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CNR No. :- MHIC01 001294 2022

BEFORE SMT. A. C. RAUT, MEMBER,
INDUSTRIAL COURT, MAHARASHTRA, MUMBAI

COMPLAINT (ULP) NO. 215 OF 2022

1. Sunil Tanga Pagare, ... **Complainants**
2. Nilesh Sambhaji More,
3. Prashant Murkar,
4. Santosh Dagadu Kawde,
5. Raksha Ramakant Sawant,
6. Sandip Digambar Kamble,
7. Bhushan R. Vinchu,
8. Sameer Chandrakant Jadhav,
9. Ramesh Ramchandra Deshmukh,
10. Priyanka Bala Morajkar,
11. Hemlata Dattaram Salvi,
12. Dnyaneshwar Shivram Nadekar,
13. Bhagirathi Madhukar Kamble,
14. Sneha Yatin Shinde,
15. Gautam Shivram Gaikwad,
16. Sanjay Dunda Bambale,
17. Shaikh Toufiq Badshah,
18. Sheela Shantaram Mohite,
19. Nagesh Mahadev Jadhav,
20. Sachin Devrao Somware,

21. Yogita Barku Kemble,
22. Yogesh Prakash Patil,
23. Hemant Manohar Salvi,
24. Omkar Bharat Shedge,
25. Ragji Prathamesh Damodar,
26. Nilesch Prabhudas Ghagare,
27. Vivek Ravji Mhatre,
28. Sushil Suresh Kaluskar,
29. Kiran Sambhaji Patil,
30. Vinod Hirabhai Vora,
31. Vishnu Kashinath Sonawane,
32. Chetan Anand Gaware,
33. Abhijit Sambhaji Dhokare,
34. Ankesh Arjun Rambade,
35. Sujata Shridhar Ramje,
36. Pragati Jaywant Paghare,
37. Kanchan Gajanan Gadge,
38. Gopal Vithoba Sutar,
39. Pooja Kishor Pawar,
40. Chhaya Vijay Bhogle,
41. Vishakha Milind Mhaske,
42. Rambhuwal Ramkumar Chauhan,
43. Gayatri Anil Mayekar,
44. Tejas Mahendra Owhal,
45. Deepak Hirabhai Vora,
46. Vishal Dashrath Lembhe,
47. Shilpa Ajit Pethe,
48. Prakash Dashrath Kurjekar,

49. Bhavik Dinesh Solanki,
50. Pankaj Lokesh Kumar
51. Janardan R. Kandekar,
52. Sushil Gajanan Indulkar,
53. Ahmed Shamsuddin Sayed,
54. Sanjay Vishwanath Sawant,
55. Amruta Premchand Kamble,
56. Dhanashree Satyawar Shedge,
57. Anita Kadu Wakode,
58. Nitin Gulab Dhotre,
59. Atish Arjun Kadam,
60. Manishwa M. Sawant,
61. Kirsan Vasant Burte,
62. Haresh Ramchandra Bagave,
63. Sushama Latikesh Bane,
64. Vinayak Malikarjun Gajakosh,
65. Sushant Shripat Gurav,
66. Gajanan Kondiba Gavale,
67. Harshada Sunil Paste,
68. Santosh Shivaji Patil,
69. Sagar Kishor Taware,
70. Nilesh Amrao Gangawane,
71. Sitaram Biroji Bodke,
72. Akshay Sadanand Shinde,
73. Aniket Ramesh Patil,
74. Akshay Anil Tambe,
75. Archana Ashok Bagwe,
76. Bhagwan Mahadev Kate,

77. Sandeep Damodar Magar,
78. Rajesh Prakash Salvi,
79. Vijay Laxman Gurav,
80. Rajkumar Premkumar Kashyap,
81. Gauri Mayur Neharkar,
82. Ashwini Nishakant Mhatre,
83. Santosh Bhikaji Shirwadkar,
84. Sachin Jagan Singh,
85. Yuvaraj Bhagwan Sawant,
86. Neha A. Ujjainwal,
87. Abhishek Sanjay Pujare,
88. Priyanka Bapusaheb Torane,
89. Kamlesh Dattaram Ghanekar,
90. Anil A. Ujjinwal,
91. Neha Appaso Thombare,
92. Swapnil H. Wagh,
93. Digambar Eknath Rikame,
94. Janardhan K. Sabne
95. Avdut Pundalkik Varekar,
96. Shailesh M. Bankar,
97. Akash Bhaskar Magare,
98. Pradnya Nagesh Mohite,
99. Chetan Subhash Patil,
100. Tushar Gajanan Mahadik,
101. Sneha Sadanand Jourat,
102. Kailash Bhaskar More,
103. SnehalSanjay Ratwadkar,
104. Shobha Zumber Kamble,

105. Pooja Barku Mhaske,
106. Varsha Amit Mane,
107. Suchita Manoj Patil,
108. Shweta Shantaram Redekar,
C/o. Mr. Prashant Vijay Murkar,
Mhatre Enclave, Flat No. 7,
Opp. Gamdevi Mandir,
Near Kalubai Mandir,
Dombivali (West) 421 202.

-: **V e r s u s** :-

1. **University of Mumbai,**
Fort, Mumbai - 400 032.
2. **The Registrar,**
University of Mumbai,
Fort, Mumbai - 400 032.

... **Respondents**

**Complaint U/s. 28 R/w. Items 4(a) of
Sch.-II and Items 5, 6 & 9 of Sch.-IV
of the MRTU & PULP Act.**

Coram :- **Smt. A. C. RAUT**, Member,
Industrial Court, Mumbai.

Appearances :- Ld. Adv. Shri. B. K. Hegde, for the Complainants.
Ld. Adv. Shri. S. N. Desai for the Respondents.

-: **J U D G M E N T** :-

(Delivered on 15th September 2025)

1. The present complaint is filed by the complainants under section 28 read with Items 4 (a) of Schedule-II and Items 5, 6 and 9 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter, referred to as the “MRTU & PULP Act”) against the

Respondents, thereby praying for declaration of unfair labour practice on the part of respondents and further prayed to hold that the complainants are entitled to wages, allowances, benefits and perquisites at par with the permanent employees on the roll of the respondent university and entitled to draw wages, benefits and perquisites in respective pay scales applicable to the complainants in accordance with their designations and nature of work, further to direct respondents to pay wages, benefits and perquisites to each of the complainants at par with the permanent employees on the roll of the University with effect from 1st July, 2022, further to direct the respondents to extend leave with wages, annual grade increments, promotions as per the rules applicable to the aided employees to the complainants.

2. Facts of the complaint, in nutshell is as under -

That the complainants have filed this complaint in the capacity of employees. The respondents have engaged in unfair labour practices under Items 4 (a) of Schedule-II and Items 5, 6 & 9 of Schedule-IV of the MRTU & PULP Act, 1971 on and from 01.07.2022 and 17.08.2022 thereby trying to terminate the services of the complainants by appointing the fresh employees through the contractor. The respondent no. 1 is a Mumbai University established under the Mumbai University Act, 1884 which is time and again replaced by Maharashtra Public University Act, 2016 applicable to all the non-agricultural universities in the State of Maharashtra. The service conditions of the non teaching employees in non-agricultural universities are/were governed by the

Maharashtra Non-agricultural Universities and affiliated colleges Standard Code Rules, 1994. The Mumbai University is an Industry within the meaning of Section 2 (j) of the Industrial Disputes Act, 1947. The respondent no. 2 is the Registrar of the respondent no. 1 University.

3. It is further contended that, in respondent University, there are two types of recruitment i.e. recruitment of Government Posts and University Approved Posts. All complainants were appointed on University Approved Vacant posts. It is further submitted that the vacant university approved posts are initially appointed on temporary basis and thereafter they are made permanent and this practice is followed by respondents since last many years. The employees recruited in the year 1982 to 1984 were made permanent and respondents also passed resolution to that effect on 02.04.1991. That complainants are appointed on vacant and approved posts by University and therefore they have completed 240 days uninterrupted services during a period of preceding 12 calendar months. The complainants have apprehension that the respondents may terminate the services of the complainant with an intention to deprive them benefits of permanency. All the complainants are presently working on vacant and permanent posts and doing perennial nature of work.

4. That all the complainants were appointed on their respective posts as per the notice published by the respondent university. They were called for interview and accordingly were

appointed. All the complainants were continuously worked with the respondents without any break in service, but respondents showing artificial break in their services by issuing fresh appointment letters time to time with an intention to deprive the benefits of permanency. The respondents deducted PF amount of the complainant no. 1. The past service records of all the complainants are clean and unblemished. All the complainants were appointed by following due procedure of law and therefore respondents have no right to deny permanency to the complainants. The salaries of the complainants were/are credited by the respondents in their respective bank accounts. The respondents have also issued I-cards to all the complainants.

5. The Trade Union namely Mumbai Vidyapeeth Kamgar Sanghatana so called temporary employees filed complaint of unfair labour practice. The Industrial Court allowed the complaint and directed the respondents to pay wages and benefits to all the complainants. The said order was challenged before the Hon'ble High Court and the Hon'ble High Court has upheld the order of the Industrial Court. The order of the Hon'ble High Court was challenged before the Hon'ble Apex Court, wherein the respondents were directed to pay minimum pay scale from 1st July, 2022 to the regular appointment employees without prejudice to the rights of the parties. Therefore, the respondents started presurizing the employees and threatening the employees that their services will be discontinued and in their place contract labour will be recruited through the contractor. According to the complainants, they worked

more than 240 days preceding the 12 months of 30 August, 2022. Thus, the respondents have committed unfair labour practices under Items 4 (a) of Schedule-II and Items 5, 6 & 9 of Schedule-IV of the MRTU & PULP Act, 1971 and prayed to allow the complaint.

6. The respondents have opposed the complaint by filing their Written Statement at Exh. C-7. It is submitted that complainants have been appointed by the respondents, as fresh employees. The appointments are made on the basis of application made by each of the complainant and also has given an undertaking confirming the Terms and conditions of the Appointment. The appointment of the complainants are made on a Fixed Terms Contract Basis, clearly stipulating the date of discontinuation of service also. The respondents have powers to make appointments on a temporary / fixed terms contract basis as per Section 2 (oo) (bb) of the Maharashtra Provincial Municipal Corporation Act, 1949. Therefore, complaint is not maintainable. It is denied by the respondents that they have engaged in any unfair labour practices as claimed by the complainants. It is further denied that, there is any change in designation of the complainant. It is submitted that the complainants are appointed as fresh employees in the capacity of Technical Support Services Staff. The complainants are paid a consolidated salary as stipulated in the letter of appointment of each of the complainants. The appointment of the complainants as a fresh employees.

7. The respondents further denied that the complainants have been working continuously without any break and they have completed 240 days of uninterrupted services during the period of the preceding 12 calendar months. It is submitted that the designation depends upon the nature of the work. The complainants have been engaged in employment in the UCC of the University to do a particular work which is defined as TSSS. The complainants are employed purely on a temporary basis for a fixed term. It is denied by respondents that the complainants have put in 240 days of service in a bracket of 12 calendar months. The complainants have issued fresh appointment orders therefore there is no scope for making the complainants permanent. It is submitted that the fact in Complaint (ULP) No. 385 of 2014 and that of the decision of the Hon'ble Bombay High Court in Writ Petition No. 2976 of 2018 and the subsequent Special Leave Petition, the facts are different from that of the facts in the present complaint.

8. It is further stated that the nature of work required to be performed by the complainants is different from that of the work performed by any of the permanent or temporary employees. 'Equal Pay for equal work' cannot be made applicable in the present complaint merely on the basis of designations. The rest of the contents are denied by the respondents by giving parawise reply. Lastly, it is prayed that the complaint be dismissed with costs.

9. From the rival pleadings of the parties, following issues are framed by my Ld. Predecessor at Exh. O-4. I have recorded my findings against each of them, for the reasons to be followed -

<u>I s s u e s</u>	<u>F i n d i n g s</u>
1. Do the complainants prove that the respondents have engaged in unfair labour practices under Item 4 (a) of Schedule-II and Items 5, 6 and 9 of Schedule-IV of the MRTU & PULP Act, 1971 ?	:- Partly in the affirmative.
2. Do the complainants prove that they are entitled for the reliefs claimed ?	:- Partly, in the Affirmative.
3. What Order?	:- As per final Order.

:- REASONS :-

10. Out of 108 complainants, the Complainants have examined one Prasahant Vijay Murkar at Exh. U-14 and Bhagyashri Mahadeo Paul at Exh. UW-2 on behalf of all the complainants. Complainants closed their evidence by filing pursis at Exhibit U-110.

11. Respondents examined Dr. Ashok Hema Farde, Deputy Registrar, HRDC Department of the Respondent No.1 University by

filing his affidavit-in-lieu of examination-in-chief at Exhibit CW-1. Respondents closed their evidence by filing pursis at Exhibit C-57.

12. Heard the Ld. Advocates for both the parties. Perused the written synopsis of arguments filed by the Respondents at Exhibit U-87.

13. Coming to the evidence, the Complainants have examined one Shri. Prasahant Vijay Murkar by filing his affidavit-in-lieu of examination-in-chief at Exhibit U-14 & Bhagyashri Mahadeo Paul at Exh. UW-2. Their deposition is in consonance with the averments in the Complaint. They have been exhaustively cross-examined by the Respondents.

14. The complainants have filed various copies of documents with list Exh. U-7 i.e. copies of appointment letters of complainants, copies of adhar card of complainants, copies of PAN Card of all complainants. The respondents have filed documents with application Exh. C-25. The said documents are appointment orders of the complainants. The said documents are admitted by the complainants. All appointment orders are placed on record from page no. 1 to 411. They are from Exh. U-16 to Exh. U-106 respectively. The complainants also placed on record documents with list Exh. U-108 i.e. document no. 1 is the copy of office order dated 18.05.2011 issued to Mr. Sandip Digambar Kamble at Exh. U-109, document no. 2 is the copy of office order dated 20.03.2012 issued to Mr. Sandip Digambar Kamble under the signature of

Registrar In-charge is at Exh. U-110, document no. 3 office order dated 04.08.2012 issued to Mr. Sandip Digambar Kamble at Exh. U-111, document no. 4 copy of office order dated 31.01.2013 issued to 66 employees including Mr. Sandip Digambar Kamble at Exh. U-112, document no. 5 is the copy of office order dated 30.08.2013 issued to 12 employees including Mr. Sandip Digambar Kamble at Exh. U-113, document no. 6 is the office order dated 24.10.2013 issued to 16 employees including Mr. Sandip Digambar Kamble at Exh. U-114. The complainants have also filed documents with list Exh. U-112 i.e. copy of appointment of intern to work in place of employees concerned in the complaint dated 12.04.2023 and copy of letter appointment of intern of various dates of the complainants, copy of market sheet for the post of intern and copy of chart showing name of the employees, post held by them, department, salary and joining date are filed at Sr. No. 1 to 24. They are collectively marked as Exh. U-113.

15. The Respondents adduced evidence of Dr. Ashok Hema Farde, Deputy Registrar, HRDC Department of the Respondent No.1 University by filing his affidavit-in-lieu of examination-in-chief at Exhibit CW-1. His deposition is in consonance with the averments made in the Written Statement by the Respondents. He has been cross-examined by the Ld. Advocate for the Complainants. The Respondents relied on the following documents with list of document Exh. C-37 i.e. copy of Government Resolution dated 20.05.2010 at Exh. C-38, copy of advertisement published in the year 2013 Newspaper regarding the recruitment process of various

non-teaching staff, copy of Government resolution dated 10.04.1991, 18.09.1992 and 18.01.1996 are at Exh. C-39, copy of list of temporary employees who had appeared for competitive examination held in the year 2013 for recruitment at Exh. C-40, copy of Government resolution dated 25.08.2005 at Exh. C-41, copy of Government Notification dated 06.06.2017 and 21.02.2018 at Exh. C-46 colly, copy of Government resolution dated 07.08.2011 at Exh. C-42, copy of resolution dated 26.04.2010 at Exh. C-43, copy of resolution dated 08.11.2011 at Exh. C-44 and Item for the management council dated 03.01.2013 is at Exh. C-45.

Submissions:-

16. Ld. Advocate Shri. B. K. Hegde, on behalf of the Complainants urged that presently all the five complainants are working with the Respondents on sanctioned vacant post as per the documentary evidence produced by them. Ld. Advocate then adverted to the documents, which is the RTI Information received from the Respondents wherein the Respondents resolved and recommended to the Management Council that proposal for creating/ abolishing/ modifying/ continuing of staff position in University Computerization Centre, as per new roles and goals required for implementation of SAP – ERP package for computerization of administral process of university of Mumbai be accepted and resolved that no change in the following approved staff position be made and the position in the scale of pay mentioned be continued.

17. Ld. Advocate Shri B. K. Hegde urged that admittedly, the Complainants are appointed on various posts as stated in the complaint on vacant sanctioned posts and they are doing the work of perennial nature. They have completed 240 days in every calendar year as per attendance register manually maintained by the Respondents. Ld. Advocate submits that the monthly salary of all the Complainants are credited in their respective salary bank account. Accordingly, Complainants produced their bank statement from the date of their appointment till 2022. He further submitted that on 12th August, 2022, the employees in the petition before the Hon'ble Supreme Court held Procession rally in Kalena Campus of the University and in which the complainants also participated. They approached one Mr. Milind Kirloskar the President of Mumbai Vidyapeeth Kamgar Sanghatana and requested him to make them members of the Union and take up their issues to get wages and benefits at par with the other employees. The respondents got information about the complainant joining procession and organizing the other employees under the banner of Mumbai Vidyapeeth Kamgar Sanghatana, therefore to get rid of services of the complainants, the respondents are trying to recruit employees through Contractor and on expiry of term of employment specified in the last office order dated 28.06.2022 extending employment of the complainant till 30th August, 2022 would be the last employment and on expiry of the same, the complainants would not be employed and in their places contract labour would be recruited. He further submitted that the complainants have right to join union of their choice, they have right to urge the other non

members to join a trade union of their choice. The respondents are making a plan to terminate the services of the complainants from 30th August, 2022 and this amounts to unfair labour practice within Item 4 (a) of Schedule-IV of the Act.

18. Ld. Advocate Shri B. K. Hegde argued that in support of voluminous documentary evidence, the Complainants also recorded their evidence below Exhibit UW-1 and UW-2. The documents as well as contentions raised by the witnesses have remained unchallenged. Ld. Advocate Shri B. K. Hegde then referred to the evidence of the witness examined by the Respondents(Mr. Ashok Farde, Dy. Registrar of the Respondent University below Exhibit CW-1). In the cross examination, this witness admitted that on 28.10.2022 he applied for MA-Part-1 University as State Govt. did not give approval for his post of Dy. Registrar as well as that of Asst. Registrar Mrs. Vaishali Kamble and they are getting salary from administration of the University. During his cross examination witness referred document at Sr. No. 14 relevant page 1257 to 1277 filed alongwith list Exh. U-4, but he has not aware about these documents in respect of the management council of the university passing resolution for fill up the posts of the Complainants in University and also finalizing their pay scale and that the Complainants were appointed on sanctioned and vacant posts. In cross-examination, this witness admitted that attendance register of the employees employed is maintained through biometric as well as manually. The management witness also admitted that the Complainants are not extended the benefits 5th & 6th pay

commission and permanent employees are getting more salary than the Complainants. The witness did not deny the documents, but only deposed that he is not aware about the said documents. Ld. Advocate submits that the cross examination of the management witness below Exhibit CW-1 also supports the case of the Complainants.

19. Ld. Advocate Shri. B. K. Hegde then referred to the items which have been inserted in this Complaint. He urged that most of the documents are admitted, which is admitted document received under RTI, the management council passed resolution and decided to appoint the employees in University through the agency where the Complainants are presently working and this act on the part of the Respondents to abolish the work of regular nature which being done by the Complainants and to give such work to the private agency on the ground that the employees are joining the union and therefore it amounts to unfair labour practice under Item 4 (a) of Schedule-II of the MRTU & PULP Act, 1971.

20. Ld. Advocate then submits that all the Complainants are performing the same duties and responsibilities as regular employees, but they are paid less wages as compared to other similarly situated employees. The complainants are having requisite qualifications and they are appointed against sanctioned posts which are available in regular cadre. They are performing similar duties and responsibilities as being discharged by regular employees, but they have been deprived from the principles of

“equal pay for equal work” and thus there is discrimination, partiality between the one set of workers. Though all the Complainants are working with the Respondents on vacant sanctioned posts, but they are not considered for permanency. Thus, the Respondent University has shown favoritism and partiality to one set of workers regardless of merits and therefore, item 5 of schedule IV of the MRTU & PULP Act, 1971 is attracted.

21. Now, as regards item 6 of Sch.IV of the MRTU & PULP Act is concerned, it is the submission of the Ld. Advocate Shri B. K. Hegde that though all the Complainants are appointed on sanctioned and vacant posts and they are doing perennial nature of work, but with an intention to deprive them the status and privilege of permanent employees they are considered as casual or temporary employees and they are continued as such for years together on their respective posts. Further in order to deprive them the rights of permanency, they are trying to terminate the services of the employees and this act on the part of the Respondents amounts to committing an unfair labour practice under item 6 of Schedule IV of the MRTU & PULP Act, 1971.

22. With regard to unfair labour practice under Item 9 of Sch.IV of the MRTU & PULP Act, Ld. Advocate Shri B. K. Hegde submits that though all the complainants are appointed on sanction vacant posts and they are working with the Respondents since long, but they have been deprived statutory benefits such as (i) PF Benefits, (ii) Leave Benefits, (iii) House Rent Allowance, (iv) Equal

pay for equal work and these acts on the part of the Respondents amount to unfair labour practice under item 9 of Schedule IV of the MRTU & PULP Act, 1971.

23. In support of the arguments advanced, Ld. Advocate Shri B. K. Hegde relied on the following case-laws :-

- i) *Mumbai Vidyapeeth Kamgar Sanghatana & Others Vs. University of Mumbai and Others, 2020 (1) LLN 413 (Bom.).*
- ii) **University of Mumbai V/s. Parag Bhaskar Ghag and Ors., Writ Petition No. 6932 of 2022, DOD :- 09.05.2025**

24. Ld. Advocate Shri B. K. Hegde strenuously urged that from the documentary evidence as well as oral evidence, Complainants have proved that the Respondents have committed unfair labour practices under items 4(a) of Schedule-II and Items 5, 6 & 9 of Schedule IV of the MRTU & PULP Act, 1971 and therefore, this Court is required to issue direction to the Respondents to cease and desist from committing unfair labour practices and further be pleased to direct the Respondents to hold that Complainants are the permanent workmen of Respondent University and Respondents be directed to give status of permanency along with all consequential benefits and arrears of salary from the date of completion of 240 days uninterrupted services during the period of 12 calendar

months and to give fitment of wage revision at par with regular employees. Accordingly, Ld. Advocate urged to allow the Complaint.

25. In rebuttal, Ld. Advocate Shri. S.N. Desai, on behalf of the Respondents, urged that though the Complainants have invoked item 5 of Sch.IV of the MRTU & PULP Act, there is no specific pleading to that effect in the Complaint in respect of favoritism to one set of workers regardless of merits. No specific evidence is also adduced by the Complainants. There is no evidence to show that regular employees are doing the same and similar work like the Complainants, in order to reach to the conclusion about the so-called favoritism.

26. As regards item 6 of Sch.IV of the MRTU & PULP Act, Ld. Advocate Shri Desai submitted that there is no pleading or evidence to show how 240 days have been completed in each calendar year by the Complainants. The concept of 240 days comes under the Industrial Employment (Standing Orders) Act. However, the present matter comes under the Maharashtra Public Universities Act, in which 240 days have not been considered. There is no provision for granting permanency. In the case of Complainants, no recruitment procedure and selection process was conducted. The documents produced by the complainants about physical and manual attendance are prior to the date of cause of action dated 01.07.2022 and 17.08.2022. Hence, it cannot be considered. Though in the Complaint, Complainants have pleaded that are claiming for permanency since years together, but considering the

cause of action as dated 01.07.2022 and 17.08.2022, the said stand cannot be considered.

27. Ld. Advocate Shri S.N. Desai submits that the documents received under the RTI Act are not reliable and there are judgments to that effect. All the appointment letters show that the Complainants are appointed on temporary basis. Looking to the status of employment of the employees, Complainants cannot claim permanency.

28. Referring to item 9 of Sch.IV of the MRTU & PULP Act, Ld. Advocate submits that there is no award, agreement or any provision of law which is breached thereby attracting item 9. As regards the calculation sheet produced on record, the same are just calculations. There is no accountancy to the said calculations. Moreover, there is no adjudication in respect of the said calculations. No order is made for preparation of these calculations. Referring to the Order of the Hon'ble Supreme Court produced by the Complainants clearly shows that Complainants are not party to the said proceeding. The document produced is regarding the creation of post, but selection process cannot be ignored. Though the Complainants are harping on the fact that there is long standing practice to make temporary employees permanent, but same is not proved by them. Moreover, Industrial Employment (Standing Orders) are not applicable. The employment in the Respondent University comes under the category of "public employment" and therefore selection process as per rules is must. Mere issuance of

notice on the notice board is not sufficient, but there should be proper selection procedure for appointment on that particular post/s.

29. Ld. Advocate Shri S. N. Desai heavily stressed on the point that the scope of the present Complaint is from dated 01.07.2022 and 17.08.2022, the date on which the alleged cause of action arose. Therefore, the Complainants are estopped from relying on the documents prior to that of dated 01.07.2022 and 17.08.2022. Any incident prior to the alleged date of cause of action cannot be looked into. Ld. Advocate submits that the Complainants have not disclosed the source in support of their allegations in the complaint. Name of the private agency is not given. Referring to the evidence of the Complainants, Ld. Advocate Shri Desai submits that all the witnesses have miserably failed to point out any instance of unfair labour practice allegedly being committed by the Respondents. Admittedly, their appointments are not through proper selection procedure. Backdoor entry is not permitted. Though the Complainants are alleging that the work carried out by them is of permanent and perennial nature, no evidence is produced on record to that effect. Their employment is for a temporary period. The Complainants had given the undertaking, which fact is intentionally suppressed by the Complainants. The Complainants have miserably failed to prove any of the items invoked in this Complaint alleging unfair labour practice on the part of the Respondents. Hence, the Ld. Advocate urged to dismiss the Complaint with cost.

30. Ld. Advocate Shri S.N. Desai for the Respondents, in support of his arguments, relied on the following case-laws:-

- i) **State of Punjab and Another V/s. Surjit Sing and Others, (2009) 9 Supreme Court Cases 514**
(Relevant Para 19, 25, 32, 36, 37, 38 & 40)
- ii) **State of West Bengal and Another V/s. West Bengal Minimum Wages Inspectors Association and Anr., (2010) 5 Supreme Court Cases 225**
(Relevant Para 18, 19, 20 & 25)
- iii) **Director General of Works, CPWD, V/s. Regional Labour Commissioner (Central) and Others, (2008) 2 Supreme Court Cases 589.** (Relevant Para 3 & 4)
- iv) **Uttar Pradesh State Electricity Board and another V/s. Aziz Ahmed, (2009) 2 Supreme Court Cases 606** (Relevant Para 17, 20 & 22)
- v) **Pandurang Sitaram Jadhav and Others V/s. State of Maharashtra Through its Dairy Manager and Anr., (2020) 17 Supreme Court Cases 393.**
(Relevant Para 7 to 14)
- vi) **Steel Authority of India Limited and Others V/s. Dibyendu Bhattacharya (2011) 11 Supreme Court Cases 122.**
- vii) **State Bank of India and Anr. V/s. M. R. Ganesh Babu and Others, (2002) 4 Supreme Court Cases 556** (Relevant Para 16)

- viii) **Durgapur Casual Workers Union & Ors. V/s. Food Corporation of India and Ors., (2015) 5 Supreme Court Cases 786.**
- ix) **State of U. P. & Others V/s. Putti Lal, (2009) 9 Supreme Court Cases 337 (Relevant Para 5)**
- x) **Orissa University of Agriculture & Technology and Anr. V/s. Manoj K. Mohanty, (2003) 5 Supreme Court Cases 188. (Relevant Para 10, 12 & 14)**
- xi) **Castribe Rajya Parivahan Karmachari Sanghatana and etc. V/s. Maharashtra State Road Transport and Others, 2001 Lab IC 2917. (Relevant Para 42, 43 & 44)**
- xii) **Nandkishore Lalbhai Mehta V/s. New Era Fabrics Private Limited and Ors., (2015) 9 Supreme Court Cases 755. (Relevant Para 39 & 40)**
- xiii) **Secretary, State of Karnataka V/s. Umadevi, (2006) 4 Supreme Court Cases 1. (Relevant Para 10, 13, 14, 43, 44, 45 & 49)**
- xiv) **Official Liquidator V/s. Dayanand & Ors., (2008) 10 Supreme Court Cases 1.**
- xv) **State of Uttar Pradesh and Anr. V/s. Anand Kumar Yadav and Ors., (2018) 13 Supreme Court Cases 560.**
- xvi) **H. Siddiqui (Dead) by LRS. V/s. RamalinGam (2011) 4 SC Cases 240.**

xvii) **Life Insurance Corporation of India & Anr. V/s. Ram Pal Singh Bisen, (2010) 4 Supreme Court Cases 491.**

xviii) **Kumarpal N. Shah (since deceased) through L.Rs. V/s. Universal Mechanical Works Pvt. Ltd., Mumbai & Ors., 2020 (1) Mh.L.J. 443.**

31. Prior to evaluating the submissions advanced by both parties and examining the documentary evidence on record, it is pertinent to first scrutinize the oral evidence presented by the parties.

32. The Complainant No.1 has examined Shri. Prashant Vijay Murkar at Exh. U-14. He has deposed in the line of the complaint in his chief examination. He has placed on record number of documents and in the cross-examination, he admitted that the respondent university has not issued permanency letter to him and right from the beginning he was working as a temporary employees. He further admitted that prior to this case, he has not filed any case against the respondents university. He denied that he had never given application to the University for employment in 2006 for the first time, he had given application for employment to the University. He has not filed the copy of said application in this Court. He stated that he is deposing on behalf of himself and other 107 complainants. He had made application for the post of peon, however no advertisement was published in the newspaper for the post of peon. He voluntarily stated that in February-2006, notice

was displayed on the display board of Establishment Section of the University for the post of Peon / Hamal. He does not remember as to for how many posts, the said notice was displayed. He has not filed the copy of the said notice in the matter. He admitted that he had not worked with the University prior to making of the application for the post of Peon. He was informed by his neighbour that notice is displayed for the post of Peon / Hamal. His neighbour Mr. Kale was working in the University in the Accounts Department. He denied that right from the beginning he had worked on the post of Peon. He states that for some period, he had worked on the post of peon and for some period he worked as a Hamal. He admitted that there is difference in the nature of work assigned to the said post. He admitted that no advertisement was published for the post of Hamal at that time. He denied that at the time of his initial appointment, his interview was not conducted. He stated that he does not remember as to who had taken his interview. His appointment letter was signed by Registrar of University. He stated that he was getting fixed wages. He admitted that his salary was deposited directly in his bank account from the University fund. He stated that initially he joined Accounts Department and there were 7-8 peons. He denied that in the Accounts Departments all 7-8 peons were temporary peons. He stated that there were permanent as well as temporary peons. He states that he is unable to say as to out of those 7-8 peons, how many of them were temporary and permanent peon. He has worked in DSW office. He denied in the DSW office all peons are temporary peons. He stated that he is working in the DSW Office since last 10 to 12 years. Initially, there

were only one permanent peon and thereafter all peons are temporary peons. He was given threat of removal from service by staff as well as officer after 12.08.2022. He has not made police complaint against them. He stated that inspite of threats he has not been terminated. He stated that he has not filed copy of quotation to show that university has called contract labour. He admitted that he does not know as to from whom and when the quotation was called by University. He stated that he does not know as to whether there is any part time worker, working for the post of peon.

33. The another witness examined by the complainants is Bhagyashree Mahadeo Paul at Exh. UW-2. Her evidence is also in the similar line of UW-1. In her cross-examination, she stated that she is educated as a MA in Sociology. At the time of joining employment in the year 2008, she had completed her English and Marathi typing. She denied that for getting the job she never applied by written application. She stated that she has not filed the copy of the application in the present proceeding. She admitted that for the post of Junior typist clerk no advertisement was published in the newspaper. She voluntarily stated that the news about vacancy of the post of junior typist clerk was published on the notice board of University. In the year 2008, she joined in the photocopy verification department Exam House as a Junior typist clerk. She denied that she had worked only in the photocopy verification department, not in the other department. She admitted that frequently appointment letters were issued to her after every six months or three months and she used to make application for

every time. Till now she worked in three departments. She admitted that her written application and typing test was not conducted. Her interview was taken by department head of University. She admitted that in the departments where she worked only temporary employees were working, who were appointed every six months and three months like her. She admitted that as per the requirement of concerned department, she was appointed in the various departments. She denied that no one has threatened her about termination of her services. She also denied all the other suggestions given by the advocate for the respondent.

34. The Respondents adduced evidence of Dr. Ashok Hema Farde, Deputy Registrar, HRDC Department of the Respondent No.1 University by filing his affidavit-in-lieu of examination-in-chief at Exhibit CW-1. His deposition is in consonance with the averments made in the Written Statement by the Respondents. He has been cross-examined by the Ld. Advocate for the Complainants. In cross, the witness states that, as on today, there are near about 900 temporary employees working in the Respondent University. He further states that complainants were appointed by the authorities of the Respondent University. Appointment letters were issued by the Dy. Registrar of the concerned department after sanction of the authority. Concerned department send requisition for appointment of seasonal employees to the University. He denied that, Complainants have completed more than 240 days in each calendar year. He further denied that the University has power to appoint

employees. He further stated that complainants were paid wages from the general fund raised by University. He further stated that working hours are to be followed by Aided Peons as well as Temporary Peons. He denied that the work performed by aided employees as well as temporary employees is same and similar. He stated that unaided Clerks do the typing work, unaided Data Entry Operators do the feeding work of data given to them. He states that, he has personally seen the work of the concerned 108 Complainants. Their work is seen by the concerned department heads. It is further contended that the attendance of the Complainants was marked in the register maintained by the Respondent University.

35. In cross examination, the witness was asked the question as, the State Government has not given approval to the post of Dy. Registrar(yourself) and Assistant Registrar (Vaishali Kamble) ? And the witness answered that Approval is given by the University and there is no concern of the State Government to approve the posts. The proposal for approval of these posts is sent to the State Government and committee is also constituted in that regard. He admitted that in the University, two types of recruitment are made i.e. Government aided recruitment and recruitment through University which is seasonal appointment. He further admitted that the payments are made to the Government aided recruited employees by State Government and the seasonal employees are paid by the University. He further admitted that payments to the seasonal employees are made as per the resolution passed by the management council and for

that purpose, approval of the State Government is not required. He further admitted that the Government aided employees are extended the benefits of 5th Pay and 6th Pay Commission, whereas the seasonal employees are not extended the said benefits. He further admitted that the Complainants are not extended the benefits of 5th and 6th Pay Commissions.

36. In cross examination, he admitted that the employees in the present complaint are doing same nature of work as with the employees whose case is pending before the Hon'ble Supreme Court. He further denied that there is no provision to obtain the sanction of the Government before appointing the employees. The employees were appointed as temporary/seasonal employees. The employees were appointed during the exam season and admission season. He stated that, these employees were appointed after taking sanction from the Administration of the University. He denied that Shri. Sandip Kamble is working on the vacant post of Mark-sheet and Certificate Division. He further stated that every head of the department to whom these employees were attached were supervising the work of these employees.

37. Before adverting to the merits of the case, it is apposite to first examine the specific allegations levelled in the complaint against the Respondents, namely, Item 4(a) of Schedule II and Items 5, 6, and 9 of Schedule IV of the MRTU & PULP Act, 1971

Schedule-II

Item 4 *To encourage or discourage membership in any union by discriminating against any employee i.e. to say -*

(a) discharging or punishing an employee because he urged other employees to join or organize a Union.

Schedule-IV

Item 5. *To show favoritism or partiality to one set of workers, regardless of merits.*

Item 6. *To employ employees 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.*

38. From the admitted facts emerging from the pleadings and evidence on record, it is evident that the Complainants were appointed on a temporary basis, therefore their appointments are of on Ad-hoc nature, and not as per the procedure established by the State Government in case of sanctioned posts. The Complainants are governed by the terms and conditions stipulated in the said appointment letter/s which is in the form of agreement. Therefore, it is the stand of the Respondents that the appointments of the

Complainants are made on fixed term contract basis, clearly stipulating the date of discontinuation of service also.

<u>No.</u>	<u>Name of the Employee</u>	<u>Date of Joining</u>	<u>Joining of Department</u>	<u>Designation</u>
1.	Sunil Tanga Pagare,	10.10.2004	CRO Unit	Hamal
2.	Nilesh Sambhaji More,	07.04.2006	College Tribunal	Peon
3.	Prashant Murkar,	16.03.2006	Department of Student Welfare	Peon
4.	Santosh Dagadu Kawde,	28.08.2006	Idol	Peon cum Hamal
5.	Raksha Ramakant Sawant,	01.02.2007	Examination Section	Jr Ty Clerk
6.	Sandip Digambar Kamble,	23.11.2007	Examination Section	Jr. Ty Clerk
7.	Bhushan R. Vinchu,	03.04.2008	Examination Section	Peon
8.	Sameer Chandrakant Jadhav,	11.12.2008	Phule Ambedkar Chair	Peon
9.	Ramesh Ramchandra Deshmukh	16.08.2008	Dlle	L. G. Steno
10.	Priyanka Bala Morajkar,	23.01.2008	IT	Jr. Ty Clerk
11.	Hemlata Dattaram Salvi,	09.06.2008	Department of Student Welfare	Sweeper
12.	Dnyaneshwar Shivram Nadekar,	03.10.2008	CAP Cell	Peon Cum Hamal
13.	Bhagirathi Madhukar Kamble,	25.03.2008	Examination Section	Jr. Ty Clerk
14.	Sneha Yatin Shinde,	18.08.2009	Department of Student Welfare	Deo
15.	Gautam Shivram Gaikwad,	01.12.2009	ACEE	Project Assistant

16.	Sanjay Dunda Bambale,	01.10.2009	Examination Section	Jr. Ty Clerk
17.	Shaikh Toufiq Badshah,	23.03.2009	CAP Cell	Peon
18.	Sheela Shantaram Mohite,	02.11.2010	Department of Student Welfare	Jr. Ty Clerk
19.	Nagesh Mahadev Jadhav,	15.07.2010	Idol	Peon Cum Hamal
20.	Sachin Devrao Somware,	13.09.2010	J. N. Library	Peon
21.	Yogita Barku Kemble,	18.02.2010	Employment Bureau	Jr. Ty Clerk
22.	Yogesh Prakash Patil,	02.10.2010	Department of Student Welfare	Peon
23.	Hemant Manohar Salvi,	15.04.2010	J. N. Library	Hamal
24.	Omkar Bharat Shedge,	10.06.2011	UG	Peon
25.	Ragji Prathamesh Damodar,	10.10.2011	Examination Section	Peon Cum Hamal
26.	Nilesh Prabhudas Ghagare,	04.05.2011	Garware Institute	Driver
27.	Vivek Ravji Mhatre,	08.02.2012	Department of Student Welfare	Peon
28.	Sushil Suresh Kaluskar,	02.05.2012	Account Section (Bill Unit)	Jr. Ty Clerk
29.	Kiran Sambhaji Patil,	30.08.2012	Dept. of Lifelong Learning & Extention	Technical Assistant
30.	Vinod Hirabhai Vora,	01.04.2013	Department of Student Welfare	Hamal
31.	Vishnu Kashinath Sonawane,	08.03.2013	Department of Student Welfare	Peon
32.	Chetan Anand Gaware,	10.10.2003	Examination Section	Peon

33.	Abhijit Sambhaji Dhokare,	02.06.2014	Lokkala	Peon
34.	Ankesh Arjun Rambade,	03.06.2014	Account Section	Peon
35.	Sujata Shridhar Ramje,	01.04.2014	Affiliation	Peon
36.	Pragati Jaywant Paghare,	12.09.2014	Affiliation	Deo
37.	Kanchan Gajanan Gadge,	03.07.2014	Security Office	Security
38.	Gopal Vithoba Sutar,	01.07.2014	Campus Developmen t Unit	Helper to Carpenter
39.	Pooja Kishor Pawar,	05.08.2015	Eligibility	Peon
40.	Chhaya Vijay Bhogle,	30.06.2015	NSS	Jr. Ty. Clerk
41.	Vishakha Milind Mhaske,	15.04.2015	CAP Cell	Sweeper
42.	Rambhuwal Ramkumar Chauhan,	03.09.2015	Security Office	Security
43.	Gayatri Anil Mayekar,	02.03.2015	Dept. of Sanskrit	Jr. Ty. Clerk
44.	Tejas Mahendra Owhal,	20.03.2015	NSS	Peon
45.	Deepak Hirabhai Vora,	01.04.2015	JSH	Hamal
46.	Vishal Dashrath Lembhe,	24.04.2015	Internation Cooperation	Peon
47.	Shilpa Ajit Pethe,	19.11.2015	CCF	Programmer
48.	Prakash Dashrath Kurjekar,	23.05.2015	History	Research Assistant
49.	Bhavik Dinesh Solanki,	04.06.2015	Department of Student Welfare	Hamal
50.	Pankaj Lokesh Kumar	13.07.2015	J N Library	Sweeper
51.	Janardan R. Kandekar,	02.10.2015	J N Library	Hamal
52.	Sushil Gajanan Indulkar,	22.09.2015	Department of Philosophy	Peon

53.	Ahmed Shamsuddin Sayed,	05.01.2016	College Tribunal	Peon
54.	Sanjay Vishwanath Sawant,	07.04.2016	VC Office	Jr. Ty. Clerk
55.	Amruta Premchand Kamble,	02.01.2016	CAP Cell Department	Sweeper
56.	Dhanashree Satyawar Shedge,	20.07.2016	COE	Programmer
57.	Anita Kadu Wakode,	02.01.2016	Account Section	Jr. Ty. Clerk
58.	Nitin Gulab Dhotre,	09.07.2016	Thane Sub Centre	Hamal Cum Sweeper
59.	Atish Arjun Kadam,	19.12.2016	WDC	Hamal
60.	Manishwa M. Sawant,	09.12.2014	Biotechnology	Sweeper
61.	Kirsan Vasant Burte,	02.08.2016	Department of Student Welfare	Jr. Ty. Clerk
62.	Haresh Ramchandra Bagave,	01.04.2016	Idol	Peon Cum Hamal
63.	Sushama Latikesh Bane,	02.07.2016	Eligibility	Jr. Ty. Clerk
64.	Vinayak Malikarjun Gajakosh,	01.06.2016	CAP Cell	Peon
65.	Sushant Shripat Gurav,	01.04.2016	CAP Cell	Jr. Ty. Clerk
66.	Gajanan Kondiba Gavale,	07.06.2016	CAP Cell	Office Assistant
67.	Harshada Sunil Paste,	04.06.2016	CAP Cell	Jr. Ty. Clerk
68.	Santosh Shivaji Patil,	01.07.2016	DLLE	Peon Cum Hamal
69.	Sagar Kishor Taware,	11.04.2016	CAP	Jr. Ty. Clerk
70.	Nilesh Amrao Gangawane,	11.04.2016	CAP	Jr. Ty. Clerk
71.	Sitaram Biroji Bodke,	02.09.2016	Revaluation Unit	Jr. Ty. Clerk
72.	Akshay Sadanand Shinde,	07.07.2016	Registrar Office Fort	Peon
73.	Aniket Ramesh Patil,	14.06.2016	G.A.D. Kalina	Jr. Ty. Clerk

74.	Akshay Anil Tambe,	03.11.2016	CAP	Peon
75.	Archana Ashok Bagwe,	02.11.2016	CAP	Jr. Ty. Clerk
76.	Bhagwan Mahadev Kate,	26.09.2016	Establishment Section	Jr. Ty. Clerk
77.	Sandeep Damodar Magar,	01.01.2016	G.A.D. Kalina	Hamal
78.	Rajesh Prakash Salvi,	01.03.2016	G.A.D. Kalina	Hamal
79.	Vijay Laxman Gurav,	18.06.2016	G.A.D. Kalina	Hamal
80.	Rajkumar Premkumar Kashyap,	11.01.2016	Idol	Fitness Trainer
81.	Gauri Mayur Neharkar,	02.01.2017	Sanskrit	Jr. Prof. Lib. Assistant
82.	Ashwini Nishakant Mhatre,	15.03.2017	Department of Student Welfare	Jr. Ty. Clerk
83.	Santosh Bhikaji Shirwadkar,	09.08.2017	Security Ish	Security
84.	Sachin Jagan Singh,	03.01.2017	JSH	Hamal
85.	Yuvaraj Bhagwan Sawant,	01.11.2017	Security	Watchman
86.	Neha A. Ujjainwal,	03.01.2017	J. N. Library	Hamal Cum Sweeper
87.	Abhishek Sanjay Pujare,	03.01.2017	J. N. Library	Peon Cum Hamal
88.	Priyanka Bapusaheb Torane,	03.01.2017	J. N. Library	Jr. Prof. Lib. Assistant
89.	Kamlesh Dattaram Ghanekar,	20.08.2017	Thane Sub Centre	Hamal Cum Sweeper
90.	Anil A. Ujjainwal,	01.04.2017	Department of Economics	Hamal
91.	Neha Appaso Thombare,	02.11.2017	Confucius Institute University of Mumbai	Peon
92.	Swapnil H. Wagh,	19.04.2017	Dispatch Section	Peon

93.	Digambar Eknath Rikame,	05.05.2017	College Tribunal, Fort	Driver
94.	Janardhan K. Sabne	01.04.2017	Dispatch Section	Peon
95.	Avdut Pundalkik Varekar,	16.06.2017	Account Section, Kalina	Jr. Ty. Clerk
96.	Shailesh M. Bankar,	21.03.2017	Idol	Jr. Ty. Clerk
97.	Akash Bhaskar Magare,	21.03.2017	Idol	Peon
98.	Pradnya Nagesh Mohite,	31.03.2018	Statistical Unit	Jr. Ty. Clerk
99.	Chetan Subhash Patil,	02.05.2018	Cap Cell	Peon
100.	Tushar Gajanan Mahadik,	03.07.2018	Ratnagiri Sub Centre	Jr. Ty. Clerk
101.	Sneha Sadanand Jourat,	03.07.2018	Ratnagiri Sub Centre	Jr. Ty. Clerk
102.	Kailash Bhaskar More,	12.04.2018	Nano Sciences	Sweeper
103.	SnehalSanjay Ratwadkar,	01.08.2018	Madam Kama Girls Hostel	Security
104.	Shobha Zumber Kamble,	26.07.2018	Security Office	Security
105.	Pooja Barku Mhaske,	02.02.2018	Security Office, Kalina	Security
106.	Varsha Amit Mane,	04.08.2018	Department of German	Stenographer
107.	Suchita Manoj Patil,	01.03.2018	Department of Biophysics	Lab Assistant
108.	Shweta Shantaram Redekar,	08.12.2020	CCF	Programmer

39. It is undisputed position that the permanent posts have to be filled in accordance with the recruitment policy only, after the

approval of the State Government. In the present matter, the Complainants are not appointed on the permanent posts and in accordance with the recruitment policy as per approval of the State Government. The Respondents have denied the fact that the Complainants are appointed as temporary employees on permanent sanctioned posts and additional sanctioned posts. Therefore, according to the Respondents, the appointment of Complainants is only for the purpose of ***“Stop Gap Arrangement”***.

40. To substantiate the allegation under Item 4(a) of Schedule II of the Act, the Complainant has put forth the case that on 12th August, 2022, the employees in the petition before the Hon’ble Supreme Court held Procession rally in Kalena Campus of the University and in which the complainants also participated. They approached one Mr. Milind Kirloskar the President of Mumbai Vidyapeeth Kamgar Sanghatana and requested him to make them members of the Union and take up their issues to get wages and benefits at par with the other employees. The respondents got information about the complainant joining procession and organizing the other employees under the banner of Mumbai Vidyapeeth Kamgar Sanghatana, therefore to get rid of services of the complainants, the respondents are trying to recruit employees through Contractor and on expiry of term of employment specified in the last office order dated 28.06.2022 extending employment of the complainant till 30th August, 2022 would be the last employment and on expiry of the same, the complainants would not be employed and in their places contract labour would be

recruited. He further submitted that the complainants have right to join union of their choice, they have right to urge the other non members to join a trade union of their choice. The respondents are making a plan to terminate the services of the complainants from 30th August, 2022 and this amounts to unfair labour practice within Item 4 (a) of Schedule-II of the Act.

41. I have scrutinized the evidence of the complainant's witnesses. However, their evidence is lacking to prove the case of the complainant under Item 4 (a) of Schedule-II of the Act. I have gone through the evidence more than once, but I did not find anything to substantiate their claim. Therefore, I hold that, the complainants failed to prove unfair labour practice within Item 4 (a) of Schedule-II of the Act.

42. In relation to Item 5 of Schedule IV of the MRTU & PULP Act, it has been alleged that the duties performed by the Complainants for several years are of a permanent and recurring in nature. It is further alleged that the nature of work carried out by the Complainants and that carried out by the regular employees are similar in nature, but the Complainants are not paid wages at par with the regular employees and thereby, the Respondents have shown favoritism and partiality between the two set of workers. Even otherwise, as per the principle of "equal pay for equal work", the Complainants are entitled for wages at par with that of the regular employees of the Respondent University. By not paying wages at par with the regular employees to the Complainants, the

Respondents have shown favoritism and partiality towards the Complainants.

43. As against this, the Respondents have come out with the defence that the appointments of the Complainants are on fixed term contract basis, which would stand terminated on the stipulated date mentioned in the terms of contract. The Complainants are paid consolidated salary as stipulated in the letter of appointment. The Complainants have accepted the terms and conditions laid down in their appointment letters and hence now they are estopped from raising any grievance with regard to non-payment of wages at par with the permanent employees or showing any favoritism or partiality to them. According to the Respondent University, the University has two categories of employees (i) State Government approved posts and (ii) University approved posts. Ld. Advocate for the respondents argued that the complainants have alleged that their designations have been changed. However, they failed to show that the service conditions have been adversely affected by changing their designations. There are no pleadings and no evidence to that effect. He further submitted that the complainants were issued fresh appointment letter based upon the handwritten application made by each of them alongwith the undertaking therefore the point which is for consideration is whether issuing a fresh letter of appointment as per their application can amount the unfair labour practices within the meaning of term defined under the MRTU & PULP Act, 1971. He further submitted that the cause of action in the complaint is

pleaded on 01.07.2022 and therefore, all the documents and evidence led concerning the incidents alleged to have been occurred before 01.07.2022 are not relevant and not related to the subject matter of the present complaint. In this regard, he relied upon the provisions of Sub section 1 of Section 28 of the MRTU & PULP Act and the regulation 100 of the Industrial court Regulations, 1975. Based upon these provisions, he further submits that no cognizance of the pleadings and the documents prior to 01.07.2022 and 17.08.2022 filed in the complaint can be considered while granting any relief to the complainant as the Court has no powers to grant any relief prior to the date of alleged unfair labour practices i.e. 01.07.2022 and 17.08.2022. In support of his submission, he relied upon Nandkishor Lalbhai Mehta V/s. New Era Fabrics Ltd., reported in (2015) 9 SCC 755.

44. He further submitted that Item no. 5 pleaded by the complainants attempting to show the favoritism or partiality to one set of employees regardless of merits. The complainant has failed to show in the pleading as well as in the evidence the two similar or identical groups have not identified. The Ld. Advocate for the respondents submitted that the complainants have failed to establish the process of appointment of the permanent employees, nature of work and the responsibilities are identical with the appointments, nature of work and responsibilities of the complainants and therefore, the complainants have failed to prove unfair labour practice as alleged by them.

45. A careful scrutiny of the factual circumstances, together with the Complainants' evidence, indicates that their engagement with the University is of a temporary nature, subject to periodic extensions. They are paid salaries on consolidated basis. The Complainants have examined themselves, wherein they expressly deposed that they were issued appointment letters whereby they were appointed on fixed term contract basis and their services were extended from time to time, by Order of the University.

46. All the documents produced by the complainants are obtained under the RTI by the complainants. In this regard, the Ld. Advocate for the respondents submitted that the documents produced under the RTI are secondary evidence. The secondary evidence cannot be relied upon unless it satisfies the requirement and ingredients of Section 65, 66, 73, 58 and 22 of the Evidence Act. He submitted that this information has been taken out by the complainant under the RTI and as it is the secondary evidence, it cannot be relied upon. In this regard, he has relied on the authority between **H. Siddiqui (Dead) by L.Rs. V/s. A. RamaLingam** (Supra), wherein it is observed that-

Admitting signature in photocopy of document, held, does not amount to admitting contents of documents – Where original documents are not produced at any time, nor any factual foundations laid for giving secondary evidence, it is impermissible to allow a party to adduce

secondary evidence – Secondary evidence must be authenticated by foundational evidence that alleged copy is in fact true copy of the original - Further held, secondary evidence relating to contents of a document is inadmissible, until non-production of original is accounted for – In instant case, trial court inferred that there was a specific admission by respondent that he had executed power of attorney in favour of his brother, since he admitted his signature on photocopy of power of attorney – Sustainability – Held,

47. He has also relied on the case of *Kumarpal N. shah (since deceased) through L.Rs. Mrs. Tarunbala Kumarpal Shah and Others V/s. Universal Mechanical Works Pvt. Ltd. Mumbai and Others, 2020 (1) Mh.L.J. 442*, wherein it is observed that,

(b) Evidence Act, SS. 65, 74 and Right to Information Act (22 of 2005), Ss. 3 and 4 - Documentary evidence – Admissibility – Public document or private document – Under RTI, usually applicant gets photostat copies of documents which are certified as true copies – They cannot be equated with certified copies mentioned in Evidence Act – If official under RTI certifies and supplies a private document, it still

remains a private document – Thus, RTI Act does not affect nature of a document.

48. I have carefully gone through the ratio of the above authority. In the present case, admittedly the complainants have filed many documents received under the RTI Act. However, most of the documents have been admitted by the respondents. In these circumstances, the documents produced under the RTI can be considered. Moreover, the custodian of the documents was the respondent University. All the complainants are the employees of the University. If the complainants are asked to produce the documents which are in custody of the Management, then the only way out is to obtain the same under the RTI.

49. Furthermore, the matter is under the social legislation and the fight is in between unequal. Here the documents belongs the University which is party to the present case and are shown to their witness. The documents were not foreign to them. It is not the case that the documents are obtained from some other Government agency. If the respondents wanted to explain the documents in other way, then they had an opportunity, but they had not availed the same. They are only harping upon the documents are obtained under RTI and therefore, they cannot be considered. This submissions cannot be accepted as documents are obtained from their custody only. Therefore, the documents produced under the RTI can be considered.

50. I have considered the evidence of the complainants and the respondents. The respondents are taking the stand that the appointments of the complainants are not against the vacant posts, but the appointment orders of all the complainants are seen. They show that they are appointed for years together after giving artificial breaks. This shows that the work was available throughout the years together and the respondent without filling up the posts utilizing the services of the complainants for years together. In spite of the same, the respondents failed to show that they have taken any steps for making the complainants permanent even after taking their services years together. Therefore, the complainants have proved that their appointment on the respective posts is against the vacant posts.

51. It is pertinent to note that there can be no dispute that Item 5 of Sch.IV of the MRTU & PULP Act, by itself, operates in a space where favoritism or partiality to one set of workers. These need not be temporary workers. It will apply to all workers. Before arriving at any conclusion with regard to the allegation of unfair labour practice under Item 5 of Sch.IV of the MRTU & PULP Act, made by the Complainants against the Respondents, it would be appropriate to also deal with the allegations attracting item 6 of Sch.IV of the said Act.

52. So far as Item 6 of Schedule IV is concerned, it is the allegation of the Complainant that some of the concerned employees have been working for many years, but the University

has not granted the status of employees to them in order to deprive them of the benefits of service conditions at par with permanent employees of Respondent No.1, and thus have indulged into an unfair labour practices as envisaged under Item 6 of Schedule of the said Act.

53. The Respondents, by way of defence, have contended that the appointments of the Complainants were made in contravention of the prescribed recruitment norms. Their appointments were purely on fixed term contract basis. Moreover, the Complainants were appointed on University approved posts. The Complainants are seeking permanency on the State Government approved posts, which is not permissible and the same is by way of backdoor entry, which is not permitted as per the guidelines given in *Umadevi's* case (*supra*).

54. As to Item 6 of Schedule IV of the said Act, it stands established through the Complainants' evidence that they have been in continuous employment with the Respondent University for an extended duration, without being conferred permanent status. As per the contentions of the Complainants, they were being paid consolidated salaries, whereas the similarly placed permanent employees doing similar type of work as done by the Complainants are getting much more salaries. In *Umadevi's* case (*supra*), the Hon'ble Supreme Court has categorically explained the meaning of "backdoor entry". In para No.53 of the judgment, the Hon'ble Supreme Court has observed that the Institutions where the

employees are employed on a temporary basis for years together are required to take positive steps to regularize the services of the employees. Further, the judgment of *Umadevi* (*supra*) has been explained by the Hon'ble Supreme Court in the case of *MSRTC v/s. Casteribe Rajya Parivahan Karmachari Sanghatana-2009 III CLR 262*. It is to be noted that the power given to the Industrial and Labour Court is very wide and affirmative action mentioned therein is inclusive and not exhaustive. No doubt, employing badli's, casuals or temporaries and continuing them on the same status for years together with the object of depriving them of the status and privileges of permanent employees, is an unfair labour practices on the part of any employer. Further more, the provisions of the MRTU & PULP Act and the powers of the Industrial & Labour Court were not for consideration in the case of *Umadevi* (*supra*). Keeping in mind, the directions given by the Hon'ble Supreme Court in para No. 53 of the judgment, I am of the considered opinion the same is binding on the Respondent University. The Respondent University has power, as laid down in Section 8(2)(i) and Section 32(w) of the Maharashtra Public University Act, 2016. Therefore, the Respondent University can do the needful by exercising powers under the aforesaid provisions, but the same did not happen. It also amounts to unfair labour practices under Item 6 of Schedule IV of the said Act. Therefore, in my opinion, the Respondent University has engaged in unfair labour practice under item 6 of Sch.IV of the MRTU & PULP Act.

55. Complainants in their evidence have categorically stated their case of 'equal pay equal work'. They have also duly brought their case in the evidence of the witness of the respondents in para 42 of the cross-examination of the respondents witness, he admits that in the University, there are two types of recruitment in the University i.e. Government aided recruitment and the recruitment through University, which is seasonal appointment. He further admits that the payments are made to the Government aided recruitment employees by state government and seasonal employees are paid by University. He further admitted that the payments to the seasonal employees are made as per the resolution passed by management counsel and for that purpose approval of the State Government is not required. He further admitted that the Government aided employees are extended the benefits of 5th and 6th Pay Commission, whereas the seasonal employees are not extended the said benefits. He further admits that the benefits of 5th and 6th Pay Commission are not extended to the complainants. So, in my opinion, this evidence of the respondent's evidence is sufficient to prove the case of the complainants in respect of their claim under 'equal pay for equal work'.

56. It is significant to observe that Items 5 and 6 of Schedule IV of the MRTU & PULP Act contain overlapping elements. Item 6 of Sch.IV is restricted to persons employed as badlis, casuals or temporary employees and continuing them for years together in that capacity with the intention of depriving them of privileges of the permanent employees. Persons subjected to such deprivation

will include the favoritism or partiality shown to the other set and in the facts of the present case, since there are different sets of employees working in the same capacity, some of whom are permanent and some who are temporary, Item 6 would also operate independent of Item 5 in respect of persons who are engaged in as badlis and casual temporary labour and those who have no fellow peers viz. engaged as permanent employees. In the instant case, in almost all categories of employees, the Respondent University has permanent and temporary employees. Hence, I am of the considered view that the Complainants have succeeded to prove unfair labour practice under item 5 of Sch.IV of the MRTU & PULP Act, 1971.

57. The Ld. Counsel for respondents has relied on the following authorities - State of Punjab and Another V/s. Surjit Sing and Others, State of West Bengal and Another V/s. West Bengal Minimum Wages Inspectors Association and Anr., Director General of Works, CPWD, V/s. Regional Labour Commissioner (Central) and Others, Uttar Pradesh State Electricity Board and another V/s. Aziz Ahmed, Steel Authority of India Limited and Others V/s. Dibyendu Bhattacharya, State Bank of India and Anr. V/s. M. R. Ganesh Babu and Others, Orissa University of Agriculture & Technology and Anr. V/s. Manoj K. Mohanty (supra). The principle enumerated in these authorities before entertaining and accepting the claim based on the principle of equal pay for equal work, the court must consider the factors like the sources and mode of recruitment / appointment

the qualification, the nature of work, responsibilities, reliability, experience, confidentiality, functional need, etc.

58. At this stage, I would like to refer on the case of ***State of punjab & Anr. V/s. Jagjit Singh, 2017 (1) SCC page 148*** wherein the Hon'ble Supreme Court observed that

Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/ corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the

temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary

employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

59. The complainant has also relied upon the Judgment of the Hon'ble High Court in Writ Petition No. 6932 of 2022 in case of University of Mumbai V/s. Parag Ghag and Ors. This was the similar case before the Hon'ble High Court. While deciding the said case, the Hon'ble High Court has considered in Para 89 the observations of the case of another Judgment of the Hon'ble Bombay High Court in case of Mumbai Vidyapeeth Kamgar Sanghatana & Ors. V/s. University of Mumbai through Registrar and Ors. In the said case, the identical submissions like absence of power to create the post and unavailability of vacant posts were canvassed on behalf of the respondents i.e. the same respondent in the present case and in that context, the Hon'ble High Court has observed as follows -

“71. There is no dispute about the fact that these persons were appointed albeit temporarily on posts which were vacant and have been continued to be so employed as on date of the petition. In that sense the observation in the order of the division bench in Rajesh Keshrinath Deorukhkar and Ors. V/s. Mumbai University²⁵ would not apply to such persons and the

common finding across the board which led the Industrial Court to answer the issue No.6 in the negative would not arise in the instant case.

72. In my view the filling up of existing vacancies in non teaching administrative and managerial staff is clearly permissible. It is not the respondents' case that the funds required are always funds to be received from the State. This could always be done from the universities own funds. In that respect the evidence of Vikas Sudhakar Rao Daware had established that as of December, 2015 there were 177 sanctioned posts and there is a large pool of employees of whom several have been retained over the years. In that sense it was open to the Industrial court to exercise all its powers under section 30 to direct the university to take affirmative action to effectuate policy of the Act. This clearly is the power that the Industrial Court is proceeding under section 30(1)(b) of the Act considering the ratio in the case of Jagjit Singh (supra). No doubt that temporary workmen are entitled for equal pay for equal work and Industrial Court having found in favour of the employees ought not to have restricted the benefit granted to employees in recognition of unfair labour practices been

recognised to restrict payment from date of the judgment. In my view, there is no justification in restricting payment from date of the judgment. The judgment recognises the fact that the employees concerned were engaged in the same work that has been done by the permanent employees. In fact having concluded that unfair labour practices were involved there is no justification in denying the benefit for the prior period, that would be contradictory in terms.

73. The reason for the impugned order omitting to grant relief on the basis of unfair labour practices under Item no. 5 is not clear. The impugned order has clearly held that temporary workers had been continued for years depriving them of the status and privileges of permanent employees. Inherent in that finding, is the partiality shown to one set of workers. Item nos. 5 and 6 share common elements. Item 5 by itself operates in a space where favoritism or partiality is shown to one set of workers. These need not be temporary workers. It will apply to all workers. However item 6 is restricted to persons employed as badlis, casuals or temporary employees and continuing them for years together in that capacity with the intention of depriving them of privileges of the permanent

employees. Persons subjected to such deprivation will include the favoritism or partiality shown to the other set and in the facts of the present case since there are different sets of employees working in the same capacity some of whom are permanent and some who are temporary. item 6 would also operate independent of item no. 5 in respect of persons who are engaged in as badlis and casual temporary labour and those who have no fellow peers, viz engaged as permanent employees. In the instant case in almost all categories of employees, the university has permanent and temporary persons. I am therefore of the view that the Industrial Court was required to find the university guilty of unfair labour practices under item 5 as well.

74. This view finds justification in the fact that when the complaints were filed, the employees have apparently no considered the dual standards to be violative of their rights. Although they may have been subjected to such unfair labour practices from date of their engagement, I must not lose sight of the fact that the engagement started for a short periods but as evidence on record has shown these temporary appointments were renewed and

repeatedly over several years. Given the fact that the employees in question are all gainfully engaged and are not found to be excessive or in surplus as established from the evidence led by the university, the university must be restrained from terminating their services except by following due process.

75. It would also be appropriate that the university fills up the sanctioned posts by filling up vacant posts from amongst the petitioners since in respect of the sanctioned posts it is not necessary to await State Government approval and where fresh recruitment has to be resorted to for this purpose, the university should proceed to fill up these posts.

60. I have considered the ratio of above both the authorities. The ratio and the facts of the case before the Hon'ble High Court in the case of Mumbai Vidyapeeth Kamgar Sanghatana and Ors. (Cited supra) and the case of University of Mumbai V/s. Parag Ghag (Cited Supra) are similar to the present case. In view of the same, I am of the humble opinion that the authorities relied by the Ld. Advocate for the respondents are not applicable to the present case. The Complainants have sufficiently brought on record the fact that they were employed as temporaries and they are working work of a permanent nature which was also being done by

the permanent employees. Therefore, considering the observations made in the case of *State of Punjab vs. Jagjit Singh* the principle of “Equal pay for equal work” is required to be applied. By not paying wages to the Complainants at par with that being paid to the regular/ permanent employees, the Respondents have shown favoritism or partiality amongst two sets of workers regardless of merits. Hence also item 5 of Sch.IV of the MRTU & PULP Act is attracted.

61. So far as, the submissions as regards the date of cause of action and delay in filing the present complaint is concerned, it is to be noted that the complainants have duly proved the unfair labour practice under Item 5 and 6 of the MRTU & PULP Act, 1971. The unfair labour practice under Item 5 and 6 are of continuous in nature. Therefore, even if date 01.07.2022 and 17.08.2022 is pleaded by the complainant, it cannot be said that the complaint is time barred and the pleadings and the documents of the complainants which are earlier to the date 01.07.2022 and 17.08.2022 cannot be considered. So, on the basis of above discussions, I hold that the complainant has duly proved the unfair labour practice under Items 5 & 6 of Schedule-IV of the MRTU & PULP Act, 1971.

62. As regards Item 9 of Sch-IV, I have gone through the provisions of Item 9 of Schedule-IV of the MRTU & PULP Act, it says that failure to implement, award, settlement or agreement. There are no allegations that the respondents have failed to implement

any award, settlement or agreement. Therefore, I hold that the case of the complainant does not fall under the category of Item 9 of Schedule-IV of the MRTU & PULP Act.

63. The complainants, in their complaint, have prayed for various reliefs, including a declaration that they are entitled to wages, allowances, benefits, and perquisites at par with the permanent employees on the rolls of the respondent University. They further seek a direction that the respondent University be ordered to pay them wages, benefits, and perquisites in accordance with the respective pay scales applicable to their designations and nature of work, with effect from 1st July, 2022. Upon perusal of the said reliefs, it is observed that the benefits claimed by the complainants are applicable only to permanent employees. Therefore, unless and until the complainants are granted permanent status, the reliefs sought by them cannot be extended to them.

64. The complainants have proved that being temporary employees, the respondents have paid them meagre salary, then they were doing the work, which was being done by the permanent employees. The complainants are entitled for the difference of arrears of salary from the date of joining. The complainants are entitled for payment of statutory benefits revised salary like permanent employees of the respondent university, working in the similarly cadre. With this, I conclude that the respondents have indulged in unfair labour practice under Item 5 & 6 of Schedule-IV

of the MRTU & PULP Act, 1971. In the result, I proceed to pass the following order -

ORDER

- i) Complaint is partly allowed.
- ii) It is hereby declared that the respondents have indulged in unfair labour practices under Items 5 & 6 of Schedule-IV of the MRTU & PULP Act, 1971, against complainants.
- iii) Respondents are hereby cease and desist from committing such unfair labour practices henceforth.
- iv) The respondents shall grant permanency to the complainants in the employment and pay them wages, allowances benefits and perquisites applicable to the permanent employees w.e.f. 01st July, 2022.
- v) The respondents shall further provide the leave benefits, annual, grade increments, promotions as per the rules applicable to the aided employees to the complainants.
- vi) No Orders as to costs.

Place :- Mumbai

(Smt. A. C. Raut),
Member,

Date :- 15.09.2025.

Industrial Court, Mumbai.

Argued On : 15.09.2025

Judgment directly dictated on : 15.09.2025

Checked & Signed on : 15.09.2025

SPC/-