

MHIC090003102022



Exh.O-

**IN THE INDUSTRIAL COURT NO.1, MAHARASHTRA**  
**AT KOLHAPUR**

**Complaint(ULP)No. 127/2022**

Karveer Kamgar Sangh

V/s

Collector, Kolhapur & Ors.

**: ORDER BELOW EXH.U-2 :**

(DICTATED & PRONOUNCED IN OPEN COURT ON 18.07.2024)

1. The Complainant Union has filed present application u/s. 30(2) of the MRTU & PULP Act, 1971 (hereinafter mentioned as 'the said Act' for sake of brevity) in a proceeding filed u/s. 28 of the said Act towards the claim of permanency of the workmen mentioned in Annexure 'A'.

2. As per the Complainant it is registered under the Trade Unions Act, 1926. The workmen as per Annexure 'A' (hereinafter referred as the workmen for sake of brevity) are working with the respondents as Van Majoor. They are members of the Complainant Union. It is contended that various labour laws are applicable to the respondents. The respondents no. 2 to 4 are administratively governed by the respondent no. 1. It is contended that the workmen have completed 240 days of continuous service each year. Thus, the workmen are discharging duties of perennial nature. The respondents with malafide intention have deprived the workmen from getting benefits of permanency.

It is contended that respondent no. 2 to 4 are parts of Forest department. For administrative purposes various departments are formed but the expenses are met from some funds and inter department transfers are also made.

The attendance of the workmen is maintained through attendance muster. Their wages can be ascertained through wage registers. The respondents collect various types of woods and the

same is sold to public at large. They carry out tree plantation. Regular work of watering such plants is done through motors. Electricity connections are obtained for such motors. Their work also includes giving wild life protection. Therefore, to carry out various works, regular workmen are required. The respondent also run nurseries and tree plantation. Thus, it requires huge number of regular workmen.

It is contended that the workmen under consideration were never appointed for specific work only or part time. They are discharging similar duties as of regular and permanent employees. In spite of that they are not extended the benefits of permanency. The respondent no. 1, through Government Resolution dtd. 16.10.2012 conferred permanency to similarly situated workmen. But the workmen under consideration have been deprived of the same. The Complainant has apprehension that the respondents might resort to coercive steps as it shall require some time for final adjudication of the complaint and therefore, during the pendency thereof, it is necessary to grant protection to the said workmen. It is

contended that no prejudice shall be caused to the respondent in case the application is allowed. The application is supported by affidavit Exh.U-3. The Complainant filed documents with list Exh. U-4.

3. The interim relief application is contested by the respondent by filing say and written statement vide Exh.C-7. The respondents denied all the adverse contentions of the Complainant. It is contended that the respondents have not indulged in any unfair labour practices. It is further contended that the Complainant Union is not registered under the Trade Unions Act and it is not a recognized union. The Complainant union has no authority to file the present proceeding on behalf of the workmen as per Annexure A. It was necessary for the said workmen to file the proceeding for themselves. In the present format, the complaint is not maintainable. The said workmen are not members of the Complainant Union. No documents in support thereof are filed on record. It is contended that the State of Maharashtra or the Forest department cannot be termed as an industry under the Industrial

Disputes Act. They discharge sovereign functions. They are not involved in any business for profit.

4. It is contended that various types of forests have been demarcated and the same are governed by Indian Forest Act 1927 and the Forest Protection Act, 1980. The respondents do not collect such forest wood or sell the same. The tree plantation activity is carried out for environmental purposes. The respondents have nurseries. There is sufficient number of employees and such nurseries are being maintained in small areas. The respondent do not sell such plants. The plantation activity is carried out in the month of July i.e. the rainy season. Therefore, there is no need for electric motors or such electric connections. For protection of forest, adequate officers and staff is maintained. The respondents do not collect forest goods or sell them, therefore, there is no necessity for permanent or seasonal workmen. The Complainants have not completed 240 days of continuous service. Therefore, they cannot be conferred benefits of permanency.

5. It is contended that as per the requirement daily wage

work is given to certain workmen but the same is for the period of not more than a month. There is no permanent work available with the respondents for such candidates. As the workmen under consideration are not in the employment of respondents, the question of apprehension of discontinuation does not arise. The main complaint has no merits and therefore the application for interim relief is liable to be rejected.

6. On the basis of rival contentions, the following points arise for consideration and the same are answered below for reasons to follow:-

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the Complainant demonstrated strong prima facie case?	Yes.
2. Whether the Complainant has shown balance of convenience?	Yes.
3. Whether the Complainant demonstrated irreparable loss?	Yes.
4. What order and relief ?	As per order.

**REASONS****AS TO POINT NO. 1 to 3:**

7. The Ld. Counsel for the litigating parties have canvassed oral arguments in support of their respective contentions. The Ld. Counsel for the Complainant Union argued that the workmen under consideration are working for the respondents since 1992-1998 respectively as mentioned in Schedule A. The present proceeding is filed for permanency and they have apprehension that due to filing of this proceeding they would be discontinued. Thus, it is a befitting case for grant of interim relief.

8. The Ld. Assistant Government Pleader argued that no case is made out for grant of any relief. The respondent is not an industry. The workmen under consideration are not in the employment of respondents. The Complainant Union cannot espouse the cause by filing such complaint. Thus, it is urged to reject the interim relief application.

9. Heard Ld. Counsels and perused the papers. The Complainant Union relied upon the Government Resolution dtd.

16.10.2012 and it is contended that similarly situated workmen have been granted permanency. The Complainant filed documents with list Exh.U-32. It is contended that the Complainant Union had raised the issue of illegal termination in Comp.(ULP)No. 124/2000 which was a subject matter of Revision(ULP)No. 108/2012 and Revision(ULP)No. 115/2012. It is seen that my Ld. Predecessor vide judgment dtd. 05.11.2015 passed in above revision applications had directed respondents to continue the workmen in service till their removal by following due process of law. It is also seen that on 17.01.2017, the workmen are called upon towards allotment of work. The Complainant filed documents with list Exh.U-38 wherein the workmen are issued letter dtd. 08.07.2024 that due to ad-interim relief they are being provided work by the respondents.

10. In the above factual matrix, it is apparent, *prima facie*, that the workmen are discharging duties for the respondents since long. Their termination was subject matter of complaint and revision proceeding earlier also. The respondents have not filed any order or judgment to show that such orders passed in the complaint or revision proceeding have been set aside. *Prima facie*, it shows

that the workmen are discharging duties and therefore, it is necessary to maintain status-quo during the pendency of the complaint. This Court finds *prima facie* no substance in the contentions raised by the respondents that the Complainant Union cannot espouse the cause for such workmen. As per the provisions of the MRTU & PULP Act, 1971 in case of absence of recognized union, the workmen can be representing by unrecognized union also.

Thus, the Complainant Union is able to demonstrate strong *prima facie* case, balance of convenience and irreparable loss. Hence, the point no. 1 to 3 are answered accordingly.

**AS TO POINT NO. 4 :**

11. In the premise of above facts and circumstances, the application for interim relief is liable to be allowed. Hence, the following order is passed :

**: O R D E R :**

1. The application for interim relief Exh.U-2 is allowed.

2. The respondents are directed not to discontinue the workmen under consideration in the present proceeding without following due process of law during the pendency of complaint.
  
3. The complaint to proceed further.

Kolhapur.

Date : 18.07.2024

RSS/-

(S. S. Khandekar)  
Member,  
Industrial Court No.1, Kolhapur.