन पदे निर्माण करावी लागतील.

५) कंत्राटी पद्धतीने वर्ग ३ व ४ कर्मचाऱ्यांना नियुक्ती देताना स्थानिक वर्तमानपत्रात जाहिरात देण्यात आली व त्याचप्रमाणे सेवायोजन कार्यालयांकडून यादी मागवून त्या सर्व उमेदवारांची लेखी परीक्षा घेण्यात आली व तोंडी मुलाखाती घेऊन उमेदवारांची निवड करण्यात आली आहे . तथापि प्रयोगशाळा तंत्रयांची ४ पदे, कनिष्ट लिपिक २ पदे, सहायक ग्रंथपाल २ पदे , पहारेकरी ४ पदे , प्रयोगशाळा परिचर ०१ अशा एकूण १३ पदावर उमेदवारांकडून प्राप्त झालेल्या थेट अर्जावर गठीत केलेल्या समितीच्या शिफारशीनुसार मुलकात घेऊन नियुक्त्या देण्यात आलेल्या आहेत.

आपला विश्वासू ,

अधिष्ठता,
राजर्षि छत्रपती शाहू महाराज ,
शासकीय वैद्यकीय महाविद्यालय , कोल्हापूर

10) In para-5 of the letter dated 21 January 2009 the College has specifically confirmed the fact that while appointing the Respondents, requisition was send to the Employment Exchange,

candidates were subjected to written tests, as well as, oral interviews and thereafter they were appointed on contract basis.

11) It thus appears that the proposal for converting 113 contract posts into a regular posts was under consideration of the State Government. However, it is unknown at this stage as to whether the said proposal was taken to its logical end.

12) In the meantime, it appears that the contract employees who were being paid consolidated wages were brought on pay scales by issuance of the G.R. dated 23 January 2014. By the said G.R. it was directed that the contract employees shall be placed in the minimum of the pay scale plus grade pay plus dearness allowance. Accordingly, Smt. Sunita Vhatkar was granted pay fixation by the College by placing her in the pay scale of the post of Lab Technician.

13) Considering the above position, since the State Government itself was considering proposal for converting 113 contract posts into regular one, in my view the case of Respondent-employees needs to be considered for grant of regularisation by the State Government. Therefore, though the order passed by the Industrial Court directing permanency on account of completion of 240 days of service cannot be sustained, the Respondent-employees cannot be denied opportunity of having their cases considered for regularisation in terms of the proposal mulled by the State Government in the year 2009. Infact in ***Hari Nadan Prasad V/s. Employer I/R to Management of FCI & Anr.***[2] the Supreme Court has held that

2 (2014) 7 SCC 190

Industrial Adjudicator can direct regularisation in the services of Government and its Instrumentalities if there is a scheme formulated for such regularisation. In ***Hari Nandan Prasad*** (supra), the Apex Court has considered the issue of jurisdiction of Labour and Industrial Courts to direct regularisation dehorse the law expounded in Constitution Bench judgment in ***Secretary, State of Karnataka V/s. Umadevi***[3]. The Apex Court considered its judgment in ***MSRTC V/s. Casteribe Rajyha Parivahan Karmachari Sanghatana***[4] and held in paras-34, 35, 39 and 40 as under :

> **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., 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 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 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.

3 (2006) 4 SCC 1

4 (2009) 8 SCC 556

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.

14) A useful reference in this regard can also be made to the judgment of Single Judge of this Court (*Ravindra Ghuge, J.*) in ***Raigad Zilla Parishad V/s. Kailash Balu Mhatre and Ors.***[5] in which this Court while denying the relief of permanency on completion of 240 days of service by following the judgment in ***Municipal Council, Tirora*** has directed that proposals of temporary employees of Raigad Zilla Parishad working for several years be send to the State Government for sanction of vacancies for the purpose of consideration of their cases for grant of benefit of permanency. In my view, similar course of action deserves to be followed in the present case as well.

15) I accordingly proceed to pass the following order :

(I) Judgment and order dated 15 March 2013 passed by the Industrial Court, Kolhapur stands modified to the extent that Petitioners shall forward proposals of Respondent-employees for consideration of their cases for grant of regularisation by converting the posts occupied by them on contract basis as regular posts.

(II) If the State Government sanctions the proposals for converting the contract posts occupied by the Respondent-employees into regular posts, the Respondent-employees shall be granted the benefit of regularisation from the dates of such conversion with all consequential benefits.

5 Writ Petition No.407/2018 decided on 5.01.2022

(iii) Till the State Government decides the proposal of the Respondent-employees and for a period of two months thereafter, their services shall be continued.

(iv) In the event, the State Government rejects the proposal of Respondent-employees, they shall be at liberty to challenge the orders passed by the State Government before the appropriate forum.

16) With the above directions, the Writ Petitions are **disposed of.** Rule is discharged.

[SANDEEP V. MARNE, J.]