

BEFORE SHRI S. Z. SONBHADRE
THE MEMBER, INDUSTRIAL COURT, AT AKOLA

Complaint U.L.P. No.- 42 / 2022

CNR No.- MHIC30-000045-2022

- 1. Nagorao Devidas Nage,**
Aged About 39 Years.,
Occ. - Security Guard [Chawkidar],
R/o Devidas Nagar, Post Pailpada,
Pailpada, Akola, Tq. And Dist. - Akola.

- 2. Surendra Tulshiram Wankhade,**
Aged About 45 Years.,
Occ. - Security Guard [Chawkidar],
R/o Wani Nipana, Tq. and Dist. - Akola. - **Complainants**

Versus

- 1. Registrar,**
Dr. Panjabrao Deshmukh Krushi
Vidhyapith, Akola. Tq. And Dist. - Akola.

- 2. Suraksha Vibhag**
Dr. Panjabrao Deshmukh Krishi
Vidhyapith, Akola, Tq. and Dist. - Akola. - **Respondents**

Coram :- S. Z. Sonbhadre, Member, Industrial Court.

Appearance :- Ku. Nahila A. Ali, Ld. Adv. For Complainants.

Shri U. K. Kavishwar, Ld. Adv. For Respondents.

Order Below Application Exh.- U-2

(Passed On 22-02-2022)

01. This is the Application under Section 30(2) of the M.R.T.U. and P.U.L.P. Act, filed by the Complainants along with their main Complaint under Section 28, Read with Item 6 and 9, of Schedule IV, of the M.R.T.U. and P.U.L.P. Act. The Complainants in their Complaint has prayed for directions to the Respondents Regularize their Services and some other Reliefs. The Complainants in their Application Exh.- U-2, has prayed for directions to the Respondents Not To Dismiss, Discharge or Terminate the Complainants without following due procedure of law, until decision of the main Complaint. The facts of the Application are as under :-

02. The Complainants in their Complaint stated that, they are working as a Daily Wagers with the Respondents since the Year 2007 & 2000. The Complainants claimed themselves to be entitled for regularization of their Services. The Complainants have completed more than 5 Years Service, since the date of their Initial Appointment. It is further case of the Complainants that, they have completed more than 240 Days, in every Year. As such the Complainants claim themselves to be entitled for the Benefits of Permanent Employee. It is a case of the Complainants that, the

Respondents are engaged in Unfair Labor Practices covered by Items 6 and 9, of Schedule IV, of the M.R.T.U. and P.U.L.P. Act. As such, the Complainants have prayed for the directions to the Respondents to Regularize their Services. By this Application Exh-U-2, Complainants have prayed for Protection of their Services, during the pendency of this Complaint.

03. The Respondents have appeared on the service of Advance Notice under Rule 115(3) of the Industrial Court Regulations. The Respondents have filed their Reply at Exh.-C-2 and have opposed the Prayer of the Complainants for Protection of their Services. It is a case of the Respondents that, the Complaint is barred by Limitation, Joint Complaint is Not Maintainable, 240 Days are Not Completed, the Complainants are Not Appointed by Due Procedure of Law, Funds are Not Available with the Respondents, Work is Not Available Regularly. It is further case of the Respondents that it Does Not Have Any Intention To Terminate The Services of the Complainants. Work is Not Available Continuously and the Complainants are engaged as per Requirement. As such, if contingency arises, Respondents may Terminate Services of the Complainants after following due Procedure of law. It is

further case of the Respondents that, it has not committed any Unfair Labor Practice and therefore, prayed for rejection of Application Exh.- U-2.

04. In view of the Rival Submissions of the Parties, the following Points arise for my determination, and I have recorded my Findings, against each of them, for Reasons to be followed.

<u>Points</u>	<u>Findings</u>
1. Whether the Complainants Prima Facie make out a case of Unfair Labor Practice, against the Respondents, for grant of Interim Relief, as is prayed for ?	- <i>Partly Yes</i>
2. Whether the Balance of Convenience & Irreparable Loss, lies in favor of the Complainants ?	- <i>Yes</i>
3. What Order ?	- <i>As Per Final Order</i>

REASONS

05. As To Point No.- 1, 2 & 3 :- Heard Both Sides. Perused the Record. The Complainants have filed their Documents with List Exh.- U-4. The Document No. 2 is the Seniority List, Document No. 3 is the Identity Card, Document No. 4 is the Project Affected Certificate, Document No. 5 is the Bank Statement of the Complainant No. 1. Document No. 6 & 7 is

the Yearwise Attendance Sheet, Document No. 8 is the Identity Card, Document No. 10 is the Project Affected Certificate, and Document No. 11 is the Bank Statement of the Complainant No. 2. Said Bank Statements and Attendance Chart, reveal that, the Complainants are in employment of the Respondents since long back and are receiving their Wages, through their respective Accounts. It also appears from the said Documents that the Complainants are in service on the Respondents since more than Five Years and that the Complainants have completed more than 240 Days Service in almost Every Year of their Employment. However, I find that the Complainants are not having Regular Uniform Number of Working Days to their credit, with the Respondents. As such, I find substance in the contention of the Respondents that, the Respondents are engaging the Complainants As Per Availability of Work.

06. The Complainants are praying for Blanket Protection of their Services. However, I am of the view that, the Respondents can not be directed to employ and to continue the employment of the Complainants, even if, the Respondents are not having any work. The employment of

the Complainants has to be protected, since the Complainants are in the employment with the Respondents, since long back. At the same time, difficulty and requirement of the Respondents has also to be considered. As such, it is necessary to direct the Respondents to continue to employ the services of the Complainants during pendency of the main Complaint, as per availability of work, and as per Seniority. As such, I am of the view that, the Complainants has partly made out a case of Unfair Labour Practice.

07. The Complainants have relied on the law laid down by the Hon'ble Bombay High Court, in the case of ***Saudi Arabian Airlines -V/s- Ashok Margovind Panchal And Another***, reported in ***2002 (3) C.L.R. 743 = 2003 (1) Mh. L.J. 745***. The Complainants has invited my attention to Para 11 of the said Judgment, which reads as under -

11. Once such a complainant employees ceases to be in employment there would be no question of granting him the privileges or benefits of permanency, would be a stock plea of the employers who would very conveniently get rid of the complaint by first getting rid of such an employee. The law cannot be allowed to be defeated in this manner by unscrupulous employers.

The law aims at prevention of the unfair labour practice and not to perpetuate it. If such arguments were to succeed, no complaint under item 6 would ever succeed as no sooner the casual, badli or temporary employees who have continued for years together approach the court to seek permanency and the benefits of permanency what they would first get would be a sack order and they would never even dream to become permanent in employment anywhere. In such a complaint it is the duty of the Industrial Court to protect the employment by ordering continuation of "status quo" during the pendency of the complaint, if of course, a reasonably good prima facie case is established by such employee that he was employed and continued as badli, temporary or casual for years together. The Industrial Court has to prevent the employer from engaging in another unfair labour practice of termination of such an employee. He cannot be driven to file a complaint under item 1 of the Schedule 4 of the Act before the labour court. The Industrial Court will be well within its jurisdiction under section 30 and section 32 to direct the employer to maintain the status quo in respect of the employment, in order to accomplish the aim and object of the legislation of prevention of an unfair labour practice complained of and likely to be engaged in by the employer. Unless the badlis, temporaries or casuals who have continued for years together prima facie, are ordered to be continued so, during the pendency of their

complaint under item 6, not only the whole complaint but even the item 6 itself would get frustrated, stultified and aborted. Item 6 would be reduced to redundancy and otiose if no status quo is directed at the interim stage or if the complainant employee is not restored to his position which existed prior to his complaint for the effective order to prevent such unfair labour practice of directing the employer to make him permanent if he finally succeeds to establish the said unfair labour practice. The twin result of restoration in employment coupled with permanency benefits must flow from the success of the complaint.

08. The Complainants in the light of above Authority in *Saudi Arabian Airlines (Supra)* stated that, it is the duty of this Court to protect the employment of employees by ordering the order of status quo, during pendency of main Complaint. However, I find that, the Hon'ble Bombay High Court in Para 11, used the words as, "*if of course, a reasonably good prima facie case is established by such employee that he was employed and continued as badli, temporary or casual for years together*" As such I am of the view that No Blanket Protection can be granted in favor of the Complainants and the Employees cannot be fastened upon the Employer, unless the Prima Facie Case is made out.

09. I find that, though the Complainants have made out a case for Regularization of their Services, since they are in the employment of the Respondents, since last more than Five Years, yet the perusal of Bank Statements, reveals that the Complainants are employed for the Different Number of Days, as per the availability of Work. It shows that, the Complainants are engaged in Services on Daily Wages basis as per the Availability of Work. As such, I am of the view that, the Employees can not be fastened upon the Employer, even when, the Respondents may not have Work available for the Complainants. As such, the liberty has to be granted to the Respondents, to take action against the Complainants, only after following the due Procedure of law. As such, the Complainants have Partly made out a Prima Facie case for grant of Interim Relief.

10. The Complainants are shown to be of the Adult Years of Age and the present employment must be the only source of their Earning Livelihood. As such, the Employment of the Complainants with the Respondents needs to be protected. At the same time, liberty is to be granted to the Respondents Employer, it take action against the Complainant

Employees as per Provisions of law. Accordingly, the Application Exh.- U-2, needs to be Partly Allowed. Accordingly, I proceed to pass the following Order.

ORDER

- i. The Application Exh.- U-2, in the Complaint ULP No.- 42/2022, is hereby Partly Allowed.
- ii. The Respondents are directed to continue the employment of the Complainants, As Per Availability of Work and As Per Seniority.
- iii. Liberty is granted to the Respondents, to take Suitable Lawful Action, against the Complainants, as per Law, if the Contingency arises, by following the Due Procedure of Law.
- iv. No Orders as to Costs.

Akola.
Date –
22-02-2022.

S. Z. Sonbhadre
Member
Industrial Court, Akola