AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10960 OF 2024

Deepak Jijabrao Shitole,
Age 42 years, Sajguna Building,
S/No.81/1, Chaitraban Society,
Near Janvikas Patsanstha,
New Sangvi, Pune 0 411 027 ... **Petitioner**

Vs.

Yashwantrao chavan Academy of Development Administration (YASHADA),
Pune, Raj Bhavan Complex,
Baner Road, Pune 411 007 ... **Respondent**

Mr. Nitin Kulkarni for the petitioner.

Mr. Tejesh Dande with Ms. Tanishka Chavan for the respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : FEBRUARY 27, 2026.

PRONOUNCED ON : MARCH 17, 2026

JUDGMENT:

1. By the present writ petitions, the petitioner has challenged the Judgment and Order dated 2 August 2023 passed by the Industrial Court, Pune in Complaint (ULP) No. 275 of 2013.

2. The facts giving rise to the filing of the present writ petitions are as follows. The petitioner had initially instituted a complaint alleging unfair labour practices under Section 28(1) read with

Item Nos. 5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 before the Industrial Court at Pune. The petitioner contended that upon completion of 240 days of continuous service, he was entitled to be made permanent and to receive all consequential benefits of permanency from the date of completion of such service till regularisation by the respondent. It was pleaded that the petitioner was appointed on 10 July 2006 as a Technical Assistant and that his engagement was continued from time to time by granting artificial technical breaks of one day. It was further contended that although appointment orders were issued for fixed periods, the nature of duties performed by the petitioner was perennial and continued so long as the respondent establishment existed. According to the petitioner, such fixed term appointments were adopted only to circumvent the rigours of Section 25F of the Industrial Disputes Act, 1947 by taking recourse to Section 2(oo)(bb) thereof. The petitioner was initially appointed as Technical Assistant on 10 July 2006.

3. In the complaint filed before the Industrial Court, it was further contended that the petitioner had rendered continuous service exceeding 240 days and, therefore, the protection of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 was not available to the respondent. Reliance was placed on Clause 4(c) of the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946, to contend that on completion of 240 days of continuous service, the petitioner stood deemed to have acquired permanent status. It was also the case of

the petitioner that upon completion of 240 days of continuous service, the respondent was under an obligation to issue an order conferring permanency. Since no such order was issued, it was alleged that the respondent had committed breach of the Model Standing Orders, particularly Clause 4(c), and thereby indulged in unfair labour practices falling under Item No. 9 of Schedule IV of the MRTU and PULP Act, 1971. During the pendency of the complaint before the Industrial Court, the petitioner filed an application seeking interim relief under Section 30(2) of the MRTU and PULP Act, 1971, praying that the respondent be restrained from terminating his services pending final adjudication of the complaint. The Industrial Court issued notice to the respondent and granted an order directing the parties to maintain status quo with regard to the petitioner's employment till the hearing of the application for interim relief. Upon vacating the ad interim relief, the respondent terminated the services of the petitioner on 9 April 2015. Aggrieved thereby, the petitioner filed a separate complaint alleging unfair labour practice before the Labour Court seeking reinstatement with full back wages, which proceedings are stated to be pending before the Labour Court at Pune. After considering the evidence on record and upon hearing both sides, the Industrial Court dismissed the complaint filed by the petitioner by its order dated 2 August 2023.

4. Learned Advocate appearing for the petitioners submitted that it is an undisputed position that the respondent is a Trust registered under the Societies Registration Act, 1860, initially as Maharashtra Institute of Development Administration, and is also

registered under the Bombay Public Trusts Act, 1950 bearing Registration No. F-6370 dated 3 November 1990.

5. It was submitted that, by virtue of Section 2(4) of the Bombay Shops and Establishments Act, 1948, the respondent Trust squarely falls within the definition of a commercial establishment. Consequently, in view of Section 38B of the said Act, the provisions of the Industrial Employment (Standing Orders) Act, 1946 become applicable to the respondent. It was further submitted that the respondent admittedly employs more than fifty employees and, therefore, once the Model Standing Orders become applicable, it was mandatory for the respondent to obtain exemption under Section 13B of the Industrial Employment (Standing Orders) Act, 1946, if the service conditions of employees were governed by separate rules. Learned counsel submitted that the Industrial Court failed to properly appreciate the statutory definition of "commercial establishment" under Section 2(4) of the Bombay Shops and Establishments Act, 1948, including the amended provision. Reliance was placed on the definition to contend that societies registered under the Societies Registration Act and charitable or other trusts carrying on any business, trade, profession, or activities incidental or ancillary thereto are expressly included within its scope, irrespective of whether such activities are carried out for profit.

6. It was further submitted that the Industrial Court erred in concluding that the respondent was not carrying on any business, trade, or profession. Attention was invited to the annual reports placed on record, which reflected income generated through

course fees, sales income, project income, other income, and activities of the Management Development Centre. According to the petitioners, these documents clearly establish the commercial nature of the respondent's activities, and the finding recorded by the Industrial Court was therefore perverse and contrary to the evidence on record. Learned counsel submitted that although training is one of the activities undertaken by the respondent, it is not the sole activity. Reliance was placed on the admissions made by the respondent's witness in cross examination to demonstrate that the respondent is engaged in multiple activities including research, training, consultancy, and publication. It was contended that such activities, whether undertaken for gain or otherwise, bring the respondent within the ambit of a commercial establishment under Section 2(4) of the Bombay Shops and Establishments Act, 1948. It was further submitted that the respondent cannot be treated as an instrumentality of the State merely because it receives grants from the Government of Maharashtra. It was contended that the settled legal position is that receipt of government grants, by itself, does not render an institution an instrumentality of the State under Article 12 of the Constitution of India. Unless the Government can sue or be sued in respect of the acts of such institution, it cannot be regarded as a State instrumentality. Learned counsel submitted that there is no material to show that the respondent institution was created by statute or that any principal and agent relationship exists between the Government and the respondent. The mere presence of Government officers on the Board of Directors does not confer the

status of a State instrumentality. It was pointed out that the respondent is admittedly registered under the Bombay Public Trusts Act and the Societies Registration Act and is governed by its Board of Governors and not under the direct control of the State Government.

7. It was submitted that the finding of the Industrial Court that completion of 240 days of service does not confer a right to permanency is contrary to Clause 4(c) of the Model Standing Orders. Learned counsel contended that Clause 4(c) specifically provides that a Badli or temporary workman who has rendered uninterrupted service aggregating to 240 days in the preceding twelve months shall be made permanent by a written order signed by the Manager. Therefore, the finding of the Industrial Court was stated to be contrary to the statutory mandate as well as the law laid down by the Supreme Court in Jet Airways Ltd., and hence liable to be set aside.

8. Reliance was placed on the judgment of the Supreme Court in *Bharatiya Kamgar Karmachari Mahasangh v. Jet Airways Ltd.*, (2023) 20 SCC 178, wherein it has been held that a cumulative reading of the relevant clauses indicates that a workman completing 240 days of service becomes entitled to permanency, and that no contract, settlement, or agreement curtailing such statutory right can prevail over the Standing Orders. It was contended that the Standing Orders, being beneficial legislation, override any contractual arrangement waiving employee rights. On this basis, it was submitted that the findings of the Industrial Court are contrary to the law declared by the Supreme Court.

9. Learned counsel further submitted that the Industrial Court erred in holding that fixed term appointment orders would automatically attract Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and thereby exclude the applicability of Clause 4(c) of the Model Standing Orders. According to the petitioners, such reasoning is contrary to the law laid down by the Bombay High Court in Saudi Arabian Airlines and by the Supreme Court in *Jet Airways*. It was contended that the conclusion of the Industrial Court that the Industrial Employment (Standing Orders) Act was not applicable to the respondent, and that the petitioners were not entitled to permanency despite completion of 240 days of continuous service, is contrary to settled legal principles and therefore liable to be quashed as perverse.

10. It was further submitted that there was no material before the Industrial Court to indicate that the post occupied by the petitioner had ceased to exist or that the work itself had come to an end. Even assuming that the petitioner was appointed as a Project Assistant, the project work admittedly continued and there was no contention that the projects had been closed or discontinued. It was submitted that the respondent institution regularly undertakes projects from various public and private bodies, and therefore it cannot be contended that no work survives so as to justify discontinuation of the petitioner's services.

11. Learned counsel submitted that the terms of appointment issued to the petitioner were opposed to public policy, and that continued engagement on a contractual basis for an uninterrupted period exceeding four years amounted to exploitation. It was

argued that the respondent, being expected to act as a model employer in a welfare state, ought not to impose unfair, illegal, or inequitable conditions of employment upon persons who have no real bargaining power and are compelled to accept such terms. In support of the aforesaid submissions, learned Advocate for the petitioner placed reliance on the judgments of the Supreme Court in *Jaggo v. Union of India and Others,* 2024 SCC OnLine SC 3826.

12. Per contra, learned Advocate Mr. Dande appearing for the respondent submitted that the contractual engagement of the petitioner commenced on 5 April 2013 and came to an end on 4 March 2014 in terms of the contract executed between the parties. It was contended that the respondent is an instrumentality of the Government of Maharashtra. The Maharashtra Institute of Development Administration, subsequently renamed as YASHADA, was established pursuant to Government Resolution dated 24 May 1984 issued by the Government of Maharashtra, which provided that the respondent would function under the administrative control of the General Administration Department of the State Government. It was submitted that the Institute was established to undertake training and capacity building activities of the Government, and Clause 4 of the said Government Resolution expressly provides for supervisory and controlling powers of the General Administration Department over the respondent institution. Learned counsel further submitted that the Memorandum of Association of the respondent indicates that the institution functions as an apex training body of the Government of Maharashtra, entrusted with providing training and related

services, prescribing standards of proficiency, and recommending management inputs in matters concerning public administration and productivity of various organisations, agencies, and institutions.

13. It was submitted that the Industrial Court has rightly held that mere completion of 240 days of service does not confer a right to permanency. According to the respondent, since the institution is an instrumentality of the State, the provisions of the Model Standing Orders are not applicable. It was further contended that there were no sanctioned posts available in the establishment of YASHADA for project work and that the petitioner was engaged purely on contractual basis for a fixed duration project. The commencement and expiry dates of the contract were expressly mentioned therein, and therefore the petitioner was bound by the contractual terms and conditions and was not entitled to claim protection or continuance beyond the expiry of the contractual period. Learned counsel submitted that the petitioner is bound by the terms of the contract entered into with the respondent and that such contractual engagement squarely falls within the ambit of Section 2(oo)(bb) of the Industrial Disputes Act, 1947. Consequently, it was contended that the petitioner is not entitled to claim permanency or any relief based on continuous service.

14. It was further submitted that even assuming, without admitting, that the provisions of the Industrial Employment (Standing Orders) Act, 1946 and the Model Standing Orders framed thereunder are applicable to the respondent, the respondent would still be entitled to appoint employees on

contractual basis by virtue of Clause 31 of the Model Standing Orders. Reliance was placed on Clause 31, which provides that nothing contained in the Standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right arising under a contract of service, customary usage, agreement, settlement, or award applicable to the establishment. Learned counsel therefore submitted that it is a consistent practice in YASHADA to undertake projects dependent upon funding agencies, and that manpower is engaged specifically for such project based activities. The petitioner, according to the respondent, was appointed only for a particular project and his engagement was co terminus with the duration and requirements of that project.

REASONS AND ANALYSIS:

15. The Bombay Shops and Establishments Act provides a meaning to the expression “commercial establishment”. It does not restrict the term only to places which earn profit. The definition also includes societies and trusts which carry on business, trade, profession, or any activity connected with such work. The real test is the nature of the activities it actually carries on. In the present case, the annual reports produced on record show that the respondent conducts training programmes, consultancy work, research activities, publications and also runs the Management Development Centre. These activities generate income in the form of course fees, project income and other receipts. The documents placed on record therefore clearly reflect organised and systematic functioning of the institution. These records give a clear picture of

how the respondent operates in practice. Looking to this material, it becomes evident that the respondent answers the description of a “commercial establishment” under the Bombay Shops and Establishments Act and is therefore required to follow the legal obligations attached to such establishments.

16. Once the respondent is treated as a commercial establishment and it is also not disputed that it employs more than the minimum number of employees prescribed under Act, the provisions of the Industrial Employment Standing Orders Act automatically come into operation. In such a situation the Model Standing Orders apply unless the employer has framed and obtained certification of its own standing orders. These Model Standing Orders lay down the statutory terms which regulate service conditions of employees.

17. In view of this position, the finding recorded by the Industrial Court that the respondent does not carry on any business or trade cannot be accepted. The annual reports placed on record and the admissions made by the witness of the respondent clearly show that the respondent carries on several organised activities which generate income. The Industrial Court does not appear to have examined these documents carefully. When material documentary evidence is ignored, the factual conclusion drawn cannot stand in law. The finding therefore cannot be sustained as it reflects an incorrect appreciation of the material available on record.

18. Clause 4(c) of the Model Standing Orders provides that a badli or temporary workman who has completed 240 days of uninterrupted service during the preceding twelve months shall be made permanent by an order in writing issued by the Manager. The intention behind this provision is to protect employees who continue to work for long periods but are kept on temporary footing only in name. Once the employee completes the required length of service, the law treats that stage as the point where the employee becomes entitled to permanency.

19. It is well settled that the Model Standing Orders are intended to safeguard the rights of employees and to prevent unfair service practices. When the provisions of the Standing Orders are read together, it becomes clear that once the prescribed period of service is completed, the workman acquires a legal right to claim permanency. Such a right cannot be taken away by agreements or contractual terms framed by the employer. Any arrangement which inconsistent with a statutory protection cannot prevail over the law. In the case of *Jet Airways*, the Supreme Court has clearly held that the statutory Standing Orders will prevail over contractual terms which try to defeat or bypass these protections.

20. Section 2(oo)(bb) of the Industrial Disputes Act states that when a fixed term contract comes to an end and is not renewed, such termination will not amount to retrenchment. It allows an employer to appoint a person for a fixed period and to discontinue the service when the contract period ends. However, this provision cannot override other statutory protections which exist

independently. The Model Standing Orders have the force of law. Therefore, a contract of employment cannot be interpreted in a manner which takes away the rights granted by the Standing Orders.

21. In the present case, the respondent has attempted to describe the petitioner as a fixed term employee engaged for a project and has relied upon the contract which mentions a specific starting date and ending date. However, the terms of a contract cannot be read in isolation when the real nature of employment shows something different. The material on record shows that the petitioner continued to perform similar duties and his appointments were renewed repeatedly with only technical breaks in between. This pattern shows that the work continued and the institution depended on his services. Such circumstances clearly indicate continuity of employment. In such a situation, the protection under Clause 4(c) of the Model Standing Orders would apply even if the appointments are labelled as fixed term. An employer cannot avoid the consequence of permanency by dividing long service into a chain of short term contracts once the employee has fulfilled the statutory requirement.

22. The respondent has also relied upon a Government Resolution stating that the General Administration Department exercises administrative supervision over the institution. It is also pointed out that some government officers are members of the governing body and that the institution receives government grants. These circumstances may have some relevance, but they are not sufficient by themselves to treat the institution as a State

authority. For that purpose the Court must examine whether the institution has been created by statute, whether the Government exercises deep and effective control over its daily functioning, whether the Government can be held legally responsible for its acts, and whether the functions performed by the institution are so closely connected with the State that it can be regarded as part of the State. Merely because an institution is registered as a society and a public trust, or because it receives grants from the Government, it does not automatically become a State authority.

23. In the present case, the material produced by the petitioner indicates that the respondent functions largely as a training and consultancy institution carrying on organised activities of a commercial nature. The Government Resolution relied upon only speaks of administrative supervision. It does not show that the institution has been created by a statute under Article 12 of the Constitution. The record also does not indicate that the Government exercises complete or exclusive control over the functioning of the respondent. In these circumstances, it cannot be said that the respondent is an instrumentality of the State. Consequently, the respondent cannot deny the petitioner the protection of statutory labour laws on that ground.

24. For the reasons recorded hereinabove, the following order is passed:

(i) The writ petitions are allowed.

(ii) The Judgment and Order dated 2 August 2023 passed by the Industrial Court, Pune in Complaint (ULP) No. 275 of

2013 is quashed and set aside.

(iii) It is declared that the petitioner, having been appointed on 10 July 2006 and having worked continuously thereafter, completed 240 days of continuous service on 5 March 2007 within the meaning of Clause 4(c) of the Model Standing Orders.

(iv) It is further declared that on completion of the said period of 240 days of uninterrupted service, the petitioner became entitled to be treated as a permanent employee in the establishment in terms of Clause 4(c) of the Model Standing Orders.

(v) The respondent is directed to treat the petitioner as permanent from 5 March 2007, being the date on which the petitioner completed 240 days of continuous service, and to extend to the petitioner all consequential service benefits flowing from such status.

(vi) The respondent shall compute and grant the consequential monetary benefits within a period of three months from the date of this judgment.

25. Rule is made absolute in the above terms. No order as to costs.

(AMIT BORKAR, J.)