IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5239 OF 2005

The Executive Engineer
Maharashtra Rajya Vidyut Mandal
having office at Construction and
Sanchalan Parirakshan Vibhag,
Nachane Road, Ratnagiri ....Petitioner

V/S

Suchita Vijay Survey
r/o 1708, Teli Ali, Patliwadi,
Ratnagiri ....Respondent

WITH
INTERIM APPLICATION NO.3545 OF 2022
IN
WRIT PETITION NO.5239 OF 2005

Suchita Vijay Surve
Age 58 years, Occ. -
R/at A1, Shree Smarth Siddhi
Apartment, Opp. M.I.D.C. Post Office,
near J.K. Files, Ratnagiri ....Applicant

IN THE MATTER BETWEEN

The Executive Engineer
Maharashtra Rajya Vidyut Mandal
presently known as Maharashtra
State Electricity, office at Operation
and Maintenance Division,
Nachane Road, Ratnagiri Kazi ....Petitioner

V/S

Suchita Vijay Survey
r/o 1708, Teli Ali, Patliwadi,
Ratnagiri ....Respondent

Mr. A.R.S. Baxi, *for the Petitioner.*
Mr. Rahul Nerlekar with Mr. Sachindra B. Shetye and Mr. Akshay Pansare *for Respondent.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 03 OCTOBER 2024.
PRONOUNCED ON: 09 OCTOBER 2024.

J U D G M E N T:

1. Petitioner-Electricity Board has filed this Petition challenging the Award dated 31 March 2005 passed by Presiding Officer, Labour Court, Ratnagiri in Reference (IDA) No.3 of 1997. The Labour Court has answered the Reference partly in the affirmative and has directed Petitioner to reinstate Respondent on the post of regular Typist with 50% back-wages. Petitioner– Board is also directed to confer status and privileges of permanent employee on Respondent from the date of completion of 240 days of uninterrupted service in a period of 12 calendar months with further direction to pay resultant benefits.

2. Respondent was engaged in the Divisional Office of Petitioner-Electricity Board to perform the job of Typist by letter

dated 15 January 1987 on remuneration of Rs.10/- per 1,000 words. According to Respondent, she was terminated from service by oral order on 1 July 1993. She therefore approached the Conciliation Officer, Ratnagiri and filed demand application. Since Conciliation proceedings resulted in failure, Reference was made to Labour Court, Ratnagiri which was registered as Reference (IDA) No.3 of 1997. Respondent filed her Statement of Claim not only challenging termination but she also sought permanency in service. The Statement of Claim was resisted by Petitioner-Electricity Board by filing Written Statement. Both parties led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, Labour Court answered the Reference partly in the affirmative directing Respondent's reinstatement in service with 50% back-wages. Petitioner-Board is further directed to confer status and privileges of permanent employee on the Respondent on completion of 240 days of service in a period of 12 calendar months with necessary consequential benefits. Aggrieved by Award dated 31 March 2005, the present Petition is filed.

3. The Petition came to be admitted by this Court by order dated 23 February 2006 by which time amount of 50% back-wages of Rs.64,776/- was already deposited by Petitioner-Board in the lower Court. This Court permitted Respondent to withdraw the said amount on furnishing the necessary security. This Court granted

interim relief in terms of prayer clause (c) by which further proceedings pursuant to the impugned Award were stayed. Respondent filed Civil Application No.1301 of 2006 in which order was passed on 29 August 2006 observing that the amount of Rs.64,776/- did not represent 50% of back-wages as payable to regularly appointed Clerk cum Typist. This Court therefore directed deposit of balance amount of backwages. Petitioner-Board later realized that grant of interim relief in terms of prayer clause (c) did not amount to stay of the Award and therefore filed Civil Application No.1325 of 2008 for staying the Award dated 31 March 2005. Since this Court passed order granting stay to the impugned Award. It appears that Petitioner-Board has paid to the Respondent last drawn wages of Rs.776/- per month under provisions of section 17B of the Industrial Disputes Act **(ID Act)** till the age of attaining superannuation.

4. Ms. Baxi, the learned counsel appearing for Petitioner-Electricity Board would submit that Respondent was never appointed in the service of Petitioner-Board and her services were utilized only based on quantum of work by paying remuneration of Rs.10/- per 1,000 words. That the engagement letter itself made it clear that award of such work would not confer any right on Respondent to claim service or appointment with Petitioner-Board. That she was merely appointed on contract basis depending on the availability of work and no right was created in her favour to continue to remain in service. That her contract was discontinued

when work was not available. That she was not appointed after following process of selection nor she worked against any regularly sanctioned post. Ms. Baxi would therefore submit that Respondent did not have right to remain in service of Petitioner-Board nor could have claim permanency. She would submit that Labour Court has erred in directing the reinstatement and permanency. She would pray for setting aside the impugned Award.

5. The Petition is opposed by Mr. Nerlekar, the learned counsel appearing for Respondent. He would submit that Respondent was illegally terminated without following due process of law despite completion of more than 240 days of service in each year. That she rendered continuous service with Petitioner-Board from the year 1987 till her termination on 1 July 1993. That therefore Labour Court has rightly directed reinstatement in service. So far as the relief of permanency is concerned, Mr. Nerlekar would submit that Model Standing Orders formulated under provisions of Industrial Employment (Standing Orders) Act, 1946 would clearly apply to the Petitioner-Board and therefore on completion of 240 days of service, Respondent become entitled for grant of benefit of permanency. He would rely upon judgment of the Apex Court in ***Bharatiya Kamgar Karmachari Mahasangh vs. Jet Airways Ltd.,*** 2023 SCC OnLine SC 872 in support of his contention that permanency is required to be granted as per the Model Standing Orders. He would draw my attention to the orders passed by this Court on 28

November 2005 and 2 January 2006 by which Petitioner-Board was directed to disclose on oath availability of vacancies. That vacancies of Clerk-cum-Typist existed at the relevant time and Respondent-employee deserves to be regularized in service against such available vacant posts. Mr. Nerlekar would therefore pray for dismissal of the Petition.

6. After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that Respondent was not really appointed in the service of Petitioner-Board. She was engaged on contract basis to perform the work of typing. She did not draw any salary either on daily or monthly basis. On the contrary, she was paid in accordance with the volume of work performed. It would be apposite to reproduce the initial engagement letter dated 15 January 1987 which reads thus:

आस्थापना/२९/२४४ दि. १५-१-८७

प्रति,
डी. डी. फटकरे,
कु. **अेस**. डी. शिंदे,
रत्नागिरी.

विषयः <u>टायपिंग काम करण्याबाबत</u>

महाशय,

आपणास संचलन सुव्यवस्था व उभारणी विभागीय कार्यालय महाराष्ट्र राज्य विद्युत मंडळ, रत्नागिरी येथील टक्केखनाचे काम प्रती हजार शब्दास दहा रुपये या मोबदल्यात देण्यात येत आहे. सदर कामाची मुदत अनिश्चित राहिल व या कामाचा आपणास मंडळात नोकरी देण्याशी कोणत्याही प्रकारचा संबंध राहणार नाही याची नोंद घ्यावी.

आपला विश्वासू,
सही/-
कार्यकारी अभियंता
रत्नागिरी

7. Thus, there was no appointment of Respondent in the service of the Petitioner-Board. She was not under obligation to attend duties at specified time. No supervisory or disciplinary powers were to be exercised on her by any particular officer. She was not to perform duties as an employee of the Petitioner-Board. She was merely called upon to perform typing work and was to be paid remuneration based on volume of work performed, which was Rs.10/- per 1,000 words. The letter dated 15 January 1987 itself made it clear that award of work to her would not amount to grant of appointment in the service of Respondent.

8. Another letter dated 26 June 1992 is produced on record by which contractual work of typing was awarded to Respondent for the period from 1 July 1992 to 30 June 1993. Again, the remuneration was Rs.10/- per 1,000 words. The letter once again provided that award of work could not mean appointment of Respondent in service. Letter dated 26 June 1996 reads thus:

"26 जुन 1992

आस्था नं. 3214

प्रति,
1) श्री दिवाकर दत्तराम फटकरे,
संजय निवास, 657 "क"
थिंबा पॅलेस मागे, एस.व्ही. रोड,
रत्नागिरी.

2) सौ. सुचिता विजय सुर्वे,
1708, तेली आळी (पाटीलवाडी)
रत्नागिरी.

विषयः– विभागीय कार्यालय, रत्नागिरी येथील टंकलेखनाचे काम कंत्राटी पध्दतीने करण्याबाबत.....

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महोदय/महोदया,

आपल्या दि.22–6–92 च्या अर्जाचा विचार करून विभागीय कार्यालय, रत्नागिरी येथील टंकलेखनाचे काम कंत्राटी तत्वावर देण्यात येत असून त्याचे दर खालीलप्रमाणे असतीलः

प्रती 1000 'शब्दांचे टंकलेखन करणे :– 10 रू. प्रति हजारी.

सदरच्या कामासाठी लागणारा कागद तसेच मशीन कार्यालयाचे असेल.

सदरचे काम हे दि.1–7–92 ते 30–6–93 या कालावधीकरिता देण्यात येत असून सदरचे कंत्राट कोणतीही पूर्व सूचना न देता रद्द करण्याचे अधिकार खालील सही करण–यांना राहतील.

सदरचे काम हे कार्यालयीन वेळेमध्ये कार्यालयात बसून करणेचे आहे (सकाळी 10–30 ते 17–30)

सदरच कंत्राटी कामा नंतर विद्युत मंडळाच्या सेवेमध्ये समावून घेण्यास कोणतीही हमी विद्युत मंडळ देऊ शकत नाही. तसेच विद्युत मंडळाच्या सेवेमध्ये समावून घेण्याविषयी कोणत्याही प्रकारचा हक्क सांगता येणार नाही.

आपला स्नेहांकित
सही–
कार्यकारी अभियंता, रत्नागिरी''

9. In my view therefore, Respondent was never treated as an employee of Petitioner-Board. She was never appointed in service even on temporary basis. Therefore, there is no question of her termination from service. Hence issue as to whether termination was valid or otherwise becomes entirely irrelevant. Only an employee, who is appointed in service, can be terminated. A person who is awarded work on quantum basis without any obligation to attend duties for specified time cannot be treated as in employment of the employer. In my view therefore the Labour Court has erred in assuming that Respondent was employed in service of the Petitioner-Board. The Labour Court has erred in recording following findings in paragraph 8 of the Award:

> 8. Before proceeding further I must note that second party employee has made out a specific case and alleges that she is in employment of first party since 1986. This fact is nowhere specifically denied by the first party. On the contrary the written statement para 2a. indicates that first party admits the facts that she was in the employment for the period 16.4.1986 to 30.6.1986. In such circumstances it was incumbent on part of the first party employer to place on record all appointment orders issued by the employer in favour of the employee. The first party has placed on record a single order dated 26.06.1992.

10. The above finding of the Labour Court is perverse as Petitioner-Board had specifically pleaded in the Written Statement that Respondent was never in the employment of the Petitioner-Board. The relevant averment in this regard is to be found in paragraph 4 of the Written Statement which reads thus:

> Without prejudice to the foregoing, it is respectfully submitted that the First Party was not in the Second Party Board's employment, as she was not given an written Appointment Order.

11. Petitioner-Board further contended that it did not have any control on Respondent, she had no fixed working hours and that she was paid as per the bills submitted by her at the rate of Rs.10/- per 1,000 words. The relevant averments in this regard are reproduced below:

> (c) It is respectfully submitted that the First Party did not have any control over the Second Party whatsoever. She was assigned some typing work and she had to complete it. No working hours were fixed for her. She had to complete the assigned work using the Typewriter and Papers provided by the First Party. However, as some confidential reports were required to be typed and some of the work was required to be done as per the instructions of the Officers she was asked to work when the officers are present in the Office.
>
> (d) Second Party was paid as per the bill submitted by her. The remuneration was fixed at Rs. 10/- (Rupees Ten only) per thousand words. She was paid by account payee cheque.

12. The Labour Court did not appreciate the position that Respondent was like a contractor, who used to raise bills in respect of work performed by her and the said bill used to get paid after its certification. Considering the above facts, the Labour Court has completely erred in holding that Respondent was an employee of the Petitioner-Board. Her discontinuation after 30 June 1993 was

on account of non-availability of work. The relevant averment in this regard is to be found in paragraph 2(e) of the Written Statement, which reads thus:

> (e) The contractor for the service with the Second party was not renewed after 30/06/1993 for the reason that sufficient work was not available with the First Party. The Second Party, however, mistakenly assumed that she is in the employment of the Respondent and further took the non-renewal of the contract as her dismissal. Which is not the case in fact.

13. There was no employer-employee relationship between the parties. The Petitioner-Board was not under obligation to provide work to Respondent, even if the same was available. In my view therefore the Labour Court has grossly erred in assuming that services of Respondent were terminated. As a matter of fact, Respondent was not in the service of Petitioner-Board as an employee and did not have any right to be continued even on contract basis.

14. In my view therefore, the Labour Court has erred in assuming that Respondent was terminated from service. The direction for reinstatement and for payment of 50% backwages is therefore erroneous. The further direction for grant of permanency is also clearly erroneous. Petitioner-Board is an instrumentality of State and Clause 4C of the Model Standing Orders would not apply to as held by Division Bench of this Court in ***The Municipal Council Tirora & Anr. vs. Tulsidas Baliram Bindhade,*** Writ Petition No.5191 of 2004 decided on 16 December 2016. Therefore, mere

completion of 240 days of service in State instrumentality does not create any inherent right in favour of a temporary employee to secure permanency. Grant of permanency in services of Government or State instrumentalists has a different connotation as compared to private service. In private service, grant of permanency would merely entail payment of wages on par with regular employees as well as continuation in service till termination in accordance with law. In the Government service however, grant of permanency means that the permanent Government servant cannot be removed from service unless he commits any misconduct and he has right to continue in service till attaining age of superannuation. Grant of regularization in Government service or in the service of State Instrumentality depends on availability of sanctioned posts. An industrial adjudicator cannot direct creation of post in services of State Instrumentality in an indirect manner by directing grant of permanency to any temporary worker completing 240 days of service. This is the reason why Division Bench of this Court in ***Municipal Council Tirora*** (supra) has held that Model Standing Order 4C would not apply in case of State Instrumentalists. The law enunciated by Division Bench in ***Municipal Council Tirora*** (supra) would apply with full force in the present case as well. Respondent has never been appointed in the service of Petitioner-Board. Even if her engagement is treated as appointment in service, there is nothing to indicate that such engagement was against a regularly sanctioned post. Respondent has not

participated in selection process. She is a backdoor entrant. She performed work as typist in contract basis hardly for six years and does not satisfy the requirement of completion of 10 years of service for qualifying in the one-time exception made by Constitution Bench judgment in ***Secretary, State of Karnataka Vs. Umadevi*** (2006) 4 SCC 1. In such circumstances, she did not have any right to seek permanency in the service of Petitioner-Board. In my view therefore, direction for grant of permanency to Respondent is clearly erroneous and liable to be set aside.

15. Reliance by Mr. Nerlekar on the judgment of the Apex Court in ***Bharatiya Kamgar Karmachari Mahasangh*** (supra) does not cut any ice. The judgment relates to grant of permanency in services of *Jet Airways Ltd.,* a private entity, in accordance with the Model Standing Orders. The debate before the Apex Court was about superiority of Model Standing Order via-a-vis Memorandum of Settlement. The Apex Court held that the Model Standing Order would prevail over settlement agreement. The judgment, in my view, has no application to the facts and circumstances of the present case.

16. On account of pendency of the present Petition and in view of the various interim orders passed by this Court from time to time, Respondent has already withdrawn amount of 50% back-wages. She is apparently paid last drawn wages under section 17B of the ID Act till she attained the age of superannuation. Ms. Baxi

would submit that the total amount withdrawn and paid by and to Respondent is Rs.5,92,156/-. It appears that Respondent attained the age of retirement in the year 2021. In such circumstances though the Award of the Labour Court is being set aside, I am not inclined to direct any recovery against Respondent. Thus, various interim orders passed by this Court has resulted in payment of amount of Rs.5,92,156/-. Even if termination of Respondent was to be held illegal, at the highest, some compensation could have been paid to her. In the peculiar facts and circumstances of the case, Rs.5,92,156 can be considered as compensation payable to her. In that view of the matter, I am not inclined to order any recovery from Respondent though the Award passed by the Labour Court is not found to be in order.

17. Writ Petition accordingly succeeds. Award dated 31 March 2005 passed by Labour Court, Ratnagiri in Reference (IDA) No.3 of 1997 is set aside. However, no recovery shall be effected against Respondent in respect of any payment already made to her in pursuance of the impugned Award. Writ Petition is accordingly **allowed**. Rule is made absolute. There shall be no order as to costs.

18. In view of the disposal of the Writ Petition, nothing would survive in the Interim Application and the same is accordingly **disposed of**.

(SANDEEP V. MARNE, J.)