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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11137 OF 2024

ATUL
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1. **Shivaji Madhav Jadhav,**
Age 34 years, Occu.: Service,
Rat/ Post Desrane, Taluka Kalvan,
District Nashik 423 501
2. **Ajay Ashok Sawant,m**
Age 25 years, Occu.: Service,
R/at Post Nampur, Taluka Satana,
District Nashik 423 204
3. **Kundan Popat Pawar,**
Age 28 years, Occu.: Service,
Rat Post Bhaur, Taluka Kalwan,
District Nashik 423 501
4. **Prashant Balasaheb Ghade,**
Age 27 years, Occu. Service,
R/at Post Songaon, Tal. Niphad,
District Nashik 423 303
5. **Shivbhushan S. Gavare,**
Age 25 years, Occu.: Service,
R/at Post Mhalsakore, Tal. Niphad,
District Nashik, 422 290
6. **Sunil Santosh Pagar,**
Age 36 years, Occu.: Service,
R/at Post Ganesh Nagar,
Tal. Kalwan, District Nashik 423 501
7. **Anita Dagdu Thakare,**
Age 31 years, Occu.: Service,
Rat Post Chandori, Tal. Niphad,
District Nashik 422 201

8. **Shilpa M. Katkade,**
Age 31 years, Occu.: Service,
Rat Post Nandur Shingote,
Tal. Sinnar, District Nashik 422 606
 9. **Amol Bhausahab Gunjal,**
Age 23 years, Occu.: Service,
Rat Post Subhash Nagar, Makarand
Wadi, Tal. Deola, Dist. Nashik 423 102
 10. **Kiran Rohidas Bajare,**
Age 32 years, Occu.: Service,
R/at Post Mhalsakore, Tal. Niphad,
District Nashik 422 290
 11. **Ravindra Ramdas Arote,**
Age 38 years, Occu.: Service,
R/at Plot NO.16, Rasbhihari
Meri Link Road, Nirmal Nagar,
Panchavati, Dist. Nashik 422 003.
 12. **Sachin Dattu Surashe,**
Age 22 years, Occu.: Service,
R/at Post Talaki Vinchur,
Tal. Niphad, Dist. Nashik 422 305.
 13. **Chetan Trambak Murkute,**
Age 29 years, Occu.: Service,
R/at Post Mhalsakore,
Tal, Niphad, Dist. Nashik 422 490
- ... Petitioners

Vs.

Nashik District Central Cooperative Bank Ltd,
having its office at Old Agra Road, Oppo.
Hotel Samrat, Near CBS, Nashik 422 002
Through it's Chief Executive Officer

... Respondent

**WITH
WRIT PETITION NO.11138 OF 2024**

Raju Baban Darade & Others ... Petitioners
Vs.

Nashik District Central Cooperative Bank
Limited, through its Chief Executive Officer ... Respondent

WITH
WRIT PETITION NO.15136 OF 2022

Anil Pandurang Sonavane & Others ... Petitioners
Vs.

Nashik District Central Cooperative Bank
Limited, through its Chief Executive Officer ... Respondent

WITH
WRIT PETITION NO.14973 OF 2022

Tushar Baliram Bachav & Others ... Petitioners
Vs.

Nashik District Central Cooperative Bank
Limited, through its Chief Executive Officer ... Respondent

WITH
WRIT PETITION NO.14972 OF 2022

Deepak Parshram Deore & Others ... Petitioners
Vs.

Nashik District Central Cooperative Bank
Limited, through its Chief Executive Officer ... Respondent

WITH
WRIT PETITION NO.11139 OF 2024

Kiran Ambadas Ghuge & Others ... Petitioners
Vs.

Nashik District Central Cooperative Bank
Limited, through its Chief Executive Officer ... Respondent

WITH
WRIT PETITION NO.15135 OF 2022

Meghdeep Deepak Sawant & Others ... Petitioners
Vs.

Nashik District Central Cooperative Bank
Limited, through its Chief Executive Officer ... Respondent

WITH

WRIT PETITION NO.15146 OF 2022

Shekhar Bhausahab Hjre & Others ... Petitioners

Vs.

Nashik District Central Cooperative Bank
Limited, through its Chief Executive Officer ... Respondent

WITH

WRIT PETITION NO.15134 OF 2022

Sonali Rajendra Shirke & Others ... Petitioners

Vs.

Nashik District Central Cooperative Bank
Limited, through its Chief Executive Officer ... Respondent

WITH

WRIT PETITION NO.15145 OF 2022

Suresh Baburao Dakhane & Others ... Petitioners

Vs.

Nashik District Central Cooperative Bank
Limited, through its Chief Executive Officer ... Respondent

WITH

WRIT PETITION NO.14974 OF 2022

Bharat Hari Mengale & Others ... Petitioners

Vs.

Nashik District Central Cooperative Bank
Limited, through its Chief Executive Officer ... Respondent

WITH

WRIT PETITION NO.6647 OF 2024

Sarika Sanjay Pawar & Others ... Petitioners

Vs.

Nashik District Central Cooperative Bank
Limited, through its Chief Executive Officer ... Respondent

WITH

WRIT PETITION NO.6930 OF 2024

Shubhangi S. Sonawane & Others ... Petitioners

Vs.

Nashik District Central Cooperative Bank
Limited, through its Chief Executive Officer ... Respondent

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Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Industrial Court dismissed the complaints solely on the ground that the staffing pattern had not received approval. The petitioners were appointed more than ten years prior to the filing of the complaints, some as clerks and others as peons. According to them, though appointed against vacant posts and engaged in work of permanent and perennial nature, they were denied permanency and continued as temporary employees for several years, thereby attracting Item 6 of Schedule IV. It was further alleged that they were subjected to discrimination, irrespective of merit, inasmuch as they were denied benefits and privileges available to permanent employees performing identical or similar work, constituting unfair labour practice under Item 5. It was also contended that despite entitlement, they were not regularised, resulting in violation of the applicable Standing Orders and denial of benefits flowing from the settlement executed between the Bank and the representative union, in contravention of the provisions of the Maharashtra Industrial Relations Act, 1947, thereby attracting Items 9 and 10 of Schedule IV.

4. The petitioners set out, in paragraph 1 of the complaint, the names of the employees represented, the posts held by them, their educational qualifications, provident fund numbers, and the consolidated wages paid to them. It was specifically pleaded that they were appointed against vacant posts and possessed the requisite qualifications for such posts. The petitioners averred that they accepted appointment letters containing unfair and unlawful terms owing to financial hardship and the necessity of

employment. It was further pleaded that they had been continuously working from the date of initial appointment without any termination, including technical breaks, and that provident fund contributions were regularly deducted from their salaries. The complaint also referred to the sanctioned staffing strength of 1934 workmen as against 1270 permanent workmen actually working. It was pleaded that approximately 700 permanent workmen had ceased to be in service due to superannuation, voluntary retirement, death, or other reasons, and that no permanent recruitment had taken place after 2005 despite the resulting vacancies. The petitioners asserted that the work performed was perennial in nature and that they were required to discharge duties of a permanent character. It was further pleaded that the respondent Bank had issued a public notice inviting applications for recruitment against vacant posts, pursuant to which the petitioners applied, underwent the prescribed selection process and interviews, were selected, and continued in service on account of satisfactory performance and conduct.

5. The complaint contained detailed pleadings regarding discriminatory treatment, setting out particulars of the consolidated wages paid to the petitioners as compared to the regular pay scales and allowances, including dearness allowance, house rent allowance and travelling allowance, paid to permanent employees performing similar duties. It was also pleaded that permanent employees were granted leave to the extent of 55 days, whereas the petitioners were granted only one day of leave.

6. The petitioners further pleaded denial of promotional opportunities, educational allowance, vehicle and travelling allowances, bonus or ex gratia payments, Mediclaim policy, free medical check-up, and concessional loan facilities. It was alleged that such denial constituted violation of the Standing Orders and breach of the agreement between the parties. The complaint asserted that denial of benefits available to similarly situated employees, irrespective of merit, amounted to unfair labour practice under Item 5 read with Items 9 and 10 of Schedule IV. It was specifically pleaded that the petitioners were deliberately continued on temporary status with the object of depriving them of the benefits and privileges attached to permanency, despite demands made to the respondent to cease and desist from engaging in unfair labour practices.

7. The respondent Bank filed a reply to Exhibit U-2, the application for interim relief, and adopted the same as its written statement. The Bank admitted that the work performed was perennial in nature. It further admitted that prior to 2005 it had employed approximately 1800 to 1900 employees, but that about 700 employees had thereafter ceased to be in service on account of retirement, termination, resignation, voluntary retirement, or death, resulting in substantial reduction of workforce between 2005 and 2014-15. It was admitted that the last recruitment of permanent employees took place in 2005. The Bank stated that a proposal seeking approval of a staffing pattern comprising 1934 employees had been submitted and favourably recommended by the Divisional Registrar of Co-operative Societies, Nashik Division,

to the State Government. It was also admitted that only 1213 permanent employees were presently working as against the requirement of 1934 employees. The Bank further admitted that the petitioners were employed against posts that had fallen vacant due to the reduction in workforce and that the petitioners and other temporary workmen were performing work of perennial nature. The Bank averred that in the absence of such temporary employment, the functioning of the Bank would have been severely affected and services to account holders would have been disrupted due to inadequate staffing at branches. It was also admitted that the petitioners were not paid wages or extended benefits available to permanent employees under the settlement with the representative union solely because they were treated as temporary employees. These admissions, according to the petitioners, established unfair labour practices under Item 5 relating to discrimination, Item 6 relating to continuation on temporary basis to deny permanency, Item 9 relating to violation of settlement and statutory provisions, and Item 10 relating to use of force interpreted as violation of binding legal obligations including Standing Orders and settlements. The Bank further averred that, in order to manage its affairs, extensions had been granted in the past to employees who had retired on superannuation. It was stated that since such retired employees were required to be paid higher wages, the petitioners were engaged on consolidated wages of Rs. 6000 and Rs. 9000. The petitioners contend that this amounts to an admission of unfair labour practice under Item 6 of Schedule IV. The Bank admitted

that it required a workforce of 1934 employees but presently had only 1213 employees, thereby indicating vacancies exceeding 700 posts, and that such staffing requirement had been favourably recommended by the Divisional Registrar on the Bank's proposal. It is also noted that no statutory provision or legal basis requiring prior approval of the staffing pattern was pleaded or cited by the Bank.

8. Upon hearing the parties, the learned Industrial Court, by the impugned Judgment and Award dated 20 May 2022, dismissed the complaints filed by the petitioners.

9. Learned counsel for the petitioners, Mr. Nargolkar, submitted that each of the petitioners has been in continuous service for more than ten years and possesses the requisite qualifications for the posts held by them. It was contended that provident fund contributions are regularly deducted and deposited under the respective provident fund code numbers, as reflected in the tabulated statement placed on record. The petitioners, who are working as clerks, are paid consolidated wages of Rs. 9000, while those working as peons are paid Rs. 6000. It was submitted that they have been denied dearness allowance, periodic wage revisions, and all benefits and privileges available to permanent workmen. It was further contended that such treatment amounts to violation of the Standing Orders applicable to the respondent Bank. According to the petitioners, they were appointed against vacant posts and have continuously worked from the date of initial appointment without any termination, whether oral or written, and therefore their service is continuous in law. It was further

submitted that while the Bank had approximately 1950 permanent employees in the year 2005, only about 1270 permanent employees remained in service on the date of filing of the complaint, and that no permanent recruitment has been made after 2005 despite cessation of service of nearly 700 employees due to retirement, voluntary retirement, resignation, death, and other reasons.

10. It was further submitted that the petitioners are granted only one casual leave per month and are denied all other benefits and concessions. The petitioners continue to receive consolidated wages of Rs. 9000 and Rs. 6000 respectively, whereas permanent employees are paid in regular time-scale pay bands with periodic increments and are entitled to dearness allowance, house rent allowance, travelling allowance, fifteen days casual leave, thirty days privilege leave, ten days medical leave, and maternity leave of 180 days for female employees.

11. It was submitted that dearness allowance linked to the Consumer Price Index, 1960 Series, with 2001 as the base year, is not granted or merged with basic pay in the case of the petitioners. Further, promotional avenues available to permanent employees, including promotion from subordinate cadre to Jamadar, Driver, Clerical, Grade III, Grade II, Grade I, Special Grade and managerial cadre, are denied to the petitioners. It was also contended that post allowance, educational allowance, travelling allowance, bonus, ex gratia payments, Mediclaim policy, medical check-up allowance and other service benefits are not extended to them.

12. According to the petitioners, denial of the aforesaid benefits is solely on the ground that they are treated as temporary employees, thereby constituting discrimination under Item 5 of Schedule IV of the MRTU and PULP Act. It was further submitted that the petitioners have been deliberately continued on temporary status with the object of denying them the benefits and privileges attached to permanency. It was submitted that there is no statutory requirement mandating prior approval of the staffing pattern and that approximately 700 vacant posts are available in the establishment. Learned counsel further submitted that the testimony led on behalf of the petitioners remained unshaken in cross-examination and that no material contradictions emerged when compared with the version set out in the affidavit of evidence.

13. Inviting attention to the affidavit of evidence filed on behalf of the respondent through Shri H. S. Nalwade, it was submitted that the said witness had been employed with the Bank since 09 May 1992, initially as Deputy Chief Officer (Administration) and thereafter as Chief Officer (Administration). The witness stated that the petitioners could not claim benefits of permanency as they were engaged as temporary employees and that, in the absence of approval of the staffing pattern, they could not be regularised. However, in cross-examination, the witness admitted that the petitioners were appointed against vacant posts, that they were performing the work of permanent employees, and that their services had never been terminated since initial appointment. The witness also admitted the documents placed on record and further

admitted that services of more than 800 employees had ceased since 2005.

14. It was further submitted that, as per the advice issued by NABARD dated 03 July 2009, matters relating to staffing pattern and recruitment policy of central co-operative banks fall within the domain of the respective institutions as part of reforms in the co-operative sector, and that appropriate action could therefore be initiated by the concerned banks themselves. It was argued that such advice issued by NABARD is merely advisory in nature and does not possess statutory force.

15. On the basis of the pleadings in the complaint, the admissions contained in the written statement, the detailed and categorical evidence led by the petitioners, the unshaken oral testimony, the admissions elicited in cross-examination, and the advice issued by NABARD, it was submitted that the petitioners have duly established commission of unfair labour practices under Items 5, 6, 9 and 10 of Schedule IV of the MRTU and PULP Act.

16. Learned counsel for the respondent Bank, Mr. Vishwanath Patil, submitted that the respondent NDCC Bank is a District Central Co-operative Bank operating throughout Nashik District with branches in all fifteen talukas. It was submitted that the Bank performs diverse banking functions including disbursement of agricultural and crop loans, financing of agricultural implements, irrigation facilities, tractors, wells, seeds and fertilizers, implementation of Government subsidy schemes, grant of gold loans, mobilisation of deposits, provision of locker facilities and

undertaking recovery proceedings. It was further contended that the Bank is required to implement various Government schemes from time to time without receiving any separate administrative grant towards manpower expenditure, and failure to implement such schemes may expose the Bank to regulatory and legal consequences.

17. It was submitted that in the year 2005 the respondent Bank had approximately 1800 to 1900 employees. Thereafter, between 2005 and 2014-15, nearly 700 employees ceased to be in service on account of retirement, resignation, promotion, death and voluntary retirement. According to the respondent, no permanent recruitment has been undertaken since 2005. As on date, only about 640 permanent employees are stated to be in service, whereas the manpower requirement for efficient functioning is approximately 1934 employees.

18. The respondent submitted that due to acute shortage of manpower, a detailed staffing pattern proposal seeking sanction for 1934 posts was submitted. The Divisional Joint Registrar, Co-operative Societies, Nashik Division, by communication bearing Outward No. 4591 dated 29 September 2015, forwarded the proposal to the competent authority for approval. However, the staffing pattern has not been sanctioned by the Government till date. It was contended that in the absence of sanctioned posts, the respondent Bank is legally precluded from making permanent appointments.

19. It was further submitted that owing to continuous depletion of permanent staff and to prevent disruption of essential banking operations across the district, the respondent Bank, out of administrative necessity and exigency, appointed approximately 400 persons, including the present petitioners, on temporary basis and on consolidated remuneration. According to the respondent, such appointments were not made against sanctioned permanent posts and were effected only to ensure continuity of banking services and implementation of Government schemes.

20. The respondent contended that since the staffing pattern had not been sanctioned, recruitment through the prescribed procedure, as required by competent authorities and regulatory bodies including the Co-operative Department and NABARD, could not be undertaken. It was submitted that the appointments made in the year 2016 were temporary, conditional and purely to meet urgent administrative requirements, and that the petitioners were fully aware of the temporary nature of their engagement at the time of appointment.

21. Dealing with the petitioners' contention that they had completed more than 240 days of service and were performing work of permanent nature, the respondent submitted that such factors by themselves do not confer a legal right to permanency or entitlement to benefits available to regular employees, particularly when the appointments are not made against sanctioned posts.

22. It was further submitted that the National Bank for Agriculture and Rural Development (NABARD) functions as an

apex supervisory body for District Central Co-operative Banks in Maharashtra and across India, and that such banks are supervised by NABARD and the Reserve Bank of India for facilitating rural credit and expansion of the banking network. Reliance was placed on NABARD's communication dated 31 December 2009 addressed to the Secretary or Principal Secretary, Department of Co-operation and the Registrar of Co-operative Societies, wherein it was stated that for implementation of the Government of India package for revival of rural co-operative credit institutions, a working group under the chairmanship of Shri S.K. Mitra, Executive Director, was constituted to formulate comprehensive human resource policy guidelines. It was submitted that guidelines relating to staffing, recruitment, transfer and promotion policy were forwarded to State Co-operative Banks and Central Co-operative Banks for consideration and adoption, and that such guidelines were expressly described as suggestive in nature, permitting individual banks to adapt them in accordance with their requirements.

23. The respondent further relied upon NABARD guidelines dated 27 September 2010 issued to Chief Executive Officers of District Central Co-operative Banks in Maharashtra regarding recruitment of personnel, pursuant to decisions taken in the State Level Task Force meeting held on 09 September 2010. It was submitted that the said communication referred to broad norms laid down by the Mitra Committee for categorisation of branches, assessment of staffing requirements and selection or promotion of staff, and directed banks to take such norms into account while undertaking recruitment. It was further contended that the

guidelines stated that co-operative banks and other entities in the Short-Term Co-operative Credit Structure were required to adhere to directions issued pursuant to decisions of the State Level Task Force, and that non-compliance could invite supervisory and regulatory action by NABARD and the Reserve Bank of India.

24. It was submitted that the respondent Bank functions under the control and supervision of the Co-operative Commissioner, Registrar of Co-operative Societies, NABARD, Reserve Bank of India, Divisional Joint Registrar and other statutory authorities. According to the respondent, all appointments and financial decisions are required to conform to statutory mandates and regulatory directions, and the Bank cannot create posts or regularise services in the absence of Government sanction.

25. It was contended that the learned Industrial Court rightly appreciated the evidence on record and correctly held that in the absence of sanctioned posts and approval of staffing pattern, no direction for regularisation or grant of permanency could be issued. It was further submitted that the Industrial Court rightly concluded that no unfair labour practice is made out where the employer itself is unable to make permanent appointments due to non-sanction of the staffing pattern by the Government.

26. The respondent submitted that there was no mala fide intention or unfair method adopted to deprive the petitioners of lawful benefits. According to the respondent, temporary appointments were made solely to ensure that essential banking services across the district were not paralysed, and in the absence

of such appointments it would have been impossible for the Bank to discharge its statutory and public functions. It was further submitted that the findings recorded by the Industrial Court are findings of fact based on appreciation of evidence and do not suffer from perversity or jurisdictional error. The present writ petitions, according to the respondent, seek re-appreciation of factual findings, which is impermissible in writ jurisdiction under Article 226 of the Constitution of India.

27. The respondent contended that the petitioners have no vested or enforceable legal right to claim permanency in the absence of sanctioned posts, and that grant of such relief would compel the respondent to act contrary to statutory provisions and regulatory control, thereby adversely affecting the financial and administrative discipline of the institution. In the above circumstances, the respondent prayed that the present writ petitions be dismissed and the Judgment and Award passed by the learned Industrial Court, Nashik, be upheld, along with such further reliefs as this Court may deem fit in the interest of justice.

REASONS AND ANALYSIS:

Consideration of facts of present case

28. At this stage it becomes necessary to carefully examine the facts which emerge from the pleadings, the admissions made by the parties, and the evidence placed on record. The petitioners have been working with the respondent Bank for several years. According to them they were appointed against vacant posts, they possess the required educational qualifications, and they have

continued in service without interruption for a long period of time. The material placed on record lends support to this assertion. Documents produced before the Court show continuous engagement of the petitioners by the Bank. The records also indicate that provident fund contributions were regularly deducted from their wages and deposited with the appropriate authorities. Deduction of provident fund generally reflects a continuing relationship between employer and employee. When such deductions are made over a long period of time, it indicates that the employer treated the engagement as ongoing arrangement.

29. It is true that the petitioners were paid consolidated wages and were not placed on regular pay scales. However the nature of the work performed by them remained constant. The duties discharged by them were part of the regular functioning of the Bank. These were not occasional assignments or work limited to a particular project. The work formed part of the normal banking activity carried out in the branches.

30. The pleadings and evidence of the respondent Bank themselves contain certain admissions which are relevant. The Bank has admitted that the work performed by the petitioners is of a perennial nature. When an employer itself acknowledges that the work is permanent and necessary for the day to day functioning of the institution, it indicates that the work exists on a continuing basis and is not temporary or seasonal.

31. The Bank has further stated that after the year 2005 a large number of permanent employees ceased to be in service. This

happened due to retirement, voluntary retirement, resignation and in some cases death of employees. As a result the number of permanent staff reduced considerably. At the same time the Bank continued its operations through several branches and remained responsible for implementing various banking activities and government schemes.

32. This factual situation explains the circumstances in which temporary employees came to be engaged in large numbers. When permanent employees left service and vacancies arose, the functioning of the institution could not be allowed to stop. Banking operations require staff for day to day work such as clerical duties, customer service, record maintenance and other routine functions. In that background the Bank continued engaging temporary employees including the present petitioners.

33. Another aspect which cannot be overlooked is the admitted manpower gap within the Bank. The Bank itself placed on record that it had submitted a proposal seeking approval for a staffing pattern of approximately 1934 employees. In that proposal the Bank accepted that the number of permanent employees in service had fallen much below the requirement necessary for proper functioning of the institution. This admission shows that the shortage of staff was real. The Bank itself acknowledged that its existing employees were inadequate for the volume of work handled by the institution. The engagement of the petitioners must therefore be viewed in this factual context. They were not brought in for a short duration or for seasonal work. Their engagement was directly connected with the vacancies created due to reduction of

permanent staff. The Bank's own pleadings indicate that without such engagement the regular functioning of branches and the implementation of government schemes would have been seriously affected.

34. The evidence led by the petitioners also deserves consideration. During the course of trial the petitioners produced material to show their long years of service and the duties performed by them. The cross examination of these witnesses did not bring out any serious contradiction. Their version regarding the nature of work and continuity of service remained largely unshaken. More importantly, the witness examined on behalf of the respondent Bank made certain admissions during cross examination. The witness accepted that the petitioners were working against vacant posts. The witness also admitted that the duties performed by them were similar to the duties performed by permanent employees. It was further admitted that since their initial appointment the services of the petitioners had never been terminated. When the employer acknowledges that the employees are working on vacant posts and are performing duties similar to permanent staff, it supports the factual foundation of the petitioners' case.

35. At the same time the Court must also consider the explanation offered by the respondent Bank. The Bank has stated that it faced administrative difficulties due to the absence of a sanctioned staffing pattern. According to the Bank the competent authorities had not formally approved the required number of posts. Because of this situation the Bank continued making

appointments on a temporary basis. This explanation may explain the manner in which the appointments were described by the Bank. However it does not change the factual reality which emerges from the record. The petitioners continued to work for long periods of time. They performed duties which were regular and necessary for the functioning of the institution. Their engagement was not limited to a short or experimental period.

36. Another relevant factual aspect relates to the difference in service conditions between permanent employees and the petitioners. The permanent employees of the Bank were placed on regular pay scales and were entitled to allowances and other service benefits. The petitioners on the other hand continued to receive fixed consolidated wages. This position continued despite the fact that many of them had worked for several years. The difference in treatment between the two categories of employees is not denied by the respondent Bank. The only explanation offered is that the petitioners were treated as temporary employees and therefore were not entitled to regular service benefits.

37. Thus, when the material on record is appreciated as a whole, certain facts become clear. The number of permanent employees in the Bank reduced substantially over the years. The work of the institution however continued and remained perennial in nature. The petitioners were engaged against available vacancies created due to reduction in permanent staff. They continued to work for long periods without interruption. Their services were necessary for maintaining normal banking operations. The Bank itself acknowledged the shortage of staff and even submitted proposals

seeking approval for a larger staffing pattern. No evidence has been placed on record to show that the petitioners were engaged for purely temporary or time bound assignments.

38. Once this factual background is kept in view, the Court can now examine the legal questions concerning the existence of a staffing pattern, the scope of statutory powers, and the nature of the guidance relied upon by the respondent Bank.

On NABARD's communications.

39. The respondent Bank has placed reliance on certain communications issued by NABARD. According to the Bank these communications derive authority from Section 35(6) of the Banking Regulation Act and therefore must be treated as binding directions.

40. Section 35 of the Banking Regulation Act deals with inspection of banking institutions. It empowers the Reserve Bank of India to inspect the affairs, books and accounts of banking companies. Such inspection is intended to ensure that the financial affairs of banks are conducted in a sound and prudent manner. Sub sections (1) to (5) deal with various aspects of inspection. They provide for scrutiny of records, examination of officers, production of documents and other related matters. These provisions enable the authority to monitor the functioning of banks and to take necessary steps if irregularities are noticed. However these provisions do not deal with service conditions of employees, staffing policies or creation of posts within an institution.

41. Sub-section (6) of Section 35 extends certain powers of the Reserve Bank to NABARD in relation to Regional Rural Banks. The language of the provision shows that the power transferred authorises NABARD to conduct inspection and supervisory scrutiny in a manner similar to the Reserve Bank for specific categories of banks. The provision does not confer authority on NABARD to frame service regulations or to prescribe mandatory staffing pattern having the force of law. The provision does not authorise NABARD to override statutory powers vested in the State Government under other legislation. In particular it does not empower NABARD to decide matters relating to service regularisation or creation of posts within cooperative societies governed by separate statutes.

42. When an authority conducts inspection under Section 35 it assesses the financial health and management practices of the bank. During such exercise the authority may issue observations or communications indicating areas of concern. These communications may contain suggestions. They may advise institutions to take certain steps. Such guidance may be practically important and institutions may consider it seriously while managing their affairs. However the legal character of such communication remains advisory unless the statute clearly provides otherwise. For a direction to acquire binding force it must be supported by statutory authority or incorporated in rules framed under the statute.

43. A careful reading of Section 35 shows that the consequences expressly contemplated by the provision relate to regulatory steps.

These include actions such as restricting acceptance of deposits or recommending steps towards winding up of a bank in extreme situations. The provision does not deal with matters such as service regularisation, approval of staffing patterns or determination of employee permanency. Therefore the argument that every communication issued by NABARD becomes binding in matters relating to staffing cannot be accepted. The scope of the statutory provision cannot be extended beyond what the text of the law actually provides.

44. The reasoning of the respondent Bank proceeds on the assumption that because NABARD exercises supervisory powers similar to those of the Reserve Bank, its guidelines must bind the institution in all administrative matters. The nature and extent of power exercised by a statutory authority must be gathered from the statute itself. A power to inspect or supervise cannot be converted into a power to frame binding rules unless the statute clearly authorises such rule making. If the legislature intended NABARD's communications to have binding force in matters of staffing or service conditions, it would have expressly provided so in the statute. In the absence of such language the Court cannot infer such authority. Viewed in this light the communications issued by NABARD regarding staffing or recruitment must be understood as guidelines issued in the course of supervisory powers. However these communications do not operate as statutory directions. They cannot override powers which may be exercised by the State Government under provisions such as Section 79A of the Maharashtra Co operative Societies Act.

Statutory power under Section 79A.

45. Section 79A gives authority to the State Government to issue directions to co operative societies. This power can be exercised when the Government finds that such directions are necessary in public interest or for proper administration of the society. The section also states that the State may act on the basis of a report submitted by the Registrar. At the same time the wording of the provision makes it clear that the Government may also act otherwise. This means that even if there is no formal report of the Registrar, the Government can still exercise its power if relevant material placed before it shows that intervention is required. The conditions mentioned in Section 79A also indicate the purpose of the provision. The State Government may issue directions when it is satisfied that such directions are required in public interest. It may also act when the directions are necessary for effective implementation of co operative development programmes. The provision further mentions securing proper management of the business of the society. It also speaks of preventing the affairs of the society from being conducted in a manner which is detrimental to the interests of members, depositors or creditors.

46. Therefore, the question of adequate staffing naturally falls within the concept of proper management. When manpower shortage affects the functioning of a co operative bank, the issue clearly falls under Section 79A. In such circumstances the State Government can examine the situation and issue appropriate directions. Framing or approving a staffing pattern is therefore well within the area which the section intends to cover, provided

the State forms its satisfaction on the basis of relevant material.

47. Once the State Government issues directions under Section 79A all societies concerned shall be bound to comply with such directions. The directions issued under this provision carry statutory force because they flow directly from the authority granted by the legislature. If the State Government approves or directs a staffing pattern under Section 79A, the society concerned becomes legally bound to follow that direction. Such a directive stands on a different footing from advisory communications or policy guidelines.

48. Sub-section (2) of the same provision further clarifies the nature of the power. It provides that the State Government may modify or cancel any direction issued earlier. Sub section (3) provides that if persons responsible for implementing such directions fail to comply without good reason, the Registrar has authority to take action.

49. When all these parts of Section 79A are read together, a clear statutory scheme becomes visible. The section allows the State Government to issue binding directions in public interest. It allows modification or cancellation of such directions as circumstances change. It also provides a mechanism through the Registrar to ensure compliance. Therefore, where the functioning of a co operative bank is affected due to shortage of staff and the State Government examines the issue, the issuance or approval of a staffing pattern falls squarely within this statutory scheme.

50. In the context of the present case the respondent Bank has not produced before this Court any order issued by the State Government under Section 79A which prescribes or approves a staffing pattern applicable to the Bank. The Bank has repeatedly argued that it could not take decisions regarding staffing or grant permanency to employees because the staffing pattern had not been sanctioned. However when such a contention is raised, the first requirement is to show that there exists a statutory direction or restriction which actually binds the society. If the Bank claims that it was prevented from acting because of law, then the source of such restriction must be clearly shown. In the present case no such order has been placed on record.

51. Section 79A operates through directions issued by the State Government. Those directions must exist in writing. They must also indicate that the Government has applied its mind and has reached satisfaction that the direction is necessary in public interest or for proper management of the society.

52. Only when such a direction is issued does it become binding on the society concerned. In the absence of any such written order the Bank cannot rely upon a alleged restriction. A statutory prohibition cannot be presumed. It must be shown through a specific order, notification or directive issued under the authority of the statute. The Bank cannot say that it was legally prohibited from taking staffing decisions. Judicial reasoning must be based on material which is actually placed before the Court. Since no order under Section 79A has been produced, there is no statutory direction shown to this Court which prevented the Bank from

acting.

53. The Industrial Court appears to have proceeded on the assumption that the Bank was restrained from making permanent appointments because the staffing pattern had not been sanctioned. However the record does not show any statutory order which created such restraint. As a result the conclusion reached by the Industrial Court lacks a legal basis.

54. The pleadings and admissions placed before this Court also show that the Bank itself recognised a serious shortage of manpower. It continued engaging employees for several years to perform work which was admitted to be perennial in nature. If the Bank could engage temporary employees continuously in order to maintain its operations, it becomes difficult to accept the argument that it was completely powerless to take any staffing decisions. The absence of formal sanction cannot be treated as an absolute legal barrier when no statutory direction prohibits such action. Therefore in the present case, in the absence of any order under Section 79A, this Court cannot accept the contention that staffing decisions were legally prohibited or that the question of permanency could never arise.

55. At this stage, it becomes necessary to consider the legal principles relating to regularisation. The law laid down by the Supreme Court in *Casteribe* must be kept in view.

56. The first principle is that regularisation does not automatically follow from long service. The Supreme Court has repeatedly stated that courts cannot order regularisation in a

manner which defeats statutory recruitment rules. Public employment cannot be filled through backdoor entry. If an appointment is made in complete violation of statutory requirements, such appointment cannot be validated merely because the employee has worked for many years. At the same time the Supreme Court has also recognised the reality of employment relationships. In many institutions employees are engaged for long periods. They perform regular work which is necessary for the establishment. The employer continues to take benefit of their services while denying them the status and benefits attached to regular employment. In such situations the Court cannot close its eyes to the practical reality.

57. In this context the judgment in *Casteribe* assumes importance. In that case the Supreme Court examined the powers of the Industrial and Labour Courts under the MRTU and PULP Act. The Court considered whether relief of permanency could be granted where employees were kept temporary for many years while performing work of permanent nature. The Supreme Court held that where unfair labour practice under Item 6 of Schedule IV is established, the Industrial Court is not powerless. Item 6 deals with the practice of keeping employees as temporary or casual for years together with the object of denying them permanency. If such conduct is proved, the Court can grant appropriate relief to remove the unfair labour practice. An employer cannot repeatedly engage workers on temporary basis for work which is clearly permanent and then rely on that temporary label to deny them legal rights. When the facts show that the work is continuous and necessary

and the employer itself maintains such arrangement for years, the Court is entitled to look beyond the label and examine the real nature of employment.

58. Another important principle emerging from the *Casteribe* judgment is that adjudication under the MRTU and PULP Act operates in a different field from constitutional challenges relating to recruitment. The Supreme Court clarified that when unfair labour practice is proved, the Industrial Court can issue directions to remove that unfairness. The relief is not granted merely because the employee has served for a long time. The relief is granted because the conduct of the employer falls within the prohibited practices defined by statute. The Court cannot grant relief in a manner which creates posts where none exist or which ignores statutory prohibitions. The Court must examine whether work actually exists, whether the institution requires manpower and whether the appointments were made to meet that need. When these factors are present and employees are continued for many years, refusal of permanency may itself indicate unfair labour practice.

59. In the present matter these principles provide the legal parameters for examination. The issue before the Court is not a claim for regularisation based solely on length of service. The Court has to see whether the employer, despite admitted vacancies and continuous work, kept the employees on temporary status for years and thereby denied them benefits which were available to others performing the same duties.

60. The Court must examine whether the facts of the present case fall within the parameters recognised by law regarding unfair labour practice and regularisation.

61. The first important feature is the nature of work. The respondent Bank has not disputed that the duties performed by the petitioners are of perennial and continuous character. Banking work does not stop at any time of the year. Branches operate every working day. Deposits are accepted, loans are processed and customer services are provided regularly. The duties performed by the petitioners form part of these normal banking activities. They are not seasonal tasks. They are not linked to any temporary project.

62. The second aspect relates to continuity of service. The petitioners have worked for many years. Their services were never terminated by any formal order. Provident fund deductions were made from their wages. They continued to work in the same establishment for long periods. When an employer retains workers year after year, it indicates that their services are required on a continuing basis.

63. The third factor arises from the admissions of the respondent Bank. The Bank accepted that after the year 2005 many permanent employees had left service due to retirement and other reasons. It also admitted that no permanent recruitment was carried out thereafter. At the same time the Bank acknowledged that a shortage of manpower existed and that a proposal for a staffing pattern involving a large number of posts had been submitted.

These admissions show that vacancies and institutional need were genuine. The petitioners were not engaged in excess of requirement.

64. The explanation offered by the Bank is that appointments were made on temporary basis because the staffing pattern had not been sanctioned. This explanation may justify the initial decision to appoint employees temporarily. However the issue before the Court is whether continuation of this arrangement for several years, despite admitted perennial work and existing vacancies, results in unfair labour practice.

65. Another circumstance which cannot be ignored is the difference in service conditions. Permanent employees performing similar duties received regular pay scales, allowances, leave benefits and opportunities for advancement. The petitioners, however, continued to receive fixed consolidated wages.

66. Applying the principles laid down in *Casteribe*, the Court must consider whether the conduct of the employer falls within Item 6 of Schedule IV. This item refers to the practice of keeping employees temporary with the object of depriving them of permanency.

67. In the present case the circumstances point in that direction. The work is permanent. The service of the petitioners is long and continuous. The need for manpower is admitted. Vacancies exist. Yet the employees remain on temporary status without benefits available to permanent staff. At the same time the Court remains conscious that regularisation cannot be granted in violation of

statutory provisions. Relief must therefore be granted in a manner consistent with law. In the present case the existence of statutory power under Section 79A and the absence of any binding prohibition become relevant considerations. Once it is seen that there is no statutory direction preventing staffing decisions, the denial of permanency cannot be justified on that ground.

68. In view of the discussion made above, this Court finds that the Industrial Court failed to appreciate the legal position and the factual material placed on record. The findings recorded by the Industrial Court therefore cannot be sustained in law. The petitions consequently deserve to be allowed. Relief shall follow in terms of the operative order.

69. For the reasons stated above, I pass the following order:

- (i) The writ petitions are allowed;
- (ii) The Judgment and Award dated 20 May 2022 passed by the Industrial Court, Nashik are quashed and set aside;
- (iii) The respondent Bank is held to have engaged in unfair labour practices under Items 5 and 6 of Schedule IV of the MRTU and PULP Act by continuing the petitioners on temporary basis for prolonged periods despite existence of vacancies and requirement of permanent work.
- (iv) The respondent Bank shall, within a period of twelve weeks from the date of this order, undertake an exercise for regularisation of the petitioners against available vacant posts, subject to verification of individual eligibility,

educational qualifications and service record.

(v) Upon completion of such exercise, eligible petitioners shall be granted permanency with continuity of service for all consequential purposes.

(vi) The petitioners shall be entitled to pay and service benefits in the applicable regular pay scale prospectively from the date of regularisation. Monetary benefits, if any, shall be computed and paid within sixteen weeks thereafter.

(vi) Till completion of the exercise directed above, the respondent Bank shall not terminate the services of the petitioners or alter their service conditions to their prejudice.

(vii) Rule is made absolute in the above terms. No order as to costs.

70. At this stage, learned Advocate for the respondent-Bank seeks stay of the judgment. However, for the reasons recorded in this judgment, oral request for stay is rejected.

(AMIT BORKAR, J.)