IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2683 OF 2023

Mr. Rahul Pittu Savalkar and Ors. .. Petitioners

Versus

The Additional Principal Chief Conservator of Forest and Anr. .. Respondents

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- Ms. Vaishali Jagdale, Advocate for Petitioners.
- Mr.J.P. Patil, AGP for Respondents – State.

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CORAM : MILIND N. JADHAV, J.
DATE : SEPTEMBER 03, 2025.

JUDGMENT:

1. Heard Ms. Jagdale, learned Advocate for Petitioners and Mr. Patil learned AGP for Respondents - State.

2. 22 "Van Majoor" (Forest Labourers) in Group 'D' category in the capacity of Labourers, Watchman, Cook and Gardener since the year 2003 onwards in Sanjay Gandhi National Park are Petitioners before me. Admittedly they having been working continuously without any break and involved in highly risky job situations for years together pertaining to work of cleaning cages of wild animals like tiger, lion, leopard and hyena etc as part of their duty. Their work pertains to cutting the meat and provide food to these wild animals, nurse them, provide medicines and do all incidental and ancillary works.

3. By virtue of these Petitioners being engaged in this kind of work, the caged wild animals have become used to these workmen and therefore duly recognize them and respond to them. Thus work wise these workmen have become indispensable. After several decades of employment these workmen sought permanency status which is denied to them. Collectively through the Union 77 workmen together filed ULP Complaint No. 300 of 2016 which stands dismissed by the impugned judgement of the Industrial Court dated 12.12.2022. The dismissal order is however challenged by 22 workmen in their personal capacity before this Court.

4. Ms. Jagdale, learned Advocate for Petitioners would vehemently make the following submissions :

(i) Admittedly, all Petitioners since their date of joining / inspection from the year 2003- 2005 have completed 240 working days in all previous calendar years until today. The said position is admitted as per the work chart issued by the Range Forest Officer – Sanjay Gandhi National Park, Borivali which is appended as Exhibit 'C' at page No.40 of the Petition.

(ii) Admittedly, Petitioners received salary as per record maintained in the cash book and their attendance register alongwith all other regular employees

employed in the National Park by the Forest Department.

(iii) Admittedly work performed by these Petitioners is identical to work performed by all regular permanent employees of the Forest Department.

(iv) Admittedly salary was credited into the bank accounts of these Petitioners on month to month basis from the year 2016 onwards. Prior thereto they received their salary in cash.

(v) Government Resolution dated 16.10.2012 issued by the Revenue and Forest Department decision was taken by State to absorb daily wage employees and grant them permanent status on completion of 240 working days in one calender year for 5 consecutive years squarely applies to Petitioners' case. Copy of Government Resolution is appended below Exhibit E at page No.66 of the Petition.

(vi) That Petitioners' case for grant of permanent status and benefits is fully covered by the judgement and decision of this Court in the case of ***The Deputy Conservator of Forest Nashik Van Vibhag (E), Nasik and Ors Vs. Nasik***

Zilla Van Shramik Sangh[1].

5. ***PER CONTRA***, Mr. Patil, learned AGP for Respondent – State appearing on behalf of the Forest Department has drawn my attention to the first Affidavit-in-Reply dated 18.04.2023 filed by Ms. Revati Kulkarni – Deputy Director – South, Sanjay Gandhi National Park Division to contend that Petitioners are working as daily wage labourers and not as Van Majoors. He would submit that they are not confined to any specific work in any particular area of Sanjay Gandhi National Park. He would submit that they are employed as temporary workers and routinely assigned different tasks which include day and night patrolling, extinguishing forest fires, being attendants in Government guest houses, being watchmen at select points in the park including forest gates and in the notified area, for keeping public area clean of litter, for helping and detecting and removal of encroachments on forest land.

5.1. He would submit that they are assigned different works depending upon the available tasks at hand. He would submit that their appointment at the inception stage was not made through any selection process against sanctioned posts. He would submit that their appointment did not prescribe any qualifications nor applications were invited or interviews held under selection process. He would submit that their appointment was not made against sanctioned posts and

1 *Writ Petition No. 6398 of 2003; decided on 06.11.2023.*

thus in law duration of their employment from the year 2003-2005 on daily wage workers becomes irrelevant.

5.2. He would submit that claim of Petitioners is on the basis of completion of 240 working days in each calendar year and not as per Government Resolution. He would submit that Additional Affidavit dated 11.09.2023 is also filed by Respondents clarifying the issue of 125 'super-numerary' posts created as per Government Resolution dated 16.10.2012. He would submit that the GR applied to only those casual workers who were employed between 01.11.1994 to 30.06.2004 and had worked consecutively for 5 years atleast and completed 240 working days in each calendar year.

5.3. He would submit that the 'super-numerary' post as per Government Resolution pertained to cessation of employment due to superannuation, death, resignation or removal only and not otherwise. He would submit that all 125 'super-numerary' posts were filled up on account of passage of time as per criteria provided in the Government Resolution and no more posts are vacant to accommodate the Petitioners. He would therefore submit that the impugned judgement dated 12.12.2022 pertaining to present Petitioners and similarly placed workmen be upheld.

6. I have given my anxious consideration to the rival submissions made across the bar by Ms. Jagdale, learned Advocate for

Petitioners and Mr. Patil, AGP for Respondents – State and perused the record of the case with their able assistance.

7. It is seen that original complaint was filed by the Union on behalf of 77 such and similarly placed employees. The impugned judgement states that two employees stood deleted whereas two employees expired in the interregnum. The Industrial Court by the impugned judgement dated 12.12.2022, *inter alia,* dismissed the Complaint primarily on the ground that the Union did not adduce any material to show that there were sanctioned and vacant posts against which these workmen could be accommodated as permanent workmen. This is the chief reason for dismissal of the complaint.

8. As opposed to the above it is an admitted position borne out from the record that Petitioners and similar placed workmen have worked for 240 working days continuously for more than 5 years at a stretch in various capacities as watchman, peon, driver, Van Majoor, clerk, gardener, cook and in the guest houses, nursery, etc. The date of joining of these workman ranges from the year 1993 onwards and upto 2015 at various points of time as is seen from the record. It is admitted on record that they were paid wages and they worked alongside regular workmen of the Forest Department. It is an admitted position that their attendance was marked by the Forester i.e Officer of the Forest Department as per instructions received from the Range

Forest Officer and they are also assigned duties in various capacities which are high risk jobs also being executed by regular and permanent employees of the Forest Department in the field of gardening, nursery, security, cleaning, sweeping offices, guesthouses, wild life safaris, supervision of animal cages, feeding of wild captive animals etc. Also admittedly there was no break in service whatsoever in the services rendered by Petitioners and their record is clean and unblemished.

9. The aforesaid facts are proved by material evidence placed on record before the Industrial Court. Admittedly, these workmen have been working for the last several decades in the Sanjay Gandhi National Park, Mumbai with the Forest Department. Further admittedly these workmen have been working alongside permanent employees and they are treated like permanent employees. It is seen that they are also otherwise employed in high risk situations with very little facilities or safety or precautionary equipment.

10. It is seen that there is no difference of opinion that Petitioners' services as workmen is / was the same as the permanently employed workers of the Forest Department. Hence, they cannot be discriminated. Once they are continued in employment for years together without implementing various social security measures it would amount to depriving them the benefits, status and privilege of a permanent workman.

11. The reasoning adopted by the learned Industrial Court for denying them permanent status on the ground of they having failed to show existence of sanctioned posts cannot be acceptable neither countenanced. Accepting such a reasoning would amount to continuation of exploitation of Petitioners without granting them benefits of permanency when they are entitled to the same. Workers like Petitioners who have been working continuously for decades alongside permanent workmen cannot be deprived the status of permanency, earned leave, casual leave, sick leave, medical facility, coverage under Provident Fund Schemes and all such other social welfare enactments.

12. The rationale that there are no sanctioned permanent posts vacant or available for making them permanent and therefore their exploitation as casual workers should continue irrespective of the length of their tenure cannot be accepted at all. A similar situation had arisen in the case of ***The Deputy Conservator of Forest Nashik Van Vibhag (E), Nasik and Ors (1st supra).*** The circumstances were identical. Findings and recommendations of the Kalekar Award apply to Petitioners' case before me. Similarly there was overwhelming evidence in that case and equally in this case pertaining to engagement of the workers for decades by the Forest Department. Further the reason given for denial of permanent status was also the same namely that the Forest Department is not an industry and most importantly

sanctioned posts are not available and their appointment was on daily wage / casual basis and not through selection process.

13. A similar situation had also arisen before this Court in the case of ***Conservator of Forests and Anr. Vs. Savala Dhondiba Pise*** [2] and 5 other companion Writ Petitions. In this regard paragraph No.9.6 of the said decision is relevant and reproduced below for immediate reference for enabling adjudication in the present case:

> *"**9.6** In this regard, I would like to draw sustenance from the decision in the case of Conservator of Forests & Anr. Vs. Savala Dhondiba Pise (supra) passed by the learned Single Judge (Coram : Smt. Nishita Mhatre, J.) of this Court, the ratio of which squarely covers the present case. The issues involved in those bunch of cases were of similarly placed workers and agitated by the Respondent – Sangh as well as many individual workers independently. The learned Single Judge considered all objections which were advanced by Mr. Vanarase on behalf of Petitioners therein and decided them on merits by confirming the judgment passed by the learned Industrial Court in the case of identically and similarly placed co-workers who were found to be eligible. Findings returned in paragraph Nos. 11, 12, 13, 18, 19, 20, 21, 22 to 25 are directly relevant and answer the issues and grounds raised by Petitioners herein. In fact Mr. Vanarase has argued the same proposition in the present Writ Petition before me which have been dealt with and decided by this Court earlier on merits. The above paragraphs are reproduced below for reference:-*
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> > *"11. It is true that such workmen may not have a fundamental right as observed by the Supreme Court. However, the Court has not dealt with the statutory rights of an industrial worker in either of the aforesaid judgments. The MRTU & PULP Act is a statute which deals with unfair labour practices. Under Industrial jurisprudence, which is based on welfare legislations, certain rights have been bestowed on the workmen. The workers cannot be divested of these statutory rights by the judgement in Umadevi's case (supra). Nor does the judgement in the case of Umadevi (supra) say so. To read the judgement in the case of Umadevi in a manner so as to deprive the workmen of their statutory rights, would do violence to the language of the judgement. Therefore, it is*

2 Writ Petition No.3274 of 2002 decided on 08.09.2010.

not possible to accept the submission of the learned AGP that merely because of the judgement in the case of Umadevi (supra), the rights conferred on a workman under the Industrial Disputes Act or the MRTU & PULP Act or the other labour legislations are to be ignored.

12. In The State of Maharashtra & Anr. vs. Pandurang Sitaram Jadhav, Letters Patent Appeal No.14 of 2008, the Division Bench of this Court (Swatanter Kumar, C.J. and A.P. Deshpande, J.) considered a case where the Industrial Court found that the workman in that case had been engaged on daily wages for years together. The Industrial Court held that each of the workmen had completed 240 days in service and had not been made permanent, in breach of the standing orders applicable. The Industrial Court therefore granted permanency to the complainants from the date they completed 240 days in service and extended all benefits of permanency. The Single Judge of this Court upheld the view of the Industrial Court by observing that the judgement in Umadevi's case (supra) would not apply to the facts in that case, as the Supreme Court had not dealt with an industrial establishment to which the Industrial Employment (Standing Orders) Act applies. The Division Bench of this Court, after quoting certain passages from the judgement in Umadevi's case (supra), held that the provisions of the Model Standing Orders by themselves do not confer any right of permanency unless the two prerequisites are satisfied namely (i) the appointment is in conformity with the Rules relating to appointment and (ii) permanent sanctioned vacant posts being in existence. The Court therefore held 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. I am informed at the bar that the judgement of the Division Bench has been challenged in the Supreme Court.

13. In The Conservator of Forests & anr. v/s. Shri Bajarang Popat Kale (supra) a learned Single Judge of this Court (Chandrachud, J.), while dealing with similar writ petitions in the case of employees working in the Junnar Forest Range held that the recruitment of the workmen was not in accordance with regular process of selection. The workmen were employed on the Employment Guarantee Scheme and were provided some work as a form of livelihood. It is in these circumstances the learned Judge, by relying on the judgement in Umadevi's case (supra) and the aforesaid judgement in the Letters Patent Appeal held that, in the absence of sanctioned and vacant posts and particularly because the complainants were not appointed after following the regular process the relief granted by the Industrial Court was not warranted. The

Writ Petitions were therefore allowed. In the present case, the workmen were employed for years together on work which was of a perennial nature and not on the Employment Guarantee Scheme. Thus this judgement is clearly distinguishable from the facts and circumstances in this matter.

18. What emerges from this conspectus of decisions is:

(i) the High Courts acting in their writ jurisdiction under Article 226 of the Constitution of India, cannot regularise the services of a person who is appointed illegally in any public employment.

(ii) regular appointments are those which have been made in consonance with the recruitment rules and against sanctioned posts.

(iii)irregular appointments are not always illegal appointments and can be regularised.

(iv) regularisation of irregular appointments can be ordered only when sanctioned posts are available and not merely because the employees have been in service for a long number of years.

(v) the powers conferred on the Industrial Court and the Labour Court under the labour legislations have not been abrogated by the decision in Umadevi's case.

(vi) the provisions of the legislations governing industrial jurisprudence have not been denuded of their status by the decision in Umadevi's case.

19. Bearing in mind these principles, it would be necessary to consider some relevant provisions of law. A workman has been defined as follows in section 2(s):

> *2(s). "workman" means any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-"*

20. The section does not draw a distinction between a workman who is employed on wages payable at a daily rate and another being paid on a monthly rate or on piece rate or time rate. A person may be a workman, regardless of the manner in which he is remunerated or paid wages.

Only those persons who are mentioned in the exclusive part of the definition are not considered as workmen. Nor does the definition distinguish between those workmen who are appointed against sanctioned posts and others who are not. A distinction has been drawn in the status of the workmen, under the model standing orders framed under the Industrial Employment (Standing Orders) Act,1946. The workmen who are doing manual or technical work can be classified as (a) permanent (b) probationers (c) badlis or substitutes (d) temporary (e) casual and (f) apprentices. The categories are dependent on the nature of work performed by these workmen and not on the manner in which they are paid wages. In my opinion, the learned AGP has attempted to draw an invidious distinction between temporary and casual workmen and those who are paid wages at a daily rate. This distinction is misconceived and unsustainable.

21. Undoubtedly, the Petitioners are an industry as held in Chief Conservator of Forests & anr., etc. etc. vs. Jagannath Maruti Kondhare, 1996 I CLR 680. In this case, the Supreme court was dealing with the employees working in the Forest Department of the State of Maharashtra where they had been continued as temporary/casual workers for years together. Complaints had been filed before the Industrial Court complaining of unfair labour practices under Item 6 of Schedule IV of the MRTU & PULP Act. The facts were similar to the circumstances in the present case. The Supreme Court held that depending on the facts in a particular case it would be possible to infer that the mere fact that the workmen had been employed as casual / temporary workers for years together indicated that the intention was to deprive them of the status of permanent employees. The judgement in Kondhare's case (supra) has not been overruled and still holds the field. The nomenclature used by the petitioners for classifying the workmen cannot deprive them of their rights under the labour legislations. Besides, as observed by the Supreme Court in the case of MSRTC & Anr. vs. Casteribe Rajya Parivahan Karmchari Sanghatana (supra), the powers of the Labour Court and the Industrial Court acting under the MRTU & PULP Act are not denuded by the judgement of the constitution bench in the case of Umadevi (supra).

22. There is no dispute that each of the workers have completed 240 days in service and that each of them were employed from 1990 and had worked for at least 7 years before their services were terminated. There is sufficient evidence on record to indicate that these workmen were employed for work which was perennial in nature despite which they had not been accorded the status of permanent workmen. The Industrial Court in my view,

has not committed any error while declaring that the Petitioners had indulged in an unfair labour practice under Item 6 of Schedule IV. The submission of the learned AGP, that though a declaration has been granted that the Petitioners had committed unfair labour practices under Item 6, the Industrial Court could not have granted any consequential relief as the workmen had not sought a prayer for permanency, is without any substance. Once such a declaration is granted the Petitioners would naturally have to be directed to treat them as permanent workmen and to pay wages and other benefits in consonance with their status. Section 30 of the MRTU and PULP Act empowers the Industrial Court to take such affirmative action as is necessary, including payment of compensation, in order to effectuate the policy of the Act, once it finds that any person has indulged in or is engaging in an unfair labour practice.

23. The learned AGP had contended that the recruitment of these workmen was not in accordance with the procedure for selection. However, this is not borne out from the pleadings and evidence on record. In fact the pleadings in the written statement indicate that there were no rules for recruitment of these workmen for the nature of work that they were performing. The witness for the Petitioners also concedes that there are no such rules. Thus the contention of the learned AGP is unsustainable. If there are no rules for recruitment of the workmen such as the present respondents, it cannot be contended that there recruitment was not made in consonance with the rules. A contention, similar to the one raised by Mr. Vanarase was argued by the Corporation in the MSRTC's case (supra). The Supreme Court has observed that the employees had been exploited by the Corporation for years together by engaging them on piece rated basis and it was too late in the day for the Corporation to urge that the procedure for recruitment had not been followed and that consequentially its employees could not be given the status and privileges of permanency. In the present case, the workmen had been recruited without there being any recruitment rules in place. The petitioners had extracted work from them for years together without bothering whether their appointments fulfilled the conditions for recruitment. The unlawful acts of the Petitioners in appointing employees for years together as casual and temporary workmen without affording them the benefits of permanency cannot be permitted to be perpetuated when the MRTU and PULP Act has been enacted specifically to prevent such eventualities and to prohibit unfair labour practices. The argument of Mr.Vanarase, if accepted, would only mean that an unfair labour practice indulged in by the Petitioners was being encouraged or in any event being condoned by this Court. The policy of the

Act must be effectuated and the Court cannot be expected to be a mute spectator while the Forest Department of the State flouts the law. Therefore this submission is untenable.

24. In any event the appointment of these workmen cannot be termed as illegal, per se. At best, it may be possible to contend that the recruitment was irregular. However such recruitment can always be regularised as held in para 53 of Umadevi's case. In fact the G.R. of 1996 has been issued towards this end.

25. The next issue which I shall advert to is whether there were sanctioned posts when the complaint was filed. As stated earlier, permanency cannot be denied to a workman on the specious contention that there are no sanctioned posts. This is because the MRTU & PULP Act provides that denying a workman the status and privileges of a permanent workman for years together amounts to an unfair labour practice. In any event though it has been strenuously argued by Mr. Vanarase that there are no sanctioned posts available, there is not even a whisper to that effect in the written statement filed by the petitioners in the Industrial Court; nor is there any evidence led to substantiate this argument. Indeed, there was not even a suggestion put to the workman by the Petitioners while cross-examining him. Therefore, the argument is baseless. Thus the Petitioners have committed an unfair labour practice by not paying the wages and other benefits to the workmen which they would be entitled to receive as permanent workmen. As stated earlier, the G.R. of 1996 stipulates the number of posts required for the absorption of the forest labourers was 10160 out of which 8038 supernumerary posts were created by the State for absorption of those who had completed 5 years in service as on 1.11.1994 and had worked for 240 days in each year. Admittedly, the workmen had not completed 5 years of service on 1.11.1994. However, clause 12 of this G.R. stipulates that the Chief Conservator of Forests is expected to review the position of the number of workers employed after filling in the posts with those who had completed 5 years in service up to 1.11.1994 and for creating additional posts for the remaining workers. There is no material on record as to whether this exercise was carried out by the Chief Conservator of Forests at all. Thus there can be no dispute that there is a violation of this Government Resolution which forms a part of the terms and conditions of employment."

14. From the above it is clear that once Petitioners have complied with the twin conditions of 240 days of work in each

calendar year continuously for a period of 5 years and they are still being continued by the Forest Department for years together, they cannot be deprived of permanent status on the ground of unavailability of sanctioned post. If Government's argument is accepted, it would amount to enslavement of these workmen and bonded labour. The Court cannot be a mute spectator to this situation. The present situation clearly amounts to exploitation of Petitioners when they have been engaged in performing their daily work alongside permanent employees of the Forest Department. There is substantial material evidence available on record to prove that the Petitioners have worked with the Forest Department for long and they cannot be denied their legitimate benefit.

15. Ms. Jagdale, learned Advocate for Petitioners has placed before Court, copy of letter issued by the Chief Conservator of Forests, State of Maharashtra to the Principal Secretary Forests, Revenue and Forest Department. It refers to more than 8038 such forest workers who have been regularized in the past pursuant to Government order dated 31.01.1996, in similarly placed situations. In paragraph No.21 of the said letter details of payments / monthly salary to be given to these workmen has been depicted and sanction is sought for the same. In this letter the Chief Conservator of Forest has given detailed reasoning, role and duty of these forest workers and sought for creation of 12991 posts of forest workers in the State of Maharashtra as on today as per

requirement. Reading of this letter shows that role of these forest workers is virtually indispensable. Petitioners before me are part of these forest workers.

16. Be that as it may, in view of the decisions of this Court in the case of *(1) The Deputy Conservator of Forest Nashik Van Vibhag (E), Nasik and Ors (1st supra)*; (2) *Conservator of Forests and Anr. (2nd supra); (3) Indubai Narayan Chavan Vs. Dy Conservator of Forest, Pune Division, Pune and Anr.*[3] *; and (4) The Conservator of Forests and Anr. Vs. Ananda Soma Ughade* [4]*.* the impugned order dated 12.12.2022 is clearly unsustainable. The above decisions of this Court squarely cover the Petitioners' case before me. Hence the impugned order dated 12.12.2022 is interfered with and quashed and set aside. Petition is allowed. Resultantly Complaint (ULP) No.300 of 2016 stands allowed in the affirmative in respect of all three issues framed by the learned Industrial Court.

17. In view of the above, Respondents are directed to complete the computation and calculation of the outstanding differential wages due and payable to these Petitioners - workers who are granted benefit of permanency under this order within a time bound programme and in any event, within a period of 8 weeks from today and pay the same to the workers within a period of 2 weeks thereafter without fail and

3 Writ Petition No.2223 of 1997 decided on 18.11.2010.
4 Writ Petition No.3476 of 2004 decided on 25.08.2023.

file compliance report to that effect after 10 weeks in this Court. Place the Writ Petition for compliance after 10 weeks.

18. Writ Petition is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

Ajay

RAVINDRA MOHAN AMBERKAR
Digitally signed by RAVINDRA MOHAN AMBERKAR
Date: 2025.09.03 12:27:38 +0530