CASE NO.:
Appeal (civil) 4262 of 1999

PETITIONER:
State of Maharashtra and Ors.

RESPONDENT:
R.S. Bhonde and Ors.

DATE OF JUDGMENT: 17/08/2005

BENCH:
ARIJIT PASAYAT & H.K. SEMA

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

State of Maharashtra and the Punjabrao Krishi Vidyapeeth (hereinafter referred to as the 'University') question legality of the judgment rendered by a Division Bench of the Bombay High Court, Nagpur Bench. By the impugned judgment the High Court directed that there was no necessity for obtaining approval of the State Government for the purpose of treating the respondents (hereinafter referred to as the 'employees') as the permanent employees w.e.f. 7.11.1983 and that they are entitled to all benefits from that date as permanent employees.

Background facts in a nutshell are as follows:

The respondents and several others, who according to the appellants were engaged on seasonal basis, approached the Industrial Court, Maharashtra, Nagpur Bench, Nagpur by filing complaint purportedly under Section 28 read with Item 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the 'Act'). The case of the complainants was that they were continuously working with the present appellant no.2-University in the College of Agriculture, Nagpur without any break in service as daily-wagers. The nature of duties performed by them is of permanent nature. Even though they were being continued as temporary employees, they attended work of permanent nature. According to them this practice was being followed to deprive them from getting benefits which a permanent workman is entitled and this amounted to unfair labour practice under Item 6 of Schedule IV of the Act. Prayer was made to restrain the University and the College from continuing with the unfair labour practice complained of and to make the complainants permanent in the post they were working. Stand of the University and the College was that by itself it cannot create permanent posts as the State Government has to be approached for this purpose. It was pointed out that the State Government was approached for making 140 labourers permanent. The Industrial Court held that there was unfair labour practice and directed the respondents i.e. the University and the College to make the complainants permanent subject to the approval of the State Government. Stand taken by the University was with reference to Section 50(B) of the Punjabrao Krishi University (Krishi Vidyapeeth)

Act, 1968 (in short the 'University Act'). Six writ petitions were filed by the University questioning correctness of the judgment rendered by the Industrial Court. A learned Single Judge of the High Court of the Bombay High Court, Nagpur Bench in Writ Petition no. 143/1983 along with writ petition nos. 170/1983, 1171/1982, 1172/1982, 1173/1982 and 1174/1982 held that the order passed in the complaint cases was to be modified to the extent that for the words "subject to the approval of the State Government" in each of the case the words "subject to the prior approval of the State Government" were to be substituted.

Thereafter, ten persons who are respondents herein filed a writ petition before the High Court to implement the order of the Industrial Court. By the impugned judgment the High Court held that the Industrial Court's order was to be modified by excluding the words "subject to the approval of the State Government". Accordingly, directed that all the respondents were to be treated as permanent employees with all benefits w.e.f. 7.11.1983 i.e. the day on which Section 50(B) of the University Act was repealed by Maharashtra Agricultural Universities (Krishi Vidyapeeth) Act, 1983 in (short the '1983 Act'). According to the High Court there was no provision similar to Section 50(B) of the Act in 1983 Act and, therefore, the question of any approval much less prior approval of the State Government did not arise.

Learned counsel for the appellants submitted that the order dated 25th July, 1983 by which writ petition no. 143/83 and other cases were disposed had attained finality. Merely because the provision which was in operation when the order of the Industrial Court was passed had subsequently been repealed, same was really of no consequence.

Per contra, learned counsel for the respondent submitted that the direction of the High Court is in order keeping in view the fact that the University at all points of time had taken the stand that it had a scheme for regularization.

It is to be noted that the University as revealed from the affidavits filed before the High Court, had stated that more than 3,000 workers were engaged from time to time on daily-wages basis, besides 970 workers working on regular basis. Whenever a post fell vacant or newly created with the approval of the competent authority and following due procedure the vacancies are filled up from amongst those who are on daily-wages according to their zone-wise seniority list separately maintained for Nagpur and Amaravati zones. This position is not disputed by the respondents. That being so, the order of the High Court is clearly untenable on more than one counts. Firstly, the order in writ petition no. 143/83 and other connected cases dated 25th July, 1983 had become final and there was no challenge to it. Prayer in the subsequent writ petition to enforce Industrial Court's Order is clearly not maintainable. Merely because Section 50(B) of the Act was repealed that did not take away the effect of the order passed by the High Court in the earlier cases. The prayer for enforcement of the Industrial Court's order in its original form could not have been made, when the same had been modified by the High Court's order which had attained finality.

Additionally, as observed by this Court in Mahatma Phule Agricultural University and Ors. v. Nazsik Zilla Sheth Kamgar Union and Ors. (2001 (7) SCC 346) the status of permanency cannot be granted when there is no post. Again in Ahmednagar Zilla Shetmajoor Union v. Dinkar Rao Kalyanrao Jagdale (2001 (7) SCC 356), it was held that mere continuance every year of seasonal work obviously during the period when the work was available does not constitute a permanent status unless there exists posts and regularization is done.

Above being the position the impugned judgment of the High Court cannot be maintained and is set aside. It is, however, not in dispute that except respondent no.8 who has died in the meantime the others have been at points of time regularized. The regularization shall take effect from the respective dates of order in that regard as passed by the authority and not from 7.11.1983 as directed by the High Court.

The appeal is allowed to the aforesaid extent without any order as to costs.