

PETITIONER:
MAHARASHTRA STATE COOPERATIVE COTTONGROWERS MARKETING FEDERATION

Vs.

RESPONDENT:
SHRIPATI PANDURANG KHADE & ORS. ETC.

DATE OF JUDGMENT 11/10/1988

BENCH:
DUTT, M.M. (J)
BENCH:
DUTT, M.M. (J)
NATRAJAN, S. (J)

CITATION:
1989 AIR 485 1988 SCR Supl. (3) 472
1989 SCC Supl. (1) 226 1988 SCALE (2) 1005

ACT:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971--Section 5(d)--Duty of Industrial Court to decide complaints relating to unfair labour practices except those falling in item I of Schedule IV of the Act.

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Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971--Unfair Labour Practice--What is--An industrial award declared employees permanent--Appellant treated them as seasonal or temporary employees. Held--Amounts to unfair labour practice.

HEADNOTE:

Industrial Court--Duty of--Must give an opportunity to applicants to explain the delay if the complaints are barred by limitation.

The respondents were earlier the employees of an organisation called the Maharashtra State Cooperative Marketing Federation Limited (Marketing Federation). Later a new organisation namely the Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd., the appellant herein, was formed and some of the activities of the Marketing Federation were assigned to it. By letter dated 10th August, 1984, the Government directed the Marketing Federation that the services of the seasonal staff should be terminated and those of the regular staff be placed at the disposal of the new organisation. As the Marketing Federation and the appellant failed and neglected to give them the permanent status, the respondents made a complaint before the Industrial Court complaining of unfair labour practices on the part of the Marketing Federation as also the appellant herein as contained in Items 6 and 9 of the Schedule IV of the Act. The workers stated that even when there was an award in their favour by the Industrial Tribunal declaring them as permanent employees, yet the Marketing Federation and the appellant did not give them the status of permanent employees. The Industrial Court took the view (i) that the complaints made by the respondents did not come under items nos. 6 and 9 but they came under item No. I and as such he could not decide the complaints in view of

PG NO 473

section 5(d) of the Act, (ii) that there was no unfair labour practice on the part of the Marketing Federation or the appellant, and (iii) that the complaints were barred by limitation. The Industrial Court dismissed the complaints of the respondents. Feeling aggrieved the respondents filed writ petitions before the High Court and the same were allowed. Hence these appeals by special leave. The appellant contended that the award of the Industrial Court was not binding on them. Dismissing the appeals, this Court,

HELD: In view of the Award, it must be held that the respondents were the permanent employees of the Marketing Federation, and that after the constitution of the appellant and the transfer of the employees of the Marketing Federation to the appellant, the appellant was bound to accept the respondents as permanent employees and not to treat them as seasonal employees or temporary employees. This act on the part of the appellant amounts to unfair labour practice. [476E-F]

There is no justification for the finding of the Industrial Court that the complaints made by the respondents do not come within the purview of Items Nos. 6 and 9 of the Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. No reason has been given by the Industrial Court why the complaints come within Item No. I of Schedule IV and, as such, can be decided only by the labour Court and not by the Industrial Tribunal. The complaints made by the respondents are clear and specific and there was no scope for categorising them as complaints under Item No. I of Schedule IV. [476G-H;477]

It has been assumed by the Industrial Tribunal that the respondents came to know that they were being appointed as seasonal employees on the respective dates of their appointment letters. There is, however, no material on record to show on what dates the appointment letters were served on the respondents. In the circumstances, the Industrial Court was not at all justified in holding that the complaints filed by the respondents were barred by limitation. Even assuming that the complaints were barred by limitation, as held by the Industrial Court, the Industrial Court should have given an opportunity to the respondents for explaining the delay. No such opportunity has been given to the respondents. Accordingly, this Court is unable to subscribe to the view of the Industrial Court that the complaints filed by the respondents were barred by limitation. [477B-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No 3719-3721 of 1988.

PG NO 474

From the Judgment and Order dated 9/10.3.1987 of the Bombay High Court in W.P. Nos. 620, 622 and 621 of 1986.

G. Ramaswamy, Additional Solicitor General and A.M. Khanwilkar for the Appellant.

Dr. R.S. Kulkarni, Jitender Sharma, D.M. Nargolkar and A.S. Bhasme for the Respondents.

The Judgment of the Court was delivered by

DUTT, J. Special leave is granted. Heard learned Counsel for the parties.

These appeals preferred by the appellant, the Maharashtra State Cooperative Cotton Growers Marketing

Federation Ltd., are directed against the judgment of the Bombay High Court whereby the High Court allowed the writ petitions of the respondents and quashed the order of the Industrial Court Maharashtra (Kolhapur Bench), Kolhapur, dismissing the complaints filed by the respondents.

The Government of Maharashtra appointed the Maharashtra State Cooperative Marketing Federation, hereinafter referred to as "the Marketing Federation", the Chief Agent in the Cotton Monopoly Scheme under the provision of section 42 of the Maharashtra Raw Cotton (Procurement Process of Marketing) Act, 1971. The activities of the Marketing Federation extended to various agricultural produce including foodgrains. In February, 1984 the Government carved out the operation of the levy of cotton from the other activities of the Marketing Federation and assigned them to another society, namely, the Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd., the appellant in all these appeals. By its order dated August 10, 1984, the Government directed the Marketing Federation to take the following actions:

"(i) In respect of the Staff working under the Cotton Monopoly Scheme at present, the Services of the seasonal staff working, if any, should be terminated with immediate effect and in any case not later than 15th August, 1984.

(ii) So far as the regular staff is concerned, it is proposed that the services of the staff working in the Cotton Department of the Federation at Bombay and in the Mofussil areas would be placed at the disposal of the new

PG NO 475

Organisation on "as is where is basis" as on 1st July, 1984."

In a subsequent letter dated September 8, 1984 the Marketing Federation was directed to effect the transfer of the chief agency from the Marketing Federation to the appellant, inter alia by transferring all the assets and liabilities under the scheme account and the cash and Bank balance at Bombay and Mofussil under the scheme account as well as under the non-scheme account to the appellant etc.

The respondents claimed that they were permanent employees of the Marketing Federation and in view of the directions contained in the said letter dated August 10, 1984 of the Government, the appellant should have appointed them on a permanent basis and not as seasonal employees. The case of the respondents was that they had been in the employment of the Marketing Federation since 1972 on monthly salaries with annual increments. Even though there was an Award in their favour by the Industrial Tribunal declaring them as permanent employees, yet the Marketing Federation and the appellant failed and neglected to give them the permanent status. Accordingly, they made complaints before the Industrial Court complaining of unfair labour practices on the part of the Marketing Federation as also on the part of the appellant as contained in Items Nos. 6 and 9 of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 items 6 and 9 are as follows:

"Items 6. To employ employee 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.

Item 9. Failure to implement award, settlement or agreement.

In this connection, we may refer to section 5(d) of the said Act which provides that it shall be the duty of the Industrial Court to decide complaints relating to unfair

labour practices except unfair labour practices falling in Item I of Schedule IV.

The Industrial Court took the view that the complaints made by the respondents did not come under Item Nos. 6 and 9, but they came under Item No. I and, as such, it could not decide the complaints in view of section 5(d). Further, it was held by the Industrial Court that there was no unfair

PG NO 476

labour practice on the part of the Marketing Federation or the appellant and that, in any event, the complaints were barred by limitation as the same were filed beyond 90 days from the date of the knowledge of the respondents that they were appointed by the appellant as seasonal employees. Upon the said findings, the Industrial Court dismissed the complaints of the respondents. Being aggrieved by the order of the Industrial Court, the respondents filed writ petitions before the High Court and, as stated already, the High Court allowed the writ petitions and quashed the order of the Industrial Court. Hence these appeals.

It has been already noticed that under the Award of the Industrial Tribunal, the respondents were declared the permanent employees of the Marketing Federation. The appellant has prepared a seniority list for the year 1985-86 which shows that most of the respondents have been in the employment of the Marketing Federation since 1972. The said seniority list is Annexure 'D' to the writ petitions filed by the respondents in the High Court. The annual increment list, also D prepared by the appellant, shows that the respondents have been in the service of the appellant on monthly salaries and they were given annual increments on November 1, 1985. In spite of the above facts, the respondents have been shown in the seniority list and also in the annual increment list as temporary employees. In our opinion, there cannot be any doubt that there has been unfair labour practice on the part of the Marketing Federation as also on the appellant by continuing them as temporary employees. We are unable to accept the contention of the appellant that the Award is not binding on the appellant. In view of the Award, it must be held that the respondents were the permanent employees of the Marketing Federation, and that after the constitution of the appellant and the transfer of the employees of the Marketing Federation to the appellant, the appellant was bound to accept the respondents as permanent employees and not to treat them as seasonal employees or temporary employees. This act on the part of the appellant amounts to unfair labour practice.

We do not find any justification for the finding of the Industrial Court that the complaints made by the respondents do not come within the purview of Items Nos. 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. No reason has been given by the Industrial Court why the complaints come within Item No. 1 of Schedule IV and, as such, can be decided only by the Labour Court and not by the Industrial Tribunal. The complaints made by the respondents are clear and specific and there was no scope for

PG NO 477

categorising them as complaints under Item No. 1 of Schedule IV.

With regard to the question of limitation, the Industrial Tribunal seems to think that as the appointment letters bear some dates in October, 1984, the period of limitation will be computed from the respective dates of the appointment letters. It has been assumed by the Industrial

Tribunal that the respondents come to know that they were being appointed as seasonal employees on the respective dates of their appointment letters. There is, however, no material on record to show on what dates the appointment letters were served on the respondents. In other words, there is nothing to show when the respondents received the appointment letters. In the circumstances, the Industrial Court was not at all justified in holding that the complaints filed by the respondents were barred by limitation. Even assuming that the complaints were barred by limitation, as held by the Industrial Court, the Industrial Court should have given an opportunity to the respondents for explaining the delay. No such opportunity has been given to the respondents. Accordingly, we are unable to subscribe to the view of the Industrial Court that the complaints filed by the respondents were barred by limitation.

Before parting with these appeals, we may dispose of a short contention of the appellant. The learned Counsel for the appellant has placed much reliance upon a letter of the Government dated November 9, 1984 giving some directions to the appellant as contained in paragraphs 1 and 2 of the said letter. Paragraphs 1 and 2 are as follows:

1. All staff recruited after 1st July 1972 specifically for the cotton scheme with prior approval of Government wherever necessary or where the Government representative was associated with the selection/appointment of the candidates should be immediately placed on deputation without payment of Deputation Allowance to the Cotton Growers' Marketing Federation Their salaries and allowances will be payable from the scheme as part of the commission payable to the Cotton Growers Federation till 1st January, 1985.

2. The Cotton Growers Federation Ltd. will finally absorb the above categories of staff after scrutiny as on 1st January, 1985. Those out of the above staff who are not

PG NO 478

acceptable to the new Federation for some reason or the other, and so have to be retrenched, will be retrenched by the Maharashtra State Cooperative Marketing Federation Ltd. and the cost thereof would be debited to cotton scheme account"

On the basis of the directions in paragraph 2 extracted above, it is submitted on behalf of the appellant that the appellant is at liberty not to absorb or accept the respondents in the appellant's concern. This contention, in our opinion, is without any substance whatsoever. There is a specific direction that the appellant shall finally absorb the staff of the Marketing Federation after scrutiny as on January 1, 1985. The appellant cannot refuse to absorb or accept a permanent employee of the Marketing Federation without any reason whatsoever. So far as the respondents are concerned, we do not find any reason why the appellant should not accept them as its permanent employees. The High Court has rightly directed the appellant and the Marketing Federation to process the cases of the respondents on the basis that they have put in more than 240 days of service and grant them all the benefits under the circular letter dated January 18, 1985.

For the reasons aforesaid, the judgment of the High Court is affirmed and the appeals are dismissed with one set of costs quantified at Rs.5,000.

H.S.K.

Appeals dismissed.