



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3962 OF 2025

University of Mumbai and Others.

.....PETITIONERS

: **VERSUS** :

Amit S. Bagul & Others.

....RESPONDENTS

WITH

WRIT PETITION NO. 2556 OF 2019

The Registrar University of Mumbai
and Others.

.....PETITIONERS

: **VERSUS** :

Amit S. Bagul & Others.

....RESPONDENTS

Mr. J.P. Cama, Senior Advocate i/b Mr. Yuvraj Narwankar & Mr. Suraj Kaushik, for Petitioner

Mr. S.C. Naidu with Mr. Abhishek Ingale, Ms. Divya Yajurvedi & Mr. Pradeep Kumar i/b C.R. Naidu & Co., for Respondent Nos. 2-4, 8, 11, 12, 14-17, 19-21, 25, 26, 28-33, 35, 36, 38, 39, 41-43, 45, 48-53, 56, 57 & 62.

Mr. Manoj Gujar, for Respondent Nos. 5, 7, 9, 13, 40, 44, 46, 47, 54 & 55.

Mr. T.R. Yadav, for Respondent Nos. 1, 6, 10, 22, 27, 58 & 60.

Ms. Vaishali Kamble, Deputy Registrar, Legal Cell, University of Mumbai,
present

CORAM : SANDEEP V. MARNE, J.

Reserved On: 20 February 2026.

Pronounced On: 13 March 2026.

Judgment:

1) Petitioner-University has filed the present Petition challenging judgment and order dated 28 November 2023 passed by the Industrial Court, Mumbai allowing Complaint (ULP) No. 208 OF 2017 filed by Respondents alleging unfair labour practices under Item Nos. 5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU and PULP Act**). The Industrial Court has directed Petitioner to pay salary to Respondents equal to the lowest grade of salary and allowance being paid to its regular employees from the dates of their respective joining. Respondents are held entitled to resume their duties on their respective posts and places with all consequential benefits and equal pay at par with permanent employees from 5 July 2017. Petitioner has been further directed to provide all consequential benefits and equal pay to the Respondents on par with permanent employees from 5 July 2017 until they are provided with their normal work.

2) Brief facts leading to filing of the Petition are stated thus: Petitioner No.1 is University of Mumbai and Petitioner Nos. 2 and 3 are its Vice Chancellor and Registrar respectively. Respondents were engaged by the Petitioner-University to discharge duties on various

posts such as Peon, Junior Typist-Clerk, Sweepers, Scientific Assistant, Data Entry Operator, Driver, Hamal, Mali, etc. The services of Respondents were temporary in nature and were extended from time to time. It appears that the Respondents were in the process of filing a complaint of unfair labour practices against the University for raising a claim for regularisation. However a Circular was issued by the Registrar of the University on 30 June 2017 for discontinuation of all temporary employees named in the attached list w.e.f. 30 June 2017. Respondents were accordingly discontinued vide circular dated 30 June 2017.

3) Respondents filed Complaint (ULP) No. 208 of 2017 in Industrial Court, Mumbai alleging unfair labour practices on the part of Petitioner-University under Items Nos.5, 6 and 9 of Schedule-IV of the MRTU and PULP Act. They claimed status of permanent workmen from the date of completion of 240 days of work. They also claimed allowances and other monetary and consequential benefits at par with other permanent employees of the University from the date of completion of continuous services of 240 days by each of them. Along with the complaint, a chart providing dates of initial engagement and dates of completion of 240 days was appended at Annexure A. The complaint was signed on 30 June 2017 and the same was apparently lodged on 1 July 2017.

4) This is how the acts of filing of complaint for regularization by Respondents and discontinuation of their services vide Circular dated 30 June 2017 happened almost simultaneously. The Complaint (ULP) No.

208 of 2017 was accordingly amended by the Respondents, and the relief of reinstatement was added complaining that from 5 July 2017, the Petitioner-University refused to provide work to the Respondents. The Respondents alleged that discontinuation was aimed at frustrating the Complaint. Respondents pressed for interim stay on discontinuation. However, by order dated 3 August 2017, the Industrial Court rejected the application for interim relief on the ground that their services were already terminated on 30 June 2017. Respondents filed application on 5 October 2018 seeking review of order dated 3 August 2017. Two years later and by order dated 7 June 2019, the Industrial Court allowed the review application and allowed the application for interim relief at Exh U-26 by setting aside previous order dated 3 August 2017. Petitioners were directed to allot work to the Respondents and allowed them to perform their duties till final disposal of the Complaint. Petitioners filed Writ Petition No. 2556 of 2019 challenging order dated 7 June 2019. By order dated 5 March 2020, this Court admitted the Petition and stayed the order dated 7 June 2019. The Industrial Court was directed to dispose of the complaint expeditiously and preferably within a period of 6 months. The time for decision of the Complaint was extended by this Court from time to time.

5) The Complaint (ULP) No. 208 of 2017 was resisted by the Petitioners by filing Written Statement. Parties led evidence in support of their respective claims. By the impugned judgment and order dated 28 November 2023, the Industrial Court has partly allowed the Complaint holding that Petitioners have engaged in unfair labour practices under

Item-6 of Schedule IV of the MRTU and PULP Act. The prayer of the Respondent for permanency is not granted. However, Petitioners are directed to pay to the Respondents salary in the lowest grade which is being paid to regular employees from the dates of joining by the Respondents. The Industrial Court has further directed reinstatement to the Respondents from 5 July 2017 with further direction of equal pay on par with permanent employees from 5 July 2017.

6) Aggrieved by the judgment and order dated 28 November 2023, Petitioners have filed Writ Petition 3962 of 2025. Since Writ Petition 2556 of 2019 also arises out of same proceedings, the same is taken up for analogous hearing at the request of the learned counsel appearing for parties.

7) Mr. Cama, the learned Senior Advocate appearing for Petitioners would submit that the Industrial Court has erred in allowing the Complaint and granting relief of reinstatement and backwages on par with permanent employees in favour of the Respondents. He submits that the University does have any power of creation of posts without previous sanction of the State Government. He relies on provisions of Section 5, 8 and 28 of the Maharashtra Universities Act, 1994 in support of the contention that Respondents do not have any right to remain on the posts which are not sanctioned by the State Government. He submits that Respondents were engaged temporarily without following due process of law and in absence of any sanctioned vacant posts. That their appointments were tenure specific and gave no right to remain on the

post forever. That direction for reinstatement would entail continuance of Respondents in absence of availability of posts.

8) Mr. Cama would further submit that Industrial Court did not have jurisdiction to entertain the Complaint filed by the Respondents. He relies on provisions of Section 57 and 58 of the Maharashtra Universities Act, 1994 (**Act of 1994**) in support of his contention that only Grievance Committee had jurisdiction to decide the issue of termination and reinstatement. That Industrial Court therefore could not have entertained the issue relating to termination and reinstatement, which fell in the exclusive jurisdiction of the Grievance Committee. He submits that there is actually no inconsistency between the provisions of the Maharashtra Universities Act, 1994 and MRTU and PULP Act since Grievance Committee is invested with exclusive jurisdiction on account of non-obstante clause in Section 59 of the Act of 1994. However, even if it is assumed that there is inconsistency between the two statutes, it is settled law that the latter stood enacted after taking note of the former statute and that therefore the later statute would prevail.

9) Mr. Cama further submits that another facet of absence of jurisdiction of the Industrial Court relates to entertainment and decision of Complaint under Item 1 of Schedule IV over which only Labour Court has jurisdiction in matter of discharge, dismissal or termination. That the Industrial Court has thus transgressed its jurisdiction in passing the impugned judgment and order which is liable to be set aside.

10) Mr. Cama further submits that the Industrial Court has erred in granting the relief of resumption of duties by the Respondents. That the findings of violation of provisions of Section 25F and 25G of the Industrial Disputes Act, 1947 (**ID Act**) are recorded in ignorance of the position that the Respondents were tenure appointees and had full knowledge about the last day of their service. He submits that there has been no termination in the present case since the tenure of engagement is brought to an end by efflux of time. In support of their contention of fixed term employment, he relies upon judgment of Apex Court in **Gangaddhar Pillai Versus. Siemens Limited**¹. That the Industrial Court itself has recorded a finding in para-52 of the impugned judgment that there is no termination of the concerned employees. That the Industrial Court has erroneously directed reinstatement in absence of termination. He submits that cessation of services of the Respondents has no correlation with filing of complaint, as circular for cessation of their services was issued on 30 June 2017 and the complaint was filed much later. That therefore the allegation of victimization against the Petitioners is clearly misplaced. He submits that Respondents failed to make out pleadings in support of claim of completion of 240 days in immediate preceding year before termination. He relies on judgment of the Apex Court in **Regional Manager, SBI Versus. Rajesh Kumar**². That if Respondents do not have right of permanency, the Industrial Court could not have directed their reinstatement. He relies upon judgment of Apex Court in **Rajneesh Khajuria Versus. Wockhardt limited and another**³.

¹ 2007 (1) SCC 533

² 2006 1 SCC 530

³ 2020 (3) SCC 26

11) Mr. Cama has also canvassed submissions about absence of right of Respondents to claim permanency. The said submissions are made essentially in view of apprehension that the impugned judgment might be misinterpreted to mean that permanency is granted to the Respondents. He relies on judgment of the Apex Court in **State of Gujarat Versus. Thakor Hathaji Mohanji**⁴ in support of his contention that mere reinstatement cannot tantamount to regularization of services.

12) Mr. Cama further submits that the University does not have work to provide to the Respondents, who cannot be foisted on the University. That the termination is effected as per the G.R. issued by the State Government. That if work itself is not available, direction by the Industrial Court to allot work to the Respondents is incapable of being implemented. That the University cannot be made to pay wages to the Respondents in absence of availability of work.

13) Lastly, Mr. Cama would submit that the Industrial Court has erred in directing payment of wages in the lowest grade of salary and allowances from the date of respective joining by the Respondents. He submits that the period of limitation applies to the relief of backwages and in complaint filed in the year 2017, the relief of wages could not have been granted from the dates of their initial engagements. That even the direction for payment of equal pay for equal work on par with

⁴ 2006 1 CLR 479

permanent employees is erroneous. He would pray for setting aside the impugned judgment and order.

14) Mr. Naidu, the learned counsel appearing for Respondents opposes the Petition. He submits that no interference is warranted in well-reasoned judgment and order passed by the Industrial Court. He submits that the issue involved in the present Petition is squarely covered by the judgments of this Court in **Mumbai Vidyapeeth Kamgar Sanghatana Versus. University of Mumbai**⁵ and **University of Mumbai Versus. Parag Bhaskar Ghag**⁶. He submits that both the judgments passed by this Court are subject matter of pending proceedings before the Apex Court in which services of the concerned employees are continued on payment of pay in the pay scales corresponding to the regularly appointed employees in addition to allowances. That therefore the Petition deserves to be dismissed.

15) Mr. Naidu further submits that the Petitioners have erroneously relied on the provisions of Act of 1994 when infact what is relevant for the present case is Maharashtra Public Universities Act, 2016 (**Act of 2016**) which came into effect from 1 March 2017 and was in vogue when the complaint was filed and services were discontinued. He submits that the remedy before the Grievance Committee was not an effective remedy available to the Respondents as the Grievance Committee was not even set up at the relevant time as held by this Court in **Mumbai Vidyapeeth Kamgar Sanghatana** (supra). So far as the issue

⁵ 2019 SCC Online Bom 801

⁶ Writ Petition NO.6932 of 2022 decided on 9 May 2025

of jurisdiction of Industrial Court to decide the issue of termination and reinstatement is concerned, he submits that the same is squarely covered by the judgment in University of Mumbai Versus. Parag Bhaskar Ghag (supra) in which it has held been that termination during pendency of complaint relating to permanency and equal pay for equal work amounts to victimization. That in the present case, Petitioners did not approach the Industrial Court with the grievance of termination. That the Complaint was filed seeking equal pay for equal work and for permanency. That the services were terminated after filing of the Complaint for frustrating the same. That the finding of fact has been recorded by the Industrial Court that the alleged circular dated 30 June 2017 was actually issued after getting wind of the fact that the Complaint was filed by the Respondents. That the finding of absence of termination is recorded by the Industrial Court in the context of the stand taken by the Petitioner-University.

16) Mr. Naidu further submits that there is absolutely no evidence of fixed term of employment of the Respondents. That Petitioners did not produce any appointment order showing fixed tenure. That the services were continued without any break and without issuance of fixed term appointments. That juniors were continued by terminating the services of the Respondents. That Respondents failed to produce the G.R. and therefore the plea of termination being premised on G.R. is patently false.

17) Mr. Naidu further submit that Respondents are unceremoniously thrown out of service by not following the principles of nature justice and provisions of Section 25-G and 25-I of the ID Act. That most of them worked for over 14 long years. They were not paid any compensation in respect of the services rendered by them. That therefore no error can be traced in the direction for reinstatement with full backwages. That services of Respondents were utilized on payment of meager salaries by extracting same work as performed by regular employees. That therefore Industrial Court has rightly directed payment in lowest grade from the dates of filing of the complaint/date of discontinuation. The direction is also given for equal pay for equal work to the Respondents on par with permanent employees.

18) Mr. Naidu further submits that the University can no longer raise the issue of absence of authority to make appointments. He submits that the power of the University to make appointments is expressly upheld by this Court in Mumbai Vidyapeeth Kamgar Sanghatana in which it is held that the University can make appointments through its own funds. That there is distinction between appointments made on posts for which assistance is required from the State Government and appointments made against posts created by the University from its own funds under the Act of 2016. That there is an express admission by the witness of the Petitioners that appointments of the Respondents were made out of University funds.

19) Mr.Naidu further justifies the relief of backwages submitting that once termination is found to be illegal, grant of full backwages is a natural consequence. He relies on judgment of the Apex Court in **Deepali Gundu Survase Versus. Kranti Junior Adhyapak Mahavidyalaya and others**⁷ . He submits that the two witnesses led by the Respondents led evidence of victimisation, exploitation and payment of meager salaries. That grant of relief of wages in the lowest grades from the dates of engagement is after appreciation of evidence on record. Mr. Naidu further submits that Respondents were replaced by others and relies on orders of engagement of other employees in place of the Respondent. He submits that Petitioners cannot be permitted to raise the issue of limitation in respect of the backwages as no specific ground is raised in the petition in relation to backwages. He submits that even if any period of limitation is made applicable in respect of relief of wages in the juniormost grade, atleast the said relief be protected from the date prior to the date of 3 years prior to filing of the complaint. He prays for dismissal of the Petition.

20) Rival contentions raised on behalf of the parties now fall for my consideration.

21) The Complaint (ULP) No. 208 of 2017 was filed by the Respondents, who are 64 in number, and who were working with the Petitioner-University on various posts such as Junior Typist Clerk, Scientific Assistant, Computer Lab Incharge, Data Entry Operator, Lab

⁷ 2013 10 SCC 324

Attendant, Hamal, Peon, Driver, Mali, etc. The Complaint was filed essentially to redress the grievance of non-grant of permanency and for payment of salary, allowances and other benefits on par with other permanent employees. The prayers in the Complaint as originally filed reads thus :-

a) to hold that the Respondents have engaged in unfair labour practices under item 5, 6 and 9 of Schedule IV of The MRTU & PULP Act, 1971.

b) to direct the Respondents to cease and desist from engaging in unfair labour practices under item 5, 6 and 9 of Schedule IV of The MRTU & PULP Act, 1971.

c) to direct the Respondents to give to the complainants whose details given in Annexure-A appended to the complaint..

1) status of permanent workmen from the date each one of them has completed continuous service of 240 days with the Respondents.

ii) Arrears of salary of pay, allowances and other monetary and consequential benefits of service conditions at par with the other permanent employees of the Respondents with due retrospective effect from the date each one of them has completed continuous services of 240 days with the Respondents.

d) Pending the hearing and final disposal of the complaint, this Hon'ble court be pleased to...

i) direct the Respondents to maintain the status quo in terms of services and service conditions of the complainants (whose names are given in Annexure-A appended to the complaint) with them.

ii) restrain the Respondents from terminating or dispensing with the services of the complainants (whose details are given in Annexure-A appended to the complaint) in any manner.

iii) restrain the Respondents from recruiting or appointing the employees either directly or contractual, on the post of complainants (whose details are given in Annexure-A appended to the complaint).

iv) ad-interim relief in terms of prayer (i), (ii) and (iii) herein above.

e) cost of Rs.50,000/- be granted.

f) any other or further relief in favour of complainants in the interest of justice, equity and fair play be granted.

22) Along with the Complaint, Respondent produced a chart indicating the dates of initial appointment and dates of completion of 240 days of service by each of them. The said chart shows that Respondent No.1 is engaged on 3 October 2003. Respondent Nos.2 and 3 are engaged in 2004. Respondent Nos.4 and 5 are engaged in 2008. Respondents Nos.6 and 7 are engaged in 2009 and rest of the Respondents were engaged thereafter. The engagement of Respondent Nos.48 to 64 is in the year 2016. Respondent thus formed together a group of 64 employees, few of whom had rendered substantial services whereas most of them had rendered services of barely a year by the time the Complaint was filed.

23) The Complaint was filed for seeking permanency and for payment of wages on par with permanent employees on completion of 240 days of service. There is no dispute to the position that services of the Respondents have been disengaged and none of them are in service as of today. There is some factual dispute about the exact date on which the services were discontinued. The Petitioners have relied upon Circular issued by the University on 30 June 2017 in support of their contention that disengagement occurred at the end of closing hours of 30 June 2017. On the other hand, it is the case of the Respondents that disengagement occurred after filing of the Complaint. In fact, it is the case of

Respondents, which is accepted by the Industrial Court, that the Circular is issued with a backdate to frustrate the Complaint for permanency. The Industrial Court has treated the date of 5 July 2017 as the date of discontinuation.

24) Respondents therefore prayed for interim stay on discontinuation during pendency of the Complaint. The Industrial Court rejected the application for interim injunction by order dated 3 August 2017, but reviewed the same on 7 June 2019 and directed allotment of work to the Respondents. Order dated 7 June 2019 is subject matter of challenge in Writ Petition No. 2556 of 2019 which has been admitted. By order of this Court dated 5 March 2020, the order of Industrial Court dated 7 June 2019 has been stayed. With this, the Respondents have continued to remain without employment since June 2017.

25) For deciding the Complaint, the Industrial Court framed 9 issues and has answered the same as under :-

Sr. No.	ISSUES	FINDINGS
1	Whether the University of Mumbai is an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947?	In the Affirmative
2	Whether the University of Mumbai is an "Industrial Establishment" within the meaning of Section 2(e) of the Industrial Employment (Standing Orders) Act, 1946?	In the Negative
3	Does the Maharashtra University Act, 1994 oust the jurisdiction of the Industrial Court constituted under Section 4 of the MRTU & PULP Act, 1971 to decide a Complaint of unfair labour practices under Section 28	In the Negative

	read with Items 5, 6 & 9 of Schedule IV of the Act?	
4	Do the Complainants prove that the Respondent University has engaged in unfair labour practice under Section 28 read with Items 5, 6 & 9 of Schedule IV of MRTU & PULP Act, 1971?	Partly in Affirmative, under Item 6 of Schedule IV of the MRTU & PULP Act
5	Whether the appointments of Complainants are consistent with the procedure in view of the judgment passed in Writ Petition Nos. 1492/2013 and 2615/2013 ?	In the Negative
6	Do the Complainants make out a case of declaration and injunction as prayed?	In the Affirmative
7	Do the Complainants entitled to the status of permanency or regularization of their services with Respondent Mumbai University?	Entitled for equal pay
8	Do the Complainant prove that they are entitled to resume their duty on their respective post and place and pay full wages and consequential benefits for the period from 5th July 2017, until the Complainants are provided with their normal work and Mr. Nitin M. Sawant is entitled to full wages and consequential benefits?"	In the Affirmative
9	What Order?	As per final order

(emphasis added)

26) Before going further, it would be first necessary to achieve clarity about the exact nature of relief granted by the Industrial Court to the Respondents. Perusal of the operative part of the Industrial Court's impugned order would indicate that it has only granted the relief of reinstatement and payment of equal wages to the Respondents. The operative part of the impugned order reads thus:

1. The Complaint is partly allowed.
2. It is hereby declared that Respondents have engaged in unfair labour practices under Item 6 of Schedule IV of the MRTU & PULP Act, 1971.

3. The Respondents are hereby directed to cease and desist from engaging in unfair labour practices under Item 6 of Schedule IV of the MRTU & PULP Act, 1971.

4. The Respondents are hereby directed to pay salary to Complainants equal to the lowest grade of salary and allowances being paid to its regular employees from the date of their respective joining.

5. The Complainants including Mr. Nitin M. Sawant are entitled to resume their duties on their respective posts and places with all consequential benefits and equal pay at par with the permanent employee from 05.07.2017, until the Complainants are provided with their normal work.

6. The Respondents shall provide all consequential benefits and equal pay to the complainant at par with permanent employees from 05.07.2017, until the Complainants are provided with their normal work.

27) The operative part of the judgment of the Industrial Court, I must say, is a bit confusing. Courts and Tribunals need to issue unambiguous directions in the operative part of the judgment and order, avoiding the need for an interpretative process for understanding the exact purport of the directions. The directions issued by the Industrial Court in the operative part and their exact meaning is as under:

Directions in operative part of Order	Effect of direction and exact relief granted
2. It is hereby declared that Respondents have engaged in unfair labour practices under Item 6 of Schedule IV of the MRTU & PULP Act, 1971. 3. The Respondents are hereby directed to cease and desist from engaging in unfair labour practices under Item 6 of Schedule IV of the MRTU & PULP Act, 1971.	Item 6 of Schedule IV of the Act enlists the unfair labour practice of employing <i>budlis</i>, casuals and temporaries and to continue them for years with the objective of denying them status and privileges of permanent employees. Confusion is created by direction Nos. 2 and 3 about grant of benefit of permanency, but the confusing is resolved by (i) absence of specific direction for permanency and (ii) the way Issue No. 7 is answered.

4. The Respondents are hereby directed to pay salary to Complainants equal to the lowest grade of salary and allowances being paid to its regular employees from the date of their respective joining.	All complainants would receive salary equal to the lowest grade (Peon is the lowest grade in the hierarchy) from the date of joining. The direction is in the nature of difference in wages from the dates of initial engagements.
5. The Complainants including Mr. Nitin M. Sawant are entitled to resume their duties on their respective posts and places with all consequential benefits and equal pay at par with the permanent employee from 05.07.2017, until the Complainants are provided with their normal work.	Direction for reinstatement as temporary employees.
6. The Respondents shall provide all consequential benefits and equal pay to the complainant at par with permanent employees from 05.07.2017, until the Complainants are provided with their normal work.	Equal pay and benefits on par with permanent employees from dates of termination till reinstatement

In addition to confusion relating to permanency, there is also confusion in direction Nos. 4 and 6 relating to grant of equal wages which is discussed in greater details in the latter part of the judgment. Mere direction for reinstatement cannot be confused with the concept of regularization as held by the Apex Court in ***State of Gujarat vs. Thakor Hathaji Mohanji*** in which it is held in Para 3 of the judgment as under:

3. It is not possible for us to re-open the issue as to whether there was an abandonment of the work by the respondent or a termination of the respondent's services. The Labour Court has found that there was a termination and that finding, cannot be said to be perverse. We may clarify that when a daily wager is reinstated, he/she is re-employed as a daily wager. The award cannot, by directing reinstatement, tantamount to regularisation of the workman's services. Continuity of service in the context of a daily wager, means the maintenance of the seniority of the workman amongst other daily wagers.

28) As observed above, Respondents specifically prayed for permanency from the date of completion of 240 days of service. However, perusal of the impugned judgment and order dated 28 November 2023 indicates that the Industrial Court has not granted the relief of permanency. This is clear from answer to Issue No.7 by the Industrial Court as reproduced above. Thus, specific issue of entitlement of Respondents to permanency or regularization has been answered holding that they are '*Entitled for equal pay*'. Even the operative part of the order does not indicate that the prayer for permanency is granted to the Respondents. No doubt, the Industrial Court has made some discussion on the issue of permanency and regularization in paragraph Nos. 48 to 50 of the Judgment. However, while discussing the ratio of various judgments, the Industrial Court has not recorded a definitive finding in respect of Respondent's entitlement for permanency. Be that as it may. There is no specific direction for grant of permanency to the Respondents. On the contrary, the Industrial Court has specifically answered Issue No. 7 relating to '*Do the Complainants entitled to the status of permanency or regularization of their services with Respondent Mumbai University*' as only entitled for equal pay. Thus, there is no direction in the impugned judgment and order for permanency.

29) After going through the nature of operative directions of the Industrial Court and particularly answering of Issue No. 7, even Mr. Naidu has fairly admitted that the relief of permanency, though sought, has not been granted by the Industrial Court. Grant of relief of equal pay on par with permanent employees cannot be confused with the concept

of ‘permanency’ or ‘regularization’. In fact, grant of relief of equal pay on par with regular employees signify that the concerned workers remain temporary employees but are to be paid wages on par with regular employees. However, payment of wages on par with regular employees does not mean that the status of temporary employees gets elevated to that of regular employees. Courts grant the relief of wages in the minimum of pay-scales applicable to regular posts to ad hoc, casual, temporary employees to ensure that their temporary services are not exploited by paying meagre wages. The aspect of payment in minimum of payscale is being discussed in greater details in the latter part of the judgment. However the concept of ‘equation of pay’ cannot be confused with the concept of ‘permanency or regularisation’.

30) Respondents have not challenged the impugned judgment and order dated 28 November 2023, which does not grant them the relief of permanency. Since the relief of permanency is not granted, it is not really necessary to go into the aspect of University’s power to create posts or to employ employees. Discussion on the issue of University’s power to create posts would have had some relevance, if the issue of entitlement to permanency was the subject matter of dispute before this Court. Since permanency is not granted by the Industrial Court and since Respondents have not challenged non-grant of permanency, in my view, it is not really necessary to enter into the controversy about University’s power to create posts. I therefore find it unnecessary to go into various provisions of Sections 57, 58 and 59 the of Act of 1994 or provisions of Act of 2016.

31) Since the relief of permanency is not granted by the Industrial Court, it is also not necessary to consider the ratio of judgments in ***Regional Manager, SBI Versus. Rajesh Kumar Rajneesh Khajuria Versus. Wockhardt limited*** and ***Gangadhar Pillai*** (supra) relied upon by Mr. Cama relating to issue of permanency. Similarly reliance by Mr. Naidu on latest judgment of the Apex Court in ***Pawan Kumar & Ors. Vs. Union of India & Ors.***⁸ is not relevant to the case at hand which does not contemplate regularization as result of impugned judgment and order of the Industrial Court. As observed above, Mr. Naidu has conceded the position, and in my view, quite fairly, that the impugned order does not contemplate grant of regularization and has relied on judgment in ***Pawan Kumar*** to the limited extent of argument of discrimination and implantation of outsourcing policy. It would be relevant to extract order dated 20 February 2026 passed while reserving the judgment, which reads thus:

1) The arguments in the Petition were fully heard and the judgment has been reserved on 11 February 2026. The Petitions are listed at the instance of Mr. Naidu, the learned counsel appearing for the Respondents, who has produced before the court judgment of the Supreme Court in Pawan Kumar and Ors. V/s Union of India and Ors. which is rendered after the date on which the judgment in the present Petitions got reserved. Mr. Naidu has been heard on the judgment in Pawan Kumar (supra). Mr. Naidu however, concedes that the judgment impugned in the present Petitions does not grant the permanency/regularization to the Respondents. He however, submits that the judgment in Pawan Kumar (supra) is relied upon by the Respondents only to the aspect of discrimination and implementation of outsourcing policy.

2) The judgment is reserved.

⁸ SLP (c) No. 29214 of 2019 decided on 13 February 2026

32) Since permanency is not granted to the Respondents, it is also not necessary to go into the issue of manner of effecting initial engagements, number of years of service put by them and availability of posts against which engagements were initially made, etc.

33) Before proceeding further, it is necessary to quickly deal with the objection raised by the Petitioner-University about the issue of jurisdiction of Industrial Court to grant the relief of reinstatement. It is contended that since termination and reinstatement falls in Item 1 of Schedule IV of the MRTU & PULP Act, only Labour Court has jurisdiction to decide the said issue. However, in the present case, the Compliant was never instituted with the grievance of termination as the Respondents were apparently not terminated when the Complaint was lodged. The termination/discontinuation occurred during pendency of the Complaint, which was filed for permanency and equal pay. This issue is no more res integra and is already dealt with by this Court in and ***University of Mumbai Versus. Parag Bhaskar Ghag***. Jurisdiction of Industrial Court to grant relief of reinstalment is upheld in that judgment when termination occurred during pendency of Complaint.

REINSTATEMENT

34) I first proceed to decide Petitioner's challenge to the relief of reinstatement granted by the Industrial Court. As observed above, the services of the Respondents are apparently discontinued in view of

Circular dated 30 June 2017. The Industrial Court recorded following reasons for directing reinstatement:

52. Ongoing through the evidence adduced by the Complainant it transpired that the employees were appointed by giving them an appointment letter and thereafter their services were extended from time to time. However, witnesses have not admitted the fact that they are terminated from the services of Respondent. UW-1 specifically stated in his evidence that he is working in the Information and Technology Department of the University. Admittedly, the office order of Respondent University dated 30.01.2016 is produced on record, however, none of the witnesses has stated that they have received individual termination letters from the Respondent University. Witnesses have admitted in cross-examination that they have not undergone any written examination, but they faced an interview for their job in Respondent University. However, it is pertinent to note that it is not a case of the Complainant that Complainants are appointed, on following the due process of law i.e. by way of a recruitment. Therefore, the said admission of the witnesses is not fruitful to the defence adopted by the Respondent University. On the contrary, CW-1 is admitted in the cross-examination that the Complainants have been the employees of the University, and the date of joining of the concerned employees is correct as mentioned in the list annexed to the Complaint. It also comes on record that Respondent University has no record to show the termination of concerned employees. In light of the said admission, as there is no reliable and cogent documentary evidence to show the termination of concerned employees, it can not be said that concerned employees are terminated. However, the Complainants have not brought on record about the entitlement of Mr. Nitin M. Sawant, about his entitlement, but his name is shown in the list of employees annexed to the Complaint.

53. It is significant to note that no notice is issued by the Respondent University about the termination, no charge sheet is filed, no enquiry is conducted. Moreover, it transpired that the employees of Respondent No.1 i.e. Complainants had approached this Court for filing the present Complaint on 30.06.2017, on the same day Respondent University issued a circular with the signature of its Registrar, whereby discontinued the services of the concerned employees. As such, it is seen that this office order was brought into existence to deprive the rights of the Complainants. There was no compliance of Sections 25F and 25G of the Industrial Disputes Act, 1947. As such, sudden termination of the services of the Complainant by issuing a disputed

circular dated 30.06.2017, can not be come within the provisions of law. In view of this, I find that Complainants are entitled to resuming their duties and they are also entitled to pay full wages and consequential benefits, as prayed for. Hence, my answer to issues No. 6 & 8 in Affirmative and as to issue No.7 entitled "for equal pay".

35) Mr. Cama has particularly highlighted the finding in para 52 of the order that '*as there is no reliable or cogent documentary evidence to show termination of the concerned employees, It cannot be said that the concerned employees are terminated*'. It is contended by him that since the Industrial Court itself has not found merit in the claim for termination, it could not have directed reinstatement. However, the background in which the above finding has been recorded by the Industrial Court needs to be appreciated. The Industrial Court has taken into consideration evidence of Mr. Ashok Ferde, Deputy Registrar, Human Resource Development Cell of Petitioner-University. He deposed during the course of his cross examination that '*It is true to say that University has no record to show the termination of concerned employees*'. Thus, the finding of absence of records to indicate termination is essentially traceable to the above admission given by the witness. Also, though the above admission of the witness is taken into consideration by the Industrial Court, it has not granted reinstatement only on the basis of absence of 'real termination'. Industrial Court has ultimately considered the act of 'non-continuation of services' to be 'termination' and has held that since the provisions of Section 25F and 25G of the ID Act are not followed, the termination is bad in law. Therefore, not much capital can be made by the Petitioners in respect of the findings of absence of termination recorded by the Industrial Court.

36) Coming to the legality of termination/non-continuation, it is contended by Mr. Cama that there is in fact no termination since the appointments were tenure appointments and that they came to an end with efflux of time. If that was the case, this Court called upon Mr. Cama to show the last order of appointment/extension which contemplated continuation of services only till 30 June 2017. In response, Mr. Cama invites my attention to order dated 29 May 2017 by way of an example in support of his contention that similar orders used to be issued for every six months. The order dated 29 May 2017 does not pertain to the Respondents. The said order makes appointment of about 80 employees for a period of 6 months. The order dated 29 May 2017 provided by way of an example is not helpful since Respondents were also appointed only till 30 June 2017. However, along with the Compilation, the Petitioners have produced Office Order dated 15 February 2017 to which Mr. Cama did not invite my attention. The said Order appoints 418 employees on temporary basis for six months from 3 January 2017 to 30 June 2017. As observed above, Mr. Cama did not cite the Order dated 15 February 2017 as the last tenure appointment of the Respondents. Also, it is not clear whether the University terminated services of all 418 employees listed in the order dated 15 February 2017. Therefore, this Court is unable to believe that Circular dated 30 June 2017 effected termination of all 418 temporary employees. There is nothing on record to indicate that all 418 employees reflected in the order dated 15 February 2017 were discontinued on 30 June 2017. On the other hand, Mr. Farde admitted in his cross examination that *'at present there are 925 employees on the basis of temporary basis'*. Petitioner's witness Mr. Farde further gave admission

in his cross examination that '*I cannot tell the exact last date of allotment of work of the concerned 64 workers without verifying the record*'. He further admitted that '*It is true to say that I have not mentioned in my written statement the last date of allotment of the work to the concerned workers*'. It is also not a pleaded case of the Petitioners either in the Statement of Defence or in the present Petition that Order dated 15 February 2017 was the tenure appointment of all 64 Respondents and that all 418 temporary employees covered by order dated 15 February 2017 were terminated by Circular dated 30 June 2017. It is therefore difficult to infer that the University terminated services of all 417 employees vide Circular dated 30 June 2017.

37) Coming to the Circular dated 30 June 2017 the same reads thus :-

The Directors/Heads of the University Departments/Centres, the Principal, Sit J.J. College of Architecture, the Librarian, University Library, the Controller of Examinations and the Officers in-charge of the different Sections/Units of the Registrar's Office are hereby informed that the temporary employees who were working in the respective departments as per the attached list and whose temporary appointment was for six months, has ceased with closing hours of 30 June, 2017 by virtue of appointment/extension-office order. Please note that their services should not be continued, it is crystal clear that no office order has been issued in regards to extension of any appointment in respect of those employees mentioned herewith.

In view of above clear and categorical instructions, anyone who attempts to continue, shall be responsible at his/her own risk to consequences.

38) The Circular refers to the '*attached list*'. However, though copy of Circular dated 30 June 2017 is filed along with the Compilation by Petitioners, the '*attached list*' referred to in the Circular is not produced for my perusal. Thus, only the employees in the attached list were to be terminated as per the Circular dated 30 June 2017. The Circular states that the temporary appointments of the employees in the attached list were for six months and had ceased with closing hours of 30 June 2017. In that view of the matter, Circular cannot be blindly relied upon to infer that the appointments were tenure specific or that they had automatically come to an end by 30 June 2017, not requiring following of any process for termination.

39) In my view therefore there is no sufficient material to hold that services of the Respondents were discontinued only on account of efflux of tenures of their appointments.

40) Petitioner's witness has given a clear admission that as on 4 March 2023, when his evidence was recorded, there were 925 employees working on temporary basis. This shows that Respondents were subjected to discriminatory treatment and several other temporary workers continued to work in the University.

41) Apart from the fact that the Respondents were not issued any notices before terminating their services nor were paid the notice wages, they are also not paid the retrenchment compensation. Also, there is nothing on record to indicate that the principle of seniority was followed

for effecting discontinuance. Considering this position no serious flaw can be traced in the direction of the Industrial Court for resumption of services by the Respondents.

DIRECTION FOR PAYMENT OF LOWEST GRADE SALARY

42) While directing that the Respondents are entitled to resume duties on their respective posts and places, the Industrial Court has directed payment of all consequential benefits and equal pay on par with permanent employees from 5 July 2017 in direction No. 6. The same is repeated in direction No. 4 of operative part of the order. However, in Direction No. 4 of the operative part, the Industrial Court has directed payment of salary equal to the lowest grade of salary and allowances as paid to the regular employees from the date of their respective joining. Direction No. 4 of operative part of the order reads thus :-

4. The Respondents are hereby directed to pay salary to Complainants equal to the lowest grade of salary and allowances being paid to its regular employees from the date of their respective joining.

43) It must be observed that the above quoted direction is slightly difficult to comprehend. What exactly is meant by '*equal to the lowest grade of salary and allowances*' is difficult to comprehend and even Mr. Naidu struggled explaining this to the Court. He has submitted that the Industrial Court has directed payment of salary and allowances of the lowest grade in the University and that the lowest grade in the University is that of a Peon. Upon query by the Court as to whether a Scientific

Assistant is directed to be paid salary of a Peon, Mr. Naidu has answered in the affirmative.

44) Perusal of the chart appended to the complaint would indicate that 64 Respondents were deployed to work on various positions like Scientific Assistant, Data Entry Operator, Computer incharge, Lab Assistant, Clean Room Maintenance engineer, Junior typist clerk, Technical assistant, Driver, Peon, Hamal, Mali, etc. However, if the contention of Mr. Naidu is believed to be correct, the exact purport of Direction No. 4 in the operative part of the order is that all of them will receive salary payable to that of a Peon from the dates of their respective joining. In my view, this direction of the Industrial Court is grossly erroneous and defies logic.

45) Furthermore, in the entire body of the judgment, there is not even a whisper as to why this relief of payment of salary in the lowest grade is granted in favour of the Respondents. The grant of this is also contrary to the prayers in the Statement of Claim in which Respondents had demanded arrears of allowances and other benefits on par with permanent employees from the date of completion of continuous service of 240 days. Thus, while Respondent demanded arrears of wages on par with permanent employees from the dates of completion of 240 days of service, the Industrial Court has awarded the relief from the dates of initial joining. Also, the Industrial Court has not directed payment of difference of wages but has directed payment of whole of wages payable to lowest grade in the University. In my view

Direction No. 4 in the operative part of the order suffers from multiple errors.

LIMITATION APPLICABLE FOR ARREARS OF BACKWAGES

46) There is yet another glaring error committed by the Industrial Court in directing payment of wages in the lowest grade from the date of respective joining. Respondents have allegedly joined the services of the Petitioner-University on various dates starting from 3 October 2003. This would mean that Respondent No.1 will have to be paid salary in the lowest grade from 3 October 2003 though he filed a complaint on 5 July 2017. It is a settled position that even if payment of lesser wages may constitute continuous cause of action, the period of limitation would apply to payment of arrears. In **M.R.Gupta Versus. Union of India and others**⁹, the Apex Court has held that limitation would apply to the relief of recovery of arrears. The principle is reiterated by the Apex Court in **Union of India and others Versus. Tarsem Singh**¹⁰ wherein the Apex Court has held that though there is an exception to normal rule of limitation in cases involving continuous cause of action, there is an exception to that exception wherein cases involving continuous wrong need to be restricted to a period of three years. This Court in **Jaihind Shakari Pani Purvatha Mandali Versus. Rajendra Bandu Khot and others**¹¹ considered the ratio of the judgment

⁹ 1995 5 SCC 628

¹⁰ 2008 8 SCC 648

¹¹ WP No. 563 of 2017 decided on 20 November 2019

of the Apex Court in Tarsem Singh and M.R.Gupta (supra) and held in paras-8, 9 and 11 to 14 as under:

8. The Supreme Court has explained the difference between a continuous wrong and recurring or successive wrongs in the case of Union of India vs. Tarsem Singh¹. A continuing wrong is a single wrong causing a continuing injury. In case of a continuing wrong, the grievance essentially is about an act which creates a continuous source of injury and renders the doer of that act responsible and liable for continuance of that injury. The injury is not complete when the act is committed; it continues even thereafter; and so long as it does, the cause of action itself continues. A recurring or successive wrong, on the other hand, occurs when successive acts, each giving rise to a distinct and separate cause of action, are committed. Each act, in itself wrongful, constitutes a separate cause of action for sustaining a claim or a complaint. It is important to bear in mind in this context the distinction between an injury caused by a wrongful act and the effect of such injury. What is to be seen is whether the injury itself is complete or is continuous. If the injury is complete, the cause of action accrues and is complete; the clock starts ticking for the purposes of limitation, notwithstanding the fact that the effect of such injury continues even thereafter. For example, let us take the case of an occupant of a house who is driven out of it. The injury is complete with the act of throwing him out, though the effect of that injury, namely, his being unable to use or occupy the house, continues even thereafter. Take, however, the case of a person who is detained in a house and not allowed to roam about. The act of detention is the one which causes an injury. This injury, however, is a continuing injury, since the injury here consists in being unable to move about. This injury continues and since the injury itself continues, the wrong is a continuous wrong and the cause of action, a continuing cause of action. Take, on the other hand, the case of a person who is barred from entering a house he is entitled to enter. When he is barred for the first time, an injury follows, and a cause of action thereby accrues. Each successive day on which he is so barred gives rise to a fresh and distinct cause of action, making it a case of recurring/successive wrongs.

9. In service jurisprudence, this distinction (i.e. the distinction between a continuing wrong and a recurring one) becomes important particularly from the point of view of relief. In M.R. Gupta vs. Union of India², the Supreme Court has explained it succinctly. The appellant before the court in that case was a workman, whose grievance was that his wage fixation was not in accordance with the applicable rules. He asserted that the wrong was a continuous one. The court held that his

cause of action was a recurring cause of action rather than a continuous one. Each time he was paid a salary which was not computed in accordance with the rules, a cause of action accrued unto him. The Court held as follows (SCC pp.629- 30):

"So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time-barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc., would also be subject to the defence of laches etc. to disentitle him to those reliefs."

11. The three years' period considered by the Supreme Court in Tarsem Singh's case was on the basis of a general limitation for recovery of a money claim. What was considered was that since the recovery period being considered by the High Court was in a writ petition, where the case was not covered by any particular article of limitation, the normal rule of limitation for recovery of money dues, i.e. limitation of three years, should apply unless there are extra-ordinary circumstances. Had the case been before an administrative tribunal, it would have been the particular article of limitation which would have applied. In the present case, since we are dealing with an unfair labour practice of not honouring a settlement between the employer establishment and its workmen, the period is of three months. Ordinarily, therefore, salaries and other emoluments payable for three months prior to the complaint can alone be considered for relief as a normal rule. The Industrial Court appears to have disregarded this law. It appears to have proceeded on the footing of a continuous cause of action. It ought to have instead considered each successive act of nonpayment as a separate injury and cause of action and proceeded to consider the successive acts as recurring causes of action. Going by that, as per the law stated in Tarsem Singh's case, enforcement of settlement could have always been ordered for future and as for arrears, they could have been ordered only for three months as per the limitation period ordinarily applicable. The court should then have considered whether and to what extent to exercise its discretion to go beyond this ordinarily applicable period, depending on good and sufficient reasons being shown for the delay.

This aspect of the matter, however, has not been addressed to at all by the Industrial Court, since it, as we have seen above, wrongly, treated the cause of action as a continuing one and gave relief on that basis. The impugned order of the court, thus, deserves to be quashed and the complaint remitted to the court for consideration of the period of recovery, that is to say, how far to go back for ordering recovery of arrears.

12. Ms.Singh, learned Counsel for the Respondents, refers to the case of Life Insurance Corporation of India vs. D.J. Bahadur . What this case lays down is that a settlement made between an establishment and its workmen subsists till a new award or settlement takes its place. This proposition does not, in any way, advance the Respondent's case in the present case. It is not that in our case the award is not binding or that it does not continue to be in force, but that each individual act of refusal to implement the award gives rise to a fresh cause of action. The cause of action of non-implementation of the settlement is not a continuous cause of action, but a recurring cause of action, each individual act of nonimplementation giving rise to a distinct and separate cause of action. The case of Jagatjit Industries Ltd. vs. Labour Officer⁴ referred by Ms.Singh does not state the law of continuing cause of action any differently. The case of Mahindra & Mahindra Ltd. vs. Sharad Laxman Dalvi decided by our court was about an unfair labour practice of not recognising a claim of permanency. What was submitted to the court was that the claim of permanency related to the year 1990 and no complaint in that behalf could have been entertained in the year 1998. The court did not countenance this argument for the reason that the claim being about permanency, its denial gave rise to a cause of action for complaining about adoption of unfair labour practice by the employer and this was a continuing cause of action. Non-recognition of permanency is indeed a continuing cause of action; the injury caused by such non-recognition cannot be said to be complete when permanency, though due, was not recognised or given effect to for the first time by the employer; the injury continues on each succeeding day when permanency benefits are denied to the employee. None of these judgments, thus, supports the case of the Respondent-employees.

13. Ms.Singh, however, relies on four other cases decided by our Court, where our Court appears to have taken a different view. These cases did involve claims of non-payment of salaries and other monetary dues as a cause of action and our Court does appear to have proceeded on the basis that the claims were within time, though filed beyond the ordinary rule of limitation, without taking into account any distinction between a continuing cause of action and a recurring cause of action.

14. The Division Bench of our court in *Warden & Co. (India) Ltd. vs. Akhil Maharashtra Kamgar Union*⁶ was concerned with a workmen's complaint of unfair labour practice of non-payment of wages from February 1992, and bonus, leave travel allowance, encashment of privilege and casual leave for the years 1990-91 and 1991-92. The complaint was filed on 29-3-1993 under MRTU & PULP Act. Though the main controversy before the court was whether an unrecognised union was entitled to appear and act on behalf of workmen of an industry governed by the Industrial Disputes Act in a complaint relating to unfair labour practice other than those specified by Items 2 and 6 of Schedule IV of the MRTU & PULP Act, the Division Bench did consider the other issue involved in the matter, namely, whether the complaint was barred by limitation. From the employer's side, the same provision of limitation was pressed into service, namely, Section 28 of the Act, providing for three months' period. The Division Bench observed that the complaint was of an unfair labour practice under Item 9 of Schedule IV of the Act, namely, "failure to implement award, settlement or agreement"; Section 28 enabled a complainant to file a complaint where "any person has engaged in or is engaging in any unfair labour practice" and every time wages were not paid when due, it could be averred that the employer was engaging in an unfair labour practice under Item No.9 of Schedule IV. That was the basis on which the Division Bench did not find merit in the submission of the employer based on limitation of three months. The Division Bench, with respect, correctly held the complaint as not barred under Section 28, but that was on the basis of a recurring cause of action – every time wages were not paid, the employer could certainly be said to have engaged in an unfair labour practice. The Division Bench, however, does not appear to have considered the further question, namely, what should be the period for which arrears of wages should be ordered or in other words, which arrears, calculated on the basis of difference in pay, were recoverable as within time and which were time-barred. The decision of the Supreme Court in *M.R. Gupta's case* (supra) was not brought to the notice of the Division Bench. The Supreme Court in *M.R. Gupta*, as we have noted above, made it clear that so long as an employee was in service, a fresh cause of action arose every month when he was paid his monthly salary on the basis of a wrong computation; if the employee's claim of computation was found to be correct on merits, he would be entitled to be paid according to the properly fixed pay scale "in the future" and "the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable". This has now been fully explained and reiterated by the Supreme Court, by making out a clear distinction between a continuing cause of action and recurring causes of action particularly from the standpoint of service

jurisprudence in Tarsem Singh's case (supra). After this latter decision, it is impermissible to argue that since each time wages are not paid when due there is a resultant unfair labour practice, arrears could be ordered to be paid for any length of time, that is to say, without reference to any time-bar. The judgments of two learned Single Judges of our court in Indian Smelting & Refining Co.Ltd. vs. Sarva Shramik Sangh⁷, Maharashtra State Electricity Board vs. Suresh Ramchandra Parchure⁸ and Cipla Ltd. vs. Anant Ganpat Patil⁹, also, with utmost respect, do not state the law correctly to the extent they allow the claims of arrears of wages without reference to the bar of limitation for claiming past dues. The decisions could be said to be per incuriam for not considering the law laid down in M.R. Gupta's case (supra) and, in any event, now impliedly overruled by the Supreme Court decision in Tarsem Singh's case (supra).

47) In **Kumar Dashrath Kamble Versus. Bombay Hospital¹²**, this Court has agreed with the statement of law expounded in **Jaihind Sahakari Pani Purvatha Mandali** and has restricted the payment of arrears only in respect of 90 days since the period of limitation stipulated in MRTU & PULP Act is 90 days. This Court held in paras-33 and 34 as under:

33) In my view therefore, though this Court is inclined to grant the benefit of permanency to the Petitioner from the year 2006, the principle of delay and laches would come into play in respect of arrears arising out of grant of such permanency. Petitioner slept over his rights for over 12 years. No doubt, he was wrongfully denied the benefit of permanency in the year 2006. Therefore, he ought to have raised the said grievance immediately after denial of benefit of permanency. His medical examination in pursuance of Memorandum of Settlement was held on 6 December 2006. He ought to have filed the complaint of unfair labour practice within 90 days of denial of benefit of permanency. In that view of the matter, the Respondent-Hospital cannot be saddled with the financial burden of paying difference in wages for unduly long period of 12 long years. In the facts and circumstances of the case, it would be appropriate to deny the actual benefits arising out of permanency during the period from 2006 till 90 days before the date of filing of the complaint. The principle of restricting the arrears for three years in Tarsem Singh and Shiv Dass is

¹² Writ Petition No. 3766 of 2024 decided on 23.12.2025

on account of period of limitation for filing of suit of three years. However, in respect of complaints of unfair labour practice under the MRTU & PULP Act, 1971 the prescribed period of limitation is only 90 days. Therefore, Petitioner would be entitled to actual arrears from 90 days prior to filing of his Complaint.

34) The Petition deserves to be allowed partly by directing Respondent-Hospital to confer the benefit of permanency on the Petitioner from the date of execution of Memorandum of Settlement ie. 1 December 2006. However, he would be entitled to the actual financial benefits in respect of period 90 days before the date of filing of Complaint before the Industrial Court i.e. 5 July 2018.

48) The Industrial Court has failed to take into consideration the above stated settled law of applicability of period of limitation to payment of arrears even in respect of the grievances involving continuous cause of action. Since the complaint is filed under MRTU & PULP Act, the arrears could not have been granted for a period exceeding 90 days.

PAY IN MINIMUM OF Payscale

49) As observed above the directions for payment of salary in the lowest grade is erroneous. The Apex Court in **State of Punjab Versus. Jagjit Singh and others**¹³ has directed that all temporary employees need to be paid wages in the minimum of the pay scale (at the lowest grade in the regular pay scale) extended to regular employees holding the same post. It has held in paras-54 to 61 of the judgment as under:

¹³ 2017 1 SCC 148

54. The full bench of the High Court, while adjudicating upon the above controversy had concluded, that temporary employees were not entitled to the minimum of the regular pay-scale, merely for the reason, that the activities carried on by daily-wagers and regular employees were similar. The full bench however, made two exceptions. Temporary employees, who fell in either of the two exceptions, were held entitled to wages at the minimum of the pay-scale drawn by regular employees. The exceptions recorded by the full bench of the High Court in the impugned judgment are extracted hereunder:-

“(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.

(2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.

(3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months.”

54.1. A perusal of the above conclusion drawn in the impugned judgment (passed by the full bench), reveals that the full bench carved an exception for employees who were not appointed against regular sanctioned posts, if their services had remained continuous (with notional breaks, as well), for a period of 10 years. This category of temporary employees, was extended the benefit of wages at the minimum of the regular pay-scale. In the Secretary, State of Karnataka case²⁸, similarly, employees who had rendered 10 years service, were granted an exception (refer to paragraph 53 of the judgment, extracted in the preceding paragraph). The above position adopted by the High Court reveals, that the High Court intermingled the legal position determined by this Court on the subject of regularization of employees, while adjudicating upon the proposition of pay parity, emerging under the principle of ‘equal pay for equal work’. In our view, it is this mix-up, which has resulted in the High Court recording its afore-extracted conclusions.

54.2. The High Court extended different wages to temporary employees, by categorizing them on the basis of their length of service. This is clearly in the teeth of judgment in the Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch case²². In the above judgment, this Court held, that classification of employees based on their length of service (- those who had not completed 720 days of service, in a period of 3 years; those who had completed more than 720 days of service - with effect from 1.4.1977; and those who had completed 1200 days of service), for payment of different levels of wages (even though they were admittedly discharging the same duties), was not tenable. The classification was held to be violative of Articles 14 and 16 of the Constitution.

54.3. Based on the consideration recorded hereinabove, the determination in the impugned judgment rendered by the full bench of the High Court, whereby it classified temporary employees for differential treatment on the subject of wages, is clearly unsustainable, and is liable to be set aside.

55. In view of all our above conclusions, the decision rendered by the full bench of the High Court in Avtar Singh v. State of Punjab & Ors. (CWP no. 14796 of 2003), dated 11.11.2011, is liable to be set aside, and the same is hereby set aside. The decision rendered by the division bench of the High Court in State of Punjab & Ors. v. Rajinder Singh & Ors. (LPA no. 337 of 2003, decided on 7.1.2009) is also liable to be set aside, and the same is also hereby set aside. We affirm the decision rendered in State of Punjab & Ors. v. Rajinder Kumar (LPA no. 1024 of 2009, decided on 30.8.2010), with the modification, that the concerned employees would be entitled to the minimum of the pay-scale, of the category to which they belong, but would not be entitled to allowances attached to the posts held by them.

56. We shall now deal with the claim of temporary employees before this Court.

57. There is no room for any doubt, that the principle of 'equal pay for equal work' has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, under Article 141 of the Constitution of India. The parameters of the principle, have been summarized by us in paragraph 42 hereinabove. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as workcharge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44

hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

59. We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-

“Article 7 The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of ‘equal pay for equal work’ constitutes a clear and unambiguous right and is vested in every employee – whether engaged on regular or temporary basis.

60. 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.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (- at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post.

50) Thus, the law expounded in *Jagjit Singh* has been reiterated by the Apex Court in *Sabha Shanker Dube Versus. Divisional Forest Officer and others*¹⁴ in which it has held in paras-10 to 12 as under :-

¹⁴ 2019 12 SCC 297

10. On a comprehensive consideration of the entire law on the subject of parity of pay scales on the principle of equal pay for equal work, this Court in Jagjit Singh held as follows: (SCC p. 223, para 58)

"58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

11. The issue that was considered by this Court in Jagjit Singh is whether temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and likewise) are entitled to the minimum of the regular pay scales on account of their performing the same duties which are discharged by those engaged on regular basis against the sanctioned posts. After considering several judgments including the judgments of this Court in Tilak Raj 5 and Surjit Singh, this Court held that temporary employees are entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the same post.

12. In view of the judgment in Jagjit Singh, we are unable to uphold the view of the High Court that the appellants herein are not entitled to be paid the minimum of the pay scales. We are not called upon to adjudicate on the rights of the appellants relating to the regularisation of their services. We are concerned only with the principle laid down by this Court initially in Putti Lal Z relating to persons who are similarly situated to the appellants and later affirmed in Jagjit Singh that temporary employees are entitled to minimum of the pay scales as long as they continue in service.

51) It appears that the Industrial Court, has confused itself on account of use of the words '*at the lowest grade, in the regular pay scale*'

used in para-61 of the judgment in **Jagjit Singh**. What is directed by the Apex Court is to pay the minimum basic pay in the pay scale which is applied to regular employees holding the same post. This means a temporary Data Entry Operator would receive entry pay in the pay scale payable to regular Data Entry Operator. The temporary employees do not receive increments. What is ensured by the Apex Court is that temporary employees are not exploited by payment of honorarium or meager wages. To ensure some parity in pay, it has been directed that they are entitled to receive atleast entry pay in the pay scale during the period they continue to serve as temporary employees. However, there cannot be absolute parity in pay between regular employees and temporary employees. Regular employees receive yearly increments, which temporary employees are not entitled to receive. Throughout their service they would be entitled to receive entry pay in the applicable pay scale and all other allowances thereon.

52) Even in Direction No. 6 of the operative part of the order, the Industrial Court has directed equal pay on par with regular employees from 5 July 2017. This direction is again erroneous as temporary employees are not entitled to draw increments and therefore there is no question of granting them exact equal pay on par with regular employees. They are only entitled to draw wages in the minimum of the pay scale and allowances.

53) Reliance by Mr. Naidu on judgments of this Court in **Mumbai Vidyapeeth Kamgar Sanghatana** and **University of Mumbai**

Versus. Parag Bhaskar Ghag does not enure to the benefit of the Respondents. In ***Mumbai Vidyapeeth Kamgar Sanghatana***, this Court directed appointment of employees in the vacant posts firstly from amongst the serving Petitioners. In the present case, the Industrial Court has denied the benefit of regularization to the Respondents. The only relief granted in favour of the Respondents herein is backwages and payment of equal pay. In ***University of Mumbai Versus. Parag Bhaskar Ghag*** this Court dismissed the Petition filed by the University and confirmed the order passed by the Industrial Court and apparently granted permanency to the Respondents as is apparent from para-2 of the judgment of this Court. In the present case, permanency is not granted. In that view of the matter, it is not necessary to consider the ratio of the judgment in ***University of Mumbai Versus. Parag Bhaskar Ghag***. However, qua the issues of jurisdiction of the Industrial Court I have referred to the relevant part of the judgment in ***Mumbai Vidyapeeth Kamgar Sanghatana***. Also, both the judgments in ***Mumbai Vidyapeeth Kamgar Sanghatana*** and ***University of Mumbai Versus. Parag Bhaskar Ghag*** are pending challenge before the Apex Court and only continuance of the employees involved therein is directed on payment of minimum pay scale. In the present case also, it is ensured that the Respondents are continued in service on payment of wages in the minimum of payscales.

WAGES DURING PENDENCY OF COMPLIANT

54) Respondents were discontinued from various grades beginning from 5 July 2017 and most of them did not actually work

during pendency of the complaint. The Tribunal has however granted not just 100% backwages but has directed payment of equal pay on par with regular employees from 5 July 2017 till the complaint is decided on 28 November 2023. The issue for consideration is whether Respondents are entitled to backwages and if answer to the question is in the affirmative, to what extent.

55) Since the Respondents approached Industrial Court and decided to rely on labour laws to claim reliefs, it became incumbent for them to lead evidence to demonstrate absence of gainful employment for claiming backwages. The complaint initially filed was for permanency and for payment of equal pay from the dates of completion of 240 days of service. It is claimed that on the date of filing of the complaint, services of the Respondents were not terminated. This appears to be the reason why there was no occasion for them to raise a pleading of absence of gainful employment. However, after their services were discontinued, it became incumbent for them to incorporate a pleading in the Complaint of absence of gainful employment. It appears that though the Complaint was amended to incorporate challenge to terminations, no averment was added relating to absence of gainful employment. To make the case of the Respondent worse, they did not even lead evidence of absence of gainful employment. Respondents examined only 2 witnesses in support of their case. Ms. Shubhangi Sudhakar Balge did not state in her affidavit of evidence that she was not gainfully employed after termination of her services. The second witness examined by the Respondents was Mr. Swarneem Anil More who was in service on the date of filing of affidavit

of evidence dated 20 January 2021. Therefore there was no occasion for him to lead evidence of absence of gainful employment. Thus, the two witnesses examined by Respondents did not make any statement even for themselves about absence of gainful employment, Ms. Shubhangi Balge admitted that she had no personal knowledge of the other Respondents. Mr. Swarneem Anil More deposed that he had filed affidavit in his personal capacity and that he did not know about any particulars of rest of the Respondents.

56) Mr. Naidu has also relied on judgment of the Apex Court in *Dinesh Chandra Sharma Versus. Bhartiya Paryatan Vikas Nigam Limited and another.*¹⁵ in support of his contention that requirement to plead absence of gainful employment is not a rigid rule. However, in the present case, there is failure not just to plead absence of gainful employment, but there is also no evidence to demonstrate absence of gainful employment.

57) Also of relevance is the fact that the Industrial Court had initially rejected the prayer for interim stay of termination but in erroneous exercise of review jurisdiction, it reintroduced such stay much later on 7 June 2019. Thus, till passing of the review order on 7 June 2019, there was no stay on termination. The order dated 7 June 2019 has been stayed by this Court on 5 March 2020 in Writ Petition No. 2556 of 2019. Thus, initially the Industrial Court and later this Court thought it appropriate not to direct the Petitioners to permit Respondents to

¹⁵ 2025 SCC Online SC 3003

continue in service during pendency of the complaint. This also would be an important factor to bear in mind while deciding the issue of backwages.

58) Thus, there is neither pleading nor evidence of absence of gainful employment after termination of services of the Respondents. This issue is completely glossed over by the Industrial Court, while directing payment of backwages and equal pay from 5 July 2017. Mr. Naidu has relied upon judgment of the Apex Court in ***Deepali Gundu Survase*** (supra) in support of his contention that payment of full backwages is a natural consequence of termination being rendered illegal. However, the judgment in ***Deepali Gundu Survase*** has been explained in subsequent judgment of the Apex Court in **Management of Regional Chief Engineer Public Health and Engineering Department Ranchi Versus. Their Workmen**¹⁶ in which it has held in para-16 as under :-

16. We, however, find that the High Court in para 9 of the order placed reliance on the decision of this Court in *Deepali Gundu Survase* for holding that the question of back wages is covered by this decision. In our view, the High Court erred in so observing. It should have seen that in *Deepali Gundu Survase* itself, this Court referred to decisions, which we have mentioned in para 12 above and then in para 38 of *Deepali Gundu Survase*, this Court culled out the ratio of all the cited cases. **Thereafter, this Court in *Deepali Gundu Survase* case granted relief to the workers concerned on the facts involved in that case.** In our opinion, the High Court did not apply the ratio of the decision in *Deepali Gundu Survase* to the facts of this case properly and only quoted one paragraph of the judgment in *Deepali Gundu Survase* **which contained general observations**. Those observations had to be read in juxtaposition with para 38 which culled out the ratio of all the case law on the subject.

(emphasis added)

¹⁶ 2019 8 SCC 814

59) Thus, the Apex Court, in a subsequent judgment, has clarified that the relief of backwages is granted in **Deepali Gundu Surwase** in the light of facts of that case. In absence of any pleading and evidence of absence of gainful employment, this Court would be actually justified in denying backwages to the Respondents.

60) Petitioner is a University engaged essentially in the activities of imparting education. Directing payment of full backwages on par with the regular employees during the period when the Respondents did not actually work would put a huge financial burden on the University. It is not that each of the Respondent was in service for a long period of time. The chart appended to the complaint would indicate that Respondent Nos. 48 to 64 had joined services in 2016 and had rendered hardly a year's service. Similarly, Respondents 28 to 47 had joined service in 2015 and had worked hardly for 2 years. Respondents Nos. 17 to 27 had worked for only 3 years. Thus out of the 64 Respondents, about 10 actually worked for 3 years, 19 worked for 2 years and 16 worked for only 1 year. Thus, 70% of the Respondents had rendered services ranging between 1-3 years. They are not regular employees of the University. The issue is whether they need to be granted full backwages for 6 long years when their service period in the University is hardly between 1 to 3 years. The answer to my mind appears to be in the negative.

61) Considering the peculiar facts and circumstances of the case, where services of the Respondents were discontinued immediately after

filing of the complaint, I deem it appropriate to award 50% backwages to them after 5 July 2017 till 28 November 2023 when the complaint was decided. From 29 November 2023 onwards, Respondents were supposed to be reinstated towards implementation of the order of the Industrial Court. The direction for reinstatement is upheld by this Court. In that view of the matter, Respondents would be entitled to full wages in the minimum pay scale payable to regular employees holding corresponding post.

62) Writ Petition No. 2556 of 2019 challenges interlocutory order dated 7 June 2019 by which the Industrial Court had reviewed its earlier order of refusal of interim stay on termination. Since this Court has modified the final judgment and order of the Industrial Court, nothing survives to be adjudicated in Writ Petition No. 2556 of 2019 and both the learned Counsel agree that the same is rendered infructuous.

CONCLUSIONS

63) The conspectus of the above discussion is that the Industrial Court has not granted the relief of permanency to the Respondents. It has only granted them reinstatement and the relief of reinstatement granted by the Industrial Court is found to be justified. However, direction for payment of salary equal to lowest grade paid to regular employees from the date of respective joining is found to be erroneous. Instead, arrears need to be restricted only to a period of 90 days before filing of the complaint. Accordingly, Respondents would be entitled to

difference of wages between the one actually paid to them and the pay in minimum of pay scale applicable to the relevant posts plus dearness allowance for a period of 90 days prior to filing of the complaint. The direction for payment of consequential benefits and equal pay from 5 July 2017 is also found to be erroneous. As observed above, Respondents would be entitled to only 50% of backwages from 5 July 2017 to 28 November 2023. The backwages shall be calculated on the basis of entry pay in the pay scale applicable to the respective posts plus dearness allowance. From 29 November 2023 till Respondents are actually reinstated, the Petitioner-University shall pay full wages and dearness allowance arrived at by taking into consideration entry pay in the pay scale applicable to the posts held by the Respondents. It appears that in pursuance of order dated 26 February 2025, the Petitioner-University has deposited salaries of Respondents for a period of 3 months. Respondents would be entitled to withdraw the deposited amounts alongwith accrued interest. The balance payments arising out of the present order shall be paid over to each of the Respondents within a period of 4 months.

ORDER

64) I accordingly proceed to pass the following order :-

- i) The judgment and order dated 28 November 2023 passed by the Industrial Court, Mumbai in Complaint (ULP) No. 208 of 2017 is partly set aside and modified.
- ii) Petitioners shall pay to the Respondents difference of wages between the one actually paid and the one payable,

considering the entry pay in the minimum of the pay scale applicable to the posts held by them plus dearness allowance for a period of 90 days prior to the date of filing of Complaint.

- iii) Petitioner shall pay to the Respondents 50% of backwages from 5 July 2017 to 28 November 2023 calculated by taking into consideration entry pay and dearness allowance in the pay scale admissible to the respective posts held by the Respondents.
- iv) From 29 November 2023 onwards, Petitioners shall pay to the Respondents full salary and dearness allowance calculated by considering entry pay in the pay scale admissible to the posts held by the Respondents.
- v) The Respondents shall be entitled to withdraw the entire deposited amount in this Court along with accrued interest.
- vi) The amount arising out of the order shall be paid over by the Petitioner to the Respondents within a period of 4 months.

65) With the above directions, Writ Petition No. 3962 of 2025 is partly allowed and disposed of. Writ Petition No. 2556 of 2019 is disposed of as infructuous.

[SANDEEP V. MARNE, J.]

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