(1995) 03 BOM CK 0081

Bombay High Court

Case No: Writ Petition No. 1972 of 1992

Divisional Forest Officer, Gadchiroli		APPELLANT
	Vs	
Madhukar Ramaji Undirwade and Others		RESPONDENT

Date of Decision: March 8, 1995

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 226, 277, 309
- Electricity (Supply) Act, 1948 - Section 79
- Industrial Disputes Act, 1947 - Section 2
- Industrial Employment (Standing Orders) Act, 1946 - Section 13, 13B, 2
- Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 - Section 28

Citation: (1995) 4 BomCR 468 : (1996) 2 MhLj 376

Hon'ble Judges: R.M. Lodha, J

Bench: Single Bench

Judgement

R.M. Lodha, J.

Group of these ten writ petitions arises out of the common order passed by the Industrial Court, Maharashtra, Nagpur on 24.3.1992 and since common questions are involved in all these writ petitions, this group of writ petitions has been heard together and is disposed of by common judgment.

2. The facts of all the ten writ petitions are almost identical except that the respondents-complainants in all these writ petitions have been initially appointed on different dates from 2.5.1983 to 2.11.1985 on the post of Forest Guard by the petitioner. For the sake of convenience and to appreciate the contentions raised by the learned counsel for the parties, the facts in Writ Petition No. 1972 of 1992 may be adverted to. The respondent No. 1 in the said writ petition filed a complaint

before the Industrial Court, Nagpur on 16.12.1987 u/s 28 read with Items 7 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, the ''Unfair Labour Practices Act, 1971''). It was inter alia averred by the Respondent No. 1 (for short, the ''complainant-employee'') in the said complaint that he has been working as Forest Guard since 2.5.1983. The petitioner (for short, the ''employer'') is an appointing authority of the complainant-employee and Administrative Head for the Gadchiroli Forest Division. The complainant-employee was appointed as a candidate recommended by the Employment Exchange and prior to the appointment, interviews was taken by the employer and on finding fit for the post of Forest Guard, the complainant-employee was given appointment. The employer was causing artificial breaks in the services of the complainant-employee and was not engaging the complainant-employee continuously and thereby committing unfair labour practice. The complainant-employee also averred that sometimes the order of appointment was issued on time scale of pay while at other times, the appointment orders were issued on daily rates of wages and sometimes the complainant-employee was appointed even without orders. The attendance of the complainant-employee was marked on the muster roll and the complainant-employee worked continuously, whether on time scale of pay or on daily rates of wages. The work of the complainant-employee was of continuous nature and was satisfactory and there was no reason in continuing the complainant-employee as daily wage earner or temporarily for years together. According to the complainant-employee, his conditions of services are governed by Model Standing Orders framed under the Bombay Industrial Employment (Standing Orders) Rules, 1958 (for short, the ''Rules of 1959''). The employer has not framed any Standing Orders and has also not got certified any such Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 (for short, the Act of 1946) or the Rules of 1959. The complainant employee also averred that the parties were in agreement that the provisions of the Model Standing Orders shall govern the relationship as employer and employee. The complainant-employee having completed more than 240 days of continuous and uninterrupted service, under the provision of Model Standing Orders, was entitled to made permanent on the post of Forest Guard and by not making the complainant-employee permanent, the employee has indulged in Unfair Labour Practice under the Unfair Labour Practices Act. The complainant-employee prayed for permanency in the post of Forest Guard with effect from 13-11-1983 or from such other date as may be deemed fit by the Industrial Court.

3. The employer contested the complaint filed by the complainant-employee and it was denied that the complainant-employee was working as Forest Guard. The employer inter alia set up the defence that the complainant-employee was working in the Department of the employer as labourers on daily wages and was performing various duties as Chowkidar, number-marker etc. It was denied that the

complainants-employee''s services were utilised as Forest Guard. However, it was admitted that the employee was a candidate sponsored by the Employment Exchange. It was also admitted that the complainant-employee was appointed as forest guard for a short period of one month and the said appointment was given after his name was recommended by the Employment Exchange and after holding the interview. According to the employer, however, on expiry of one month, the appointment of the complainant-employee was automatically discontinued. Thus, the employer denied that the complainant-employee had been working continuously as Forest Guard. The employer also submitted that the nature of the working at the time of appointment of complainant-employee as Forest Guard during the Tendu Leave period, was of temporary nature and the appointment orders of the period of one month every year was made during the period from 1983-87. However, thereafter this practice has completely been stopped in view of the Government Orders. The employer admitted that the attendance of the complainant-employee is marked on the muster roll. The employer denied that the service conditions of complainant-employee were governed by the Model Standing Orders under the Rules of 1959 and it was submitted that the complainant-employee''s services were as daily wages workers and, therefore, question of Model Standing Orders did not arise, because Model Standing Orders were applicable only in case of permanent employees. It was denied that complainant-employee has put in service of 240 days during the period of one year and that he was entitled to be made permanent on the post of Forest Guard.

4. On behalf of the complainant-employees, in all ten complaints which were filed by the ten complainants-employees, one of the complainants, viz. Shri Vasudeo Turate was examined while the employer examined Shri Ranjankumar Santoshkumar Mukherjee, Assistant Conservator of Forest. Documentary evidence was produced by the complainant-employees and appointment orders (Exhibits 30 to 53) of different dates issued in favour of the complainants-employees by the employer from time to time were placed on record. Office order dated 11.1.1990 (Exhibit 55) was also placed on record.

5. The Industrial Court, Nagpur after hearing the parties by the order dated 24.3.1992, held that the complainants-employees have proved that the employer has engaged itself in unfair labour practice covered by Items 6 and 9 of Schedule IV of the Unfair Labour Practices Act, 1971 by not making them permanent on the post of Forest Guard. The Industrial Court also held that the complainants-employees were entitled to be made permanent on the post of Forest Guard and consequently, allowed all the complaints and directed the employer to make all the complainants-employees permanent on the post of Forest Guard from the date of filing of the complaint i.e., 16.12.1987 and extend them all the benefit of the post of Forest Guard from that date. The employer was directed to pay costs of Rs. 100/- to each of the complainants.

6. Legality and correctness of the order passed by the Industrial Court on 24.3.1992 is under challenge in all these writ petitions.

7. I have heard the learned counsel for the parties and perused the order of the Industrial Court, writ petitions along with annexures and the relevant documents available on record.

8. Mr. M. P. Badar, the learned counsel for the employer in all the writ petitions has urged that the directions given by the Industrial Court for making the complainants-employees permanent with effect from 16.12.1987 is bad in law, because regular appointments on the post of Forest Guard could only be made by the Divisional Forest Officer on the recommendations of the Regional Subordinate Selection Board pursuant to the Government Resolution dated 9.2.1988 as the post of forest Guard is Class III post and employees of Class III posts are required to be selected and recommended by the Regional Subordinate Selection Board and only on the recommendation of the Selection Board, appointments on regular Class-III posts could be made. The Government Resolution dated 9.2.1988 has been made effective from 16.12.1988. The learned counsel for the petitioner-employer would also urge that in exercise of the powers conferred by provision to Article 309 of the Constitution of India, the Governor of Maharashtra has been pleased to make the rules regulating recruitment to the post of Forest, Forest Guard, Ranger Surveyor, Surveyor, Head Clerk, Accountant and Clerk-cum-Typist in Class-III in the Forest Department under the Revenue and Forest Departments of the government of Maharashtra and the said rules are called, the Forester, Forest Guard, Ranger-Surveyor, Surveyor, Head Clerk, Accountant and Clerk-cum-Typist (Recruitment) Rules, 1987 (for short, ''Forest Guard Recruitment Rues 1987'') and on the face of these Rules, the complainants-employees could not be made permanent when they were not eligible under the Forest Guard Recruitment Rules, 1987. The learned counsel for the employer in this connection referred to the interview call for selection of Forest Guard dated 11.11.1989 (Annexure-IV) issued to the complainants-employees and submitted that they could not pass through the selection of Forest Guard pursuant to the said interview calls and they were communicated to that effect also and, therefore, they could not be made permanent and the direction issued by the Industrial Court making them permanent with effect from 16.12.1987 is unsustainable. It was also contended by the learned counsel for the employer that if after the appointment was given to the complainant-employees, the Recruitment Rules were made, the said Rules would be applicable and the complaints-employees would not be made permanent unless they fulfil the eligibility and qualifications prescribed under the said Recruitment Rules. Mr. Badar also contended that Forest Department or the employer is not an "Industrial Establishment" within the meaning of the Act of 1946 and, therefore, neither the provisions of then Act of 1946 nor the Rules of 1959 nor the Model Standing Orders have any application. The contention of the learned counsel for the employer was also that the complainant-employee in Writ Petition NO. 1980 of 1992

viz. Shivdas Tulshiram Meshram had not completed 240 days service continuously as Forest Guard and the complainant-employees in Writ Petitions No. 1972/92, 1973/92, 1975/92, 1977/92, 1979/92, and 234/93 viz. Madhukar Ramaji Undirwade, Babaji Waktuji Lengure, Shalik Kashinath Surankar, Ramdas Maniram Gurnule, Arun Digambar Nikhade and Prakash Laxman Dhewale respectively were also not matriculates and, therefore, they were not entitled to be made permanent. Mr. Badar in support of his contentions, relied on State of Haryana & Ors. v. Piara Singh & Ors. 1992 II CLR 890, Delhi Development Horticulture Employees Union v. Delhi Administration & Ors. 1992 I CLR 537, Punjabrao Krishi Vidhyapeeth v. General Secretary Krishi Vidhyapeeth Kamgar Union 1993 M.L.J 1394 Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc., and U.P. State Electricity Board and Another Vs. Labour Court (I), U.P. Kanpur and Another, .

9. In opposing these submissions of the learned counsel for the employer, on the other hand Mr. B. M. Khan, the learned counsel appearing on behalf of the complainant-employees in all the Writ petitions, strenuously urged that the complainants-employees have been appointed on the post of Forest Guard by various orders from 1983 to 1985 by the employer; the Government Resolution dated 9.2.1988 having been brought into force from 16.2.1988 whereby Class-III posts were required to be selected and recommended by the Selection Board and only on the recommendation of the Selection Board, appointments of regular Class-III posts could be made, had no application. According to Mr. Khan, the appointments already been made much before coming into force of the Government Resolution dated 9.2.1988 effective from 16.2.1988, are not affected by the said Government Resolution. In this connection, the learned counsel for the complainants-employees relied on the decision of this Court in Writ Petition No. 1003 of 89, Samsherkhan Majidkhan & Ors. v. State of Maharashtra & Ors., dated 4.2.1983. Mr. Khan also contended that at the time of appointment of complainants-employees on the post of Forest Guard, there were no recruitment rules framed by the State Government and for the first time, the Forest Guard Recruitment Rules made have come into effect from 29.10.1987 and since the employees were appointed on the post of Forest Guards much before these rules were made, the Forest Guard Recruitment Rules, 1987 have no application and in any case cannot be given retrospective effect to the appointments already made in the years 1983 to 1985. The contention of the learned counsel for the complainants-employees is also that, even otherwise, the Forest Guard Recruitment Rules, 1987, have not application because these rules are not covered u/s 13(b) of the Act of 1946 nor these Rules are certified Standing Orders under the Act of 1946. Thus Mr. Khan contended that the Forest Guard Recruitment Rules, 1987 are not applicable to the complainants-employees who are governed by the Act of 1946, Rules of 1959 and the Model Standing Orders. In support of his contention, Mr. Khan placed reliance on K. Thiruvenkatswami v. Coimbatore Municipality 1968 LIC 1567, U.P. State Electricity Board & Ors. v. Hari Shankar Jain & Ors. AIR 1979 SC 65,

U.P. State Electricity Board and Another Vs. Labour Court (I), U.P. Kanpur and Another, and S. Alamelu v. S. E. South Arcot Electricity System 1990 II CLR 362. According to Mr. Khan, in view of the Model Standing Orders, a temporary workman who has put in 240 days of uninterrupted service in aggregate in an industrial establishment other than an establishment of seasonal nature, during the period of preceding 12 calendar months, he is entitled to be made permanent and since all the complainants-employees had completed 240 days of uninterrupted service as Forest Guard during the period of preceding 12 calendar months, they were entitled to be made permanent on completion of one year of their appointment as Forest Guard by whatever name called. Mr. Khan placed reliance on Suresh Nerkar & Anr. v. Food Corporation of India & Ors.1984 LIC 267Chief Officer, Sangli Municipal Council v. Dharmasingh Hiralal Nagarkar 1991 II CLR 4 and Indian Tobacco Co. Ltd. v. Industrial Court & Ors. 1990 I CLR 88. The learned counsel for the complaints-employees also contended that before the Industrial Court, no dispute was raised by the employer that it was not an "industrial establishment" under the Act of 1946 and, therefore, it is not open to the counsel for the employer to urge before this Court for the first time that the Forest Department was not an "industrial establishment". Mr. Khan contended that before the Industrial Court, only two-fold contentions were raised on behalf of the employer and these were, (i) that, the Model Standing Orders were only applicable to the permanent employees and not to the temporary employees or casual workers and daily wage earners and (ii) that, after issuance of the Government Resolution dated 9.2.1988 effective from 16.2.1988 no post of Forest Guard which is Class-III post could be filled except on selection and recommendation by the Selection Board and since these two contentions raised by the employer before the Industrial Court had no merit, these were rightly negatived by the Industrial Court.

10. Though the learned counsel for the employer submitted that prior to making of the Forest Guard Recruitment Rules, 1987, there were rules for recruitment of Forest Guards in the Forest Department, but despite opportunities given on 6.2.1995, 10.2.1995 and 13.2.1995, the learned counsel for the employer could not show any rules for recruitment of Forest Guards prior to the year 1987 and at the time when the complainants-employees were appointed and engaged as Forest Guards in the years 1983 to 1985. The learned counsel for the employer also could not show any eligibility prescribed for appointment of Forest Guards in the year 1983 to the year 1985.

11. The employer did not raise any plea in the reply to the complaints field by the employees before the Industrial Court that the petitioner-employer or Forest Department was not an "Industrial Establishment" under the Act of 1946. The plea set up in the reply by the employer before the Industrial Court was that the question of applicability of Model Standing Orders did not arise, because the complainants-employees were working as daily wage workers and such Model Standing Orders were only applicable in case of permanent employees. Not only

that, no plea was set up by the employer in its reply before the Industrial Court that the Forest Department was not an "industrial Establishment", but in the evidence led before the Industrial Court also, no evidence worth the name was led to show that the Forest Department was not an "industrial establishment" within the meaning of the Act of 1946. The only witness produced by the employer before the Industrial Court Shri Ranjankuamr Mukherjee has not stated a word in his deposition that the Forest Department was not an "industrial establishment". Thus before the Industrial Court, there was total lack of pleading and proof on behalf of the employer on the question that the Forest Department was not an "industrial establishment" under the Act of 1946. Even in none of the writ petitions, the petitioner-employer has raised a ground that the Forest Department was not an "industrial establishment" under the Act of 1946. It was only during the course of arguments that the learned counsel for the employer sought to raise the plea that the Forest Department was not an "industrial establishment" under the Act of 1946 and, therefore, neither the Act of 1946 nor the Model Standing Orders could apply to the employer. The question, whether the Forest Department is an "industrial establishment" under the Act of 1946 or not, is definitely nor a pure question of law. An establishment is an industrial establishment under the provisions of the Act of 1946 or not is at best a mixed question of fact and law and the said question having not been raised before the Industrial Tribunal either in the reply field by the employer or in the evidence led by the employer or during the course of arguments, the employer cannot be permitted to raise this plea for the first time before this Court and that too during the course of arguments when such plea has not been raised even in the memo of writ petitions.

12. On the basis of the evidence led by the parties, certain facts can be said to be well established on record. It is admitted by the employer''s witness Ranjankumar Mukherjee that all the complaints-employee have been working in the Forest Department since 1984, 1985 and 1986. The complainants-employees were appointed on the post of Forest Guard temporarily by orders issued from time to time after the names of complaints-employees were and by the employees were and by the Employment Exchange. The appointment orders placed on record show that the complainants-employees were sometimes appointed Tendu Forest Guard on time-scale, sometimes appointed Tendu Forest Guard on time-scale, sometime they were appointed as Special Forests Guards on time scale on temporary basis and some of the orders have been issued showing that the complainants-employees have been appointed on time scale as Forest Guards on temporary basis. The complaints-employees were given one day''s artificial break. Exhibit 33 dated 15.8.1984 would show that the complainants-employees were appointed as temporary Forests Guards by giving one day''s break. The said appointment order does not show that the appointment was made for any particular period. The other appointment orders like Exhibits 34 and 35 show that the complainants-employees were given one day''s artificial break and then given fresh appointment for one

month. Exhibit 36 dated 12.11.1994, Exhibit 37 dated 1.10.1984, Exhibit 38 dated 31.1.1985, Ex. 39 dated 22.2.1985, Ex. 40 dated 27.3.1985, Ex. 41 dated 6.4.1985, Ex. 42 dated 24.5.1985, Ex. 43 dated 1.7.1985, Ex. 44 dated 25.7.1985, Ex. 45 dated 9.9.1985, Ex. 46 dated 30.9.1985, Ex. 47 dated 18.10.1985, Ex. 48 dated 19.11.1985, Ex. 50 dated 11.4.1986, Ex. 52 dated 30.5.1986 and Ex. 53 dated 11.5.1987 would show that the complainants-employees continued to be reappointed on month to month basis. Even by the witness of the employer it is admitted that except Shivdas Tulshiram Meshram, all the complainants-employees had completed 240 days of service as Forest Guard. The complainants-employees, thus have been continuously working as Forest Guards on temporary basis with artificial break. Cumulative effect of entire evidence also leads to an irresistible conclusion that all the complainants-employees have been continuously working with the employer as Forest Guards right from the years 1983-84 and they have completed 240 days'' uninterrupted service. Exhibit 49 is a letter dated 31.3.1986 written by the employer to the range Forest Officers and Assistant Conservator of Forests informing that in pursuance to the office order dated 19.11.1985. Written orders of the Forest Guards should not be issued on month to month basis and they should be appointed without written orders on daily wages in future. All the complainants-employees were sent interview calls for selection of forest Guards and in accordance with the time-table for interview, on 17.12.1989 written examinations were to be held, on 18.2.1989 physical tests were to be conducted and on 19.12.1989 running test of 24 kms was fixed and on 20-12-1989 personal interviews were fixed. The interview call letters (Annexure - IV) and the office order dated 11.1.1990 (Exhibit 55) are subsequent to the filing of complaints by the complainants-employees before the Industrial Court. However from Exhibit 55, it is clear that the complaints-employees have been declared successful in the educational, physical and running tests for the pot of Forest Guard, though employer''s sole witness has admitted that those who were already working as Forest Guards were not required to comply with the physical standard or required educational qualification for making them permanent.

13. In view of the aforesaid facts which are duly established on the basis of the evidence on record, the Industrial Court was justified in holding that all the complainants-employees were in continuous service of the employer and they completed 240 days of continuous service. The Industrial Court was also justified in holding that the complainants-employee though were appointed as Forest Guard in the time-scale of pay, they were given appointment from month to month and with artificial break of one day with a sole intention to deprive them of all the benefits of the permanent employees. No documents were field by the employer to show that there was interruption in the services of the complainants-employees because of their own fault. Rather it is admitted by the employer''s own witness that he had no document to show any interruption in service due to any fault of the complainants-employees.

14. On the facts established on record and found by the Industrial Court, now the arguments raised by the learned counsel for the employer may be adverted to.

15. In view of the aforesaid facts that the complainants-employees were appointed initially in the years 1983-84, though temporarily and had completed 240 days of uninterrupted service after their names were sent by the Employment Exchange and they continued to work as Forest Guards on the date of filing the complains dated 16.2.1987, there is not merit in the contention of the learned counsel for the employer that the Forest Guard of Class-III posts are as per the Government Resolution dated 9.2.1988, effective from 16.2.1988, the appointment on regular pot of Forest Guard could only be made after they have been selected and recommended by the Selection Board. Admittedly, at the time when the complainants-employees were initially appointed in the year 1983-84, there was no such Government Resolution making it incumbent that appointment on the pot of Forest Guard could only be made after selection recommendation by the Selection Board. The Government Resolution dated 9.2.1988 effective from 16.2.1988 would only be applicable to the appointment to be made on or after 16.2.1988 when the said Government resolution dated 9.2.1988 was brought into force Selection and recommendation by the Selection Board pursuant to the Government Resolution dated 9.2.1988 effective from 16.2.1988 would apply in the matter of appointment of a fresh candidate and not to the persons who have already been appointed. For making appointment of Forest Guard which is a Class-III Post, after 16.2.1988, selections and recommendations of the Selection Board would be needed, but the Forest Guards who she already been appointed much earlier to coming into force of the Government Resolution dated 9.2.1988, effective from 16.2.1988, for the purposes of making them permanent, selection and recommendation of the Selection Board under the said Government Resolution is not at all required. The Government Resolution dated 9.2.1988 effective from 16.2.1988, therefore, cannot be applied to the present complainants-employees who were appointed much earlier to the coming into force of the said Government Resolution.
16. In Chief Officer, Sangli Municipal Council''s case (supra), this Court held as under:

Mr. Jamdar further submitted that the intention of the petitioner council was not to deprive the respondent-workmen of his status and privileges of permanent employee but he could not be made permanent in view of the fact that petitioner-council could only appoint a person recommended by State Selection Board. There is no substance in this argument of Mr. Jamdar for the simple reason that the State Selection Board was a source for appointing a fresh candidate and in the mater of a person already appointed, it would not be difficult for the petitioner-council to make him permanent for the purpose of making a workman permanent the petitioner-council had not to consult the State Selection Board....

17. The Division Bench of this Court in Samsher Khan Majidkhan''s case (supra) held as under:

4. The main reason why the petitioners service stand terminated thus is that according to the State Government their appointment are not made through the Regional Selection Board, which is necessary after their constitution as per G.R. dated 9.2.1988. In appreciating the above question, it has to be seen that the petitioners were appointed on year to year basis since 1982. They were qualified when their appointments were made. Their appointments are thus prior to 9.2.1988....

5. As regards the question of appointment of the teachers through the Regional Selection Board, it is clear from the Resolutions of the Government dated 9.2.1988, 24.1.1990 and 26.7.1990 that it does not cover the selection made by the Municipal Council prior to 9.2.1988. As regards the termination orders issued upon the ground that the appointments have to be made according to the selection by the Regional Selection Board, the C.R. dated 26.7.1990 clearly provides that the teachers/employees who are selected prior to the G.R. dated 9.2.1988 should be taken back in service. In fact, the basic G.R. dated 9.2.1988 constituting the Regional Selection Board does not show that it will be applicable to the appointments which are already made prior to 9.2.1988 by the local authorities already made prior to 9.2.1988 by the local authorities or other bodies which are covered by the said G.R. in regard to the appointments to be made in the posts under them.

Thus, the consistent view in this Court is that the Government Resolution dated 9.2.1988 effective from 16.2.1988 is only applicable to the appointments to be made after 16.2.1988 and any appointment made after that date to Class III employees could only be made after the State Selection Board duly selects and recommends such person for employment and not otherwise but for the appointments which had already been made prior to the coming into force of the Government Resolution dated 9.2.1988, the selection and recommendation of the State Selection Board, was not at all required. When the selection and recommendation of the State Selection Board for appointments on Class-III post made prior to 9.2.1988 were not required, fortiori for making such employees permanent who were already appointed much before coming into force of the Government Resolution dated 9.2.1988, selection and recommendation of the Selection Board, was not at all required.

18. Mr. Badar, the learned counsel for the petitioner-employer strenuously urged that the Forest Guard Recruitment Rules, 1987 had been made on 29.10.1987 and the complainants-employees could only be made permanent if they fulfilled the eligibility prescribed under the said rules for Forest Guards and since all the complainants employees were given opportunity to qualify for the said post and since all the employees failed and were communicated as such, they were not entitled to be made permanent. In this connection, Mr. Badar placed reliance on Delhi Development Horticulture Employees Union''s case (supra) and State of Haryana v. Piara Singh & Ors. as also Madhyamik Siksha Parishad v. Anil Kumar (supra).

19. To appreciate this contention of the learned counsel for the petitioner-employer, scheme of the Act of 1946 may be dealt with. The Act of 1946 deals with the conditions mentioned in Schedule appended with the Act, of the workmen in industrial establishments and that includes classification of workmen, e.g., whether permanent, temporary, apprentices, probationers or badlis. The Apex Court has explained sufficiently and elaborately from time to time the scheme of the Act of 1946. In The Associated Cement Co. Ltd. Vs. P.D. Vyas and Others, , the Apex Court held as under:

(5) The Act has been passed because it was thought expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. Standing Orders are defined by Section 2(g) of the Act to mean rules relating to matters set out in the schedule. The schedule sets out 11 matters in respect of which standing orders are required to be made by the employers....

20. The matter again came up before the Supreme Court in U.P. State Electricity Board & Anr. v. Hari Shankar Jain & Ors. (cited supra) and the Supreme Court reiterated that the Act of 1946 is a special Act dealing with the specific subject and the provisions of the Act of 1946 and the Standing Orders must prevail in regard to the matters to which the Act of 1946 applies. The Supreme Court emphasised that the Act of 1946 was an Act giving recognition and form to hard - won and precious rights of the workmen. The Apex Court held, thus -

We have already shown that the Industrial Employment (Standing Orders) Act is a Special Act dealing with a specific subject, namely the conditions of service, enumerated in the schedule, of workman in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act embodying as they do hard-won and previous rights of workmen and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general incidental provision like Section 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing Orders Act when it passed the Electricity (Supply) Act and Parliament never meant that the Standing Orders Act should stand pro tanto repealed by Section 79(c) of the Electricity (Supply) Act. We are clearly of the view that the provisions of the Standing Orders Act must prevail over Section 79(c) of the Electricity (Supply) Act in regard to matters to which the Standing Orders Act applies.

21. No manner of doubt is left and legal position is now clearly established that the Act of 1946 is a Special Act which expressly and exclusively covers the conditions of service enumerated in the schedule appended to the Act relating to the workmen in industrial establishments.

22. It is not disputed that the complainants-employees are workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and thus, they are

workmen within the meaning of Section 2(i) of the Act of 1946. It is also not disputed that the employer has not established or framed any Standing Orders under the Act of 1946. The only question which was raised by the employer before the Industrial Court about the applicability of the Model Standing Orders, so far as they are applicable to the State of Maharashtra and amended by the Bombay Industrial Employment (Standing Orders) Amendment Rules, 1977, was that the Model Standing Orders were only applicable to the permanent employees and not to casual wage earners. By the Bombay Industrial Employment (Standing Orders) Amendment Rules, 1977, the Model Standing Orders applicable to the State of Maharashtra were amended. By the amendment, the definitions of permanent workmen and causal workmen were substituted. "Permanent workman" and "casual workmen" under the amended Model Standing Orders are defined are under:

(a) "Permanent workman" means a workman who has been employed on a permanent basis or who, having been employed as a Badli or a temporary workman has subsequently been made permanent by an order in writing by the Manager or any person authorised by him in that behalf and includes an apprentice who is asked or appointed to work in the post or vacancy of a permanent workman for the purpose of payment of wages to him, during the period he works on such post or in such vacancy.

(e) "casual workman" means a workman who is employed for any work which is not incidental to, or connected with, the main work or manufacturing process carried on in the establishment and which is essentially of a casual nature.

Clause 4-C of the Model Standing Orders as amended in the year 1977, is as under:

4-C. A badli or temporary workman who has put in 190 days uninterrupted service in the aggregate in any establishment of seasonal nature or 240 days uninterrupted service in the aggregate in any other establishment, during a period of preceding 12 calendar months, in any such establishment, shall be made permanent in that establishment by an order in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of the said 12 calendar months. Provided the period of interruption of service caused by cessation of work which is not due to any fault of the workman concerned, shall not be counted for the purpose of computing 190 days or 240 days as the case may be for making a badli or temporary workman permanent.

23. Section 13B of the Act of 1946 reads as under:

13-B. Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations

that may be notified in this behalf by the appropriate Government in the official Gazette, apply.

24. The Act of 1946 being the Special Act and expressly and exclusively dealing with the conditions of service of the workmen in industrial establishment enumerated in schedule appended to the Act, shall prevail unless it is excluded u/s 13B of the Act. Perusal of the Forest Guard Recruitment Rules, 1987 published in the Official Gazette on 29.10.1987 would reveal that the said rules have been made in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, but the said rules though notified in the official gazette, have not been notified for the purposes of the Act of 1946 and unless the rules or regulations are notified by the appropriate Government in the official gazette for the purposes of the Act of 1946, the provisions of the Act of 1946 and the Model Standing Orders relating to the conditions of service of the workmen in the industrial establishments enumerated in schedule shall have an over-riding effect and would prevail.

25. In K. Thiruvenkatswami''s case (supra), the Madras High Court after considering the question whether the provision of the District Municipalities Act would prevail over the Industrial Employment (Standing Orders) Act, 1946, held as under:

8. The question, therefore, arises whether the provision of the District Municipalities Act would prevail over the provision of the Industrial Employment (Standing Orders) Act, 1946. The District Municipalities Act is a State General enactment dealing with the administration of municipalities, whereas the Industrial Employment (Standing Orders) Act, 1946, is a special enactment relating exclusively to the service conditions of persons employed in industrial establishments. The Industrial Employment (Standing Orders) Act, being a earlier General Act, would prevail over the earlier General Act, and the provision of the District Municipalities Act and the rules framed thereunder which are not in conformity with the Industrial Employment (Standing Orders) Act and the model standing orders will not apply. The provision in the Municipal Manual providing the age of retirement as 55 cannot prevail over the models standing orders framed under the Industrial Employment (Standing Orders) Act prescribing the age of retirement as 58.

11. The only other contention raised by the learned Government pleader is that the municipal rules should be regarded as rules notified in this behalf by the appropriate Government in the official Gazette as required u/s 13B of the Industrial Employment (Standing Orders) Act. It is admitted that the rules were not notified for the purpose of the Industrial Employment (Standing Orders) Act. The clause "any other rules or regulations that may be notified in this behalf by the appropriate Government in the official Gazette" can only mean the rules and regulations that may be notified by the appropriate Government for the purpose of the Industrial Employment (Standing Orders) Act. It is admitted that no rules were notified under this Act. Rules framed under the District Municipalities Act, long before the Act came into force cannot be said to be rules notified in this behalf by the appropriate

Government. It may be that Section 13B can be brought into operation when the Government is empowered to frame rules regulating the conditions of employment in certain industrial establishments and if the Government frames rules and notifies them under the provision of Section 13B. It has been held in Raman Nambisan v. Madras State Electricity Board by its Secretary, 1967-I LLJ 252 (Mad.) that Section 13B cannot be availed of for purposes of framing rules to Government under private management or in a statutory corporation. This rule can apply only to industrial establishments in respect of which the Government is authorised to frame rules and regulations, relating to the conditions of employment in industrial establishments. I am unable to accept the District Municipalities Act will be "rules notified in this behalf by the appropriate Government".

26. While construing the clause, "any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, the Madras High Court, thus, held that the said expression can only mean the rules and regulations that may be notified by the appropriate Government for the purpose of the Industrial Employment (Standing Orders) Act, 1946 and since the rules under the District Municipalities Act were not notified and framed under the Act of 1946, Section 13B cannot be brought into operation. It may be observed that this part of the judgment has been approved by the Apex Court in U.P. State Electricity Board & Anr. v. Hari Shankar & Ors. (supra), and the Supreme Court, thus, observed:

...In Thiruvenkatswami''s case it was held that rules made by the Government under the District Municipalities Act could not be considered to be rules notified u/s 13B of the Standing Orders Act merely because the rules were made by the Government and published in the Government Gazette. We agree with the conclusions in both cases. In Thiruvenkataswami''s case Kailasam, J. also observed that the Industrial Employment (Standing Orders) Act was a special Act relating exclusively to the service conditions of persons employed in industrial establishments and, therefore, its provisions prevailed over the provision of the District Municipalities Act. We entirely agree....

27. In my opinion, therefore, to carve out exception and before Section 13B of the Act of 1946 can be pressed into service to show that the provisions of the Act of 1946 would not apply because of certain rules or regulations framed by the appropriate Government, such rules have to be notified for the purposes of the Act of 1946 and such rules must be framed in pursuance of the provisions of Section 13B of the Act of 1946 to oust the applicability of the provisions of the Act of 1946 relating to service conditions of the workmen in industrial establishment enumerated in Schedule. Merely because certain rules and regulations have been framed by the appropriate Government and published in the official Gazette relating to the recruitment of its employees, if its concerns service conditions of workmen in industrial establishments covered by the Schedule, such rules or regulations by notification itself would not exclude the applicability of the provision of the Act of

1946 unless such rules or regulations are notified in pursuance of the provision of Section 13B of the Act of 1946. If an appropriate Government is of the opinion that the provisions contained in the Act of 1946 shall not apply to the industrial establishments relating to the service conditions of the workmen employed therein then by making rules or regulations notified in the official gazette in pursuance of Section 13B the provisions of the Act of 1946 applicable to the workmen employed in industrial establishment so far as their service conditions enumerated in Scheduled may be excluded and not otherwise. Though Forest Guard Recruitment Rules, 1987 have been notified in the official Gazette, the same having not been notified in pursuance of Section 13B of the Act of 1946, the said rules cannot be said to exclude the applicability of the provisions of the Act of 1946. The expression, "may be notified in this behalf" signifies the intention that to exclude the applicability of the provisions of the Act of 1946 to an industrial establishment relating to the workmen and their conditions of service enumerated in the schedule should and could only by excluded by the appropriate Government by making rules or regulations notified for that purpose. Therefore, such rules and regulations should be made pursuant to Section 13B of the Act of 1946 and if such rules or regulations are not made u/s 13B then the provisions of the Act of 1946 shall have over riding effect and prevail over such rules or regulations.

28. Even otherwise, the Forest Guard Recruitment Rules, 1987 have no application in the facts and circumstances of the present case. These Rules have been made to regulate recruitment to the various posts in the Forest Department including the post of Forest Guard. Rules regulating recruitment to the post of Forest Guard cannot be equated with the governing rules the right of permanency claim by a Forest Guard already appointed, though temporarily. Recruitment to the post of Forest Guard cannot be said to be a mode of making already appointed Forest Guard permanent. The employees who had already been appointed as Forest Guards many years before making of Forest Guard Recruitment Rules, 1987, though their appointments were made on temporary basis, their claim of permanency would neither be governed by these Rules of 1987 nor these Rules provide for any mode of making permanent the Forest Guards who were employed on temporary basis much earlier to coming into force of these Rules. These Rules came to be published in the official gazette on 29.10.1987 and Rule 4 of the said Rules provides that the appointment to the post of Forest Guard in the Forest Department shall be made by nomination from amongst candidates who qualify eligibility prescribed in the said Rule. Sub-section (ii) of Section 4 provides the eligibility of promotion to the post of Forester from amongst Forest Guards and Rule 10 provides that a person appointed by way of nomination under Rule 4, shall be required to pass examination in Hindi and Marathi according to rules made in that behalf unless he has already passed or is exempted from passing these examinations. Thus, after coming into force of these Rules, the appointment to the post of Forest Guard could only be made in conformity with the Forest Guard Recruitment Rules, 1987, but the said

rules do not apply so far as claim of those Forest Guards is concerned who have been claiming permanency on the post of Forest Guard having completed 240 days in the preceding 12 months uninterruptedly and continuously. The Forest Guard Recruitment Rules, 1987, therefore, have no application to the claim of the complainants-employees seeking permanency under Clause 4-C of the Model Standing Orders as amended in the year 1977. Even the sole witness produced by the employer, in his deposition before the Industrial Court, has admitted that those employees who were already working as Forest Guards, need not comply with the physical standard and/or required prescribed qualification for making them permanent. That was the reason before the Industrial Court that no arguments were advanced about the applicability of the Forest Guards Recruitment Rules, 1987. Even in the memo of all the writ petitions, so such ground has been set up and for the first time during the course of arguments, the learned counsel for the employer raised argument that on coming into force of the Forest Guard Recruitment Rules, 1987 the employees could be recruited under the rules and cannot be made permanent otherwise and for the reasons stated above, the said argument has no merit and deserves to be negatived.

29. Clause 4-C of the Model Standing Orders as amended in the year 1977, entitles a temporary workman who has put in 240 days'' uninterrupted service in an industrial establishment during the period of 12 preceding months to be made permanent in that establishment by an order in writing signed by the person authorised in that behalf. The valuable right of permanency in favour of a workman is, thus, created whether he was been appointed as a badli or a temporary workman once he completes 240 days'' continuous service in an industrial establishment preceding 12 calendar months and if the industrial establishment ignores and overlooks such entitlement of permanency of the workman, the workman has a right to seek appropriate declaration against the industrial establishment. In the present case, the complainants-employees were employed, engaged and appointed on the post of Forest Guard by the orders stating that their appointments were temporary or for a period of one month and after giving them artificial break of one day, they were reappointed and their appointments continued for years together and, therefore, the complainants-employees were entitled to claim permanency under Clause 4-C of the Model Standing Orders as amended in the year 1977 and there is no merit in the contention of the employer that the Model Standing Orders are only applicable to permanent employees and not to casual workers or temporary workers or daily wage earners.

30. The learned counsel for the employer placed reliance on the Delhi Development Horticulture Employees Union''s case (supra). The Supreme Court in the said judgment held as under:

14. Viewed in the context of the facts of the present case it is apparent that the schemes under which the petitioners were given employment have been evolved to

provide income for those who are below the poverty line and particularly during the periods when they are without any source of livelihood and, therefore, without any income whatsoever. The schemes were further meant for the rural poor, for the object of the schemes was to start tackling the problem of poverty from that end. The object was not to provide the right to work as such even to the rural poor - much less to the unemployed in general. As has been pointed out by the Union of India in their additional affidavit, in 1987-88, 33 per cent of the total rural population was below the poverty line. This meant about 35 million families. To eliminate poverty and to generate full employment 2400-3000 million man days of work in a year was necessary. As against that, the Jawahar Rozgar Yojna could provide only 870 million man days of employment on intermittent basis in neighborhood projects. Within the available resources of Rs. 2600 crores, in all 3.10 million people alone could be provided with permanent employment, if they were to be provided work for 273 days in a year on minimum wages. However, under the scheme meant for providing work for only 80-90 days work could be provided to 9.30 million people.

The above figures show that if the resources used for the Jawahar Rozgar Yojna were in their entirely to be used for providing full employment throughout the year, they would have given employment only to a small percentage of the population in need of income, the remaining vast majority being left with to income whatsoever. No fault could, therefore, be found with the limited object of the scheme given the limited resources at the disposal of the State. Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularisation is to frustrate the scheme itself. No Court can be a party to such exercise. It is wrong to approach the problems of those employed under such scheme with a view to providing them with full employment and guaranteeing equal pay for equal work. These concepts, in the context of such schemes are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up the existing schemes and forbid them from introducing the new ones for want of resources. This is not to say that the problems of the unemployed deserve no consideration or sympathy. This is only to emphasize that even among the unemployed a distinction exists between those who live below and above the poverty line, those in need of partial and those in need of full employment, the educated and uneducated, the rural and urban unemployed etc.

15. Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is Employment

Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal consideration including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the Courts are of employment in Government Departments. Public Undertakings or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have sopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts.

31. In State of Haryana v. Piara Singh (supra) and relied upon by the learned counsel for the employer, the Apex Court held as under:

14. The next question is whether the orders issued by the two Governments were arbitrary and unreasonable in so far as they prescribed that only those employees who had been sponsored by Employment Exchange should alone be regularised. In our opinion, this was a reasonable and wholesome requirement designed to curb and discourage back-door entry and irregular appointments. The Government orders say that all those who have been sponsored by Employment Exchange or have been appointed after issuing a public advertisement alone should be regularised. We see no unreasonableness or invalidity in the same. As stated above, it is a wholesome provisions and ought not to have been invalidated.

Moreover, as pointed out hereinbefore, it is not found by the High Court that the writ petitioners were appointed only after obtaining a non-availability certificate from the Employment Exchange. The decision relied upon by the High Court does to say that even without such a certificate from Employment Exchange, an appointment can be made or that such appointment would be consistent with the

mandate of Articles 14 and 16.

We must also say that the further requirement prescribed in the orders viz. that the employees must have possessed the prescribed qualifications for the post of the time of his appointment on ad-hoc basis is equally a valid condition. Indeed no exception is taken to it by the High Court.

17. Now coming to the direction that all those ad-hoc temporary employees who have continued for more than an year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that even ad-hoc/temporary employees who has been continued for one year should be regularised even though (a) no vacancy is available for him - which means creation of vacancy (b) he was not sponsored by the Employment Exchange nor was he appointed in pursuance of a notification calling for application which means he had entered by a back-door (c) he was not eligible and/or qualified for the post at the time of his appointment (d) his record of service since his appointment is not satisfactory. These are in addition to some of the problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for a regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be ''no rule of thumb'' in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year''s service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. Judged from this standpoint, the impugned directions must be held to be totally untenable and unsustainable.

19. The High Court has also directed that all those employees who fall within the definition of ''Workman'' contained in the Industrial Disputes Act will also be entitled to regularisation on par with the work-charged employees in whose case it is directed that they should be regularised on completing five years of service in Punjab and four years of service in Haryana. This direction is given in favour of those casual labour and daily wagers who fall within the definition of workman. In so far as work-charged employees, daily wage workers and causal labourers who do not fall within the definition of workmen are concerned, the High Court had directed their regularisation on completion of one year''s service. We find this direction as untenable as the direction in the case of ad hoc/temporary employees. In so far as the persons belonging to the above categories and who fall within the definition of

workmen are concerned, the terms in which the direction has been given by the High Court cannot be sustained. While we agree that persons belonging to these categories continuing over number of years have a right to claim regularisation and the authorities are under an obligation to consider their case for regularisation in a fair manner, keeping in view in principles enunciated by this Court, the blanket direction given cannot be sustained. We need not, however, pursue this discussion in view of the orders of the Government of Haryana contained in the letter dated 6.4.1990 which provides for regularisation of these persons on completion of ten years. We shall presently notice the contents of the said letter. In view of the same, no further directions are called for at this stage. The Government of Punjab, of course, does not appears to have issued any such orders governing these categories. Accordingly, there shall be a direction to the Government of Punjab to verify the vacancy position in the categories of daily wagers and casual labour and frame a scheme of absorption in a fair and just manner providing for regularisation of these persons, having regard to their length of service and other relevant conditions. As many persons as possible shall be absorbed. The scheme shall be framed within six months from today.

32. The Apex Court in Madhyamik Siksha Parishad U.P. v. Anil Kumar & Ors. (cited supra), thus, observed:

4. We are unable to uphold the order of the High Court. There were no sanctioned posts in existence to which they could be said to have been appointed. The assignment was an ad hoc one which anticipated spend itself out. It is difficult to envisage for them, the status of workmen on the analogy of the provisions of Industrial Disputes Act, 1947, importing the incidents of completion of 240 days'' work. The legal consequences that flow from work for that duration under the Industrial Disputes Act, 1947 are entirely different from what, by way of implication, is attributed to the present situation by way of analogy. The completion of 240 days'' work does not, under that law import the right to regularisation. It merely imposes certain obligations on the employer at the time of termination of the service. It is not appropriate to import and apply that analogy, in an extended or enlarged from here.''

33. None of the aforesaid three case, viz. Delhi Development Horticulture Employees Union v. Delhi Administration & Ors.; State of Haryana & Ors. Piara Singh & Ors. and Madhyamik Siksha Parishad v. Anil Kumar Mishra and Ors., can be said to have any application in the facts and circumstances of the present case. In Delhi Development Horticulture Employees Union''s case (supra), the petitioner were given employment under the scheme, Jawahar Rozgar Yojna, a scheme evolved to provide income for those who were below the poverty line and particularly during the periods when they were without any source of livelihood and, therefore, without any income whatsoever. Jawahar Rozgar Yojna was meant for the rural poor, for the object of the scheme was to start tackling the problems of poverty from that end and the

object was not to provide the right to work as such even to the rural poor much less to the unemployed in general and when the question came up before the Apex Court about the regularisation of the persons employed under the said scheme, the Apex Court made the observations referred to in paras 14 and 15 of the said report and as afore-mentioned. In the present case, the complainants-employees were appointed as Forest Guard in the Forest Department, though temporarily, from time to time and they worked for years together and continuously and those employees were claiming their right of permanency under the Model Standing Orders. The work of the Forest Guards which the complainants-employees have been performing for years together, was not of a casual nature and cannot be said to be not incidental to or connected with the main work of the Forest Department. The very fact that the complainants-employees have been engaged, employed and appointed from time to time right from the year 1983-84 and continued to be so for years together, would show that the work of Forest Guard was not of a casual nature and the Industrial Court has also rightly held that the work of the Forest Guard is not essentially an occasional or casual nature and in fact, the work of Forest Guard is of permanent nature. Thus, the Delhi Development Horticulture Employees Union''s case (supra) has no application in the present case. Similarly in the State of Haryana v. Piara Singh & Ors. the Supreme Court was examining the legality and correctness of the directions given by the Punjab and Haryana High Court, blanket in nature, to regularisation of work charge employees, daily wage workers and casual labourers who were not workmen under the Industrial Disputes Act and directions to regularise persons of the said categories who were workmen on completion of 4 or 5 years and the Supreme Court laid down guidelines while reversing the judgment of the Punjab and Haryana High Court. In the case of Piara Singh, the question was not about claiming of right of permanency by the workmen in an industrial establishment having completed 240 days of uninterrupted service under the provisions of the Act of 1946 and the Model Standing Orders. Piara Singh''s case (supra), therefore, has no application to the present case. In Madhyamik Siksha Parishad''s case (supra) a challenge being made to the directions given by the High Court that the workmen be considered for regular appointments as Lower Division Clerks as and when such posts are filled up on the basis of their qualifications and seniority as daily wage labourers and that the services of such workmen shall not be dispensed with till they were absorbed on regular basis, the Apex Court while setting aside the said directions, observed that there were no sanctioned posts in existence to which they could be said to have been appointed and the assignment being an ad hoc one anticipated spent itself out. The Supreme Court observed that it was difficult to envisage for them the status of workmen on the analogy of the provisions of the Industrial Disputes Act, 1947, importing the incidents of completion of 240 days'' work and the legal consequences that flow from work for that duration under the Industrial Disputes Act, 1947 are entirely different from what, by way of implication, is attributed to the present situation by way of analogy. In the present case, the complainants-employees are claiming their

entitlement of permanency under the Model Standing Orders and the provisions of the Act of 1946 and there is no plea of the employer that there are no sanctioned posts of forest guards and thus the Madhyamik Siksha Parishad''s case (supra), also has no application.

34. In Suresh Nerkar''s case (supra), the Division Bench of his Court held as under:

15. Model Standing Order No. 3 mentions the categories into which the workmen can be classified. Sub-clause (e) of Cl. (2) of Model Standing Order No. 3 defines ''casual workman'' as a workman who is employed for any work which is essentially of a casual nature. Sub-clause (d) defines ''temporary workman'' as a workman who is appointed for a limited period for work for which is of an essentially temporary nature, or who is employed temporarily as an additional workmen in work of a permanent nature. Hence, unless the work for which the workmen is employed is essentially of an occasional or casual nature, he cannot be styled as a casual workman. As mentioned above, the work for which the workmen in question are engaged is neither of an occasional nature or casual nature. The work which the workmen are doing is of permanent nature.

16. The Model Standing Orders, so far as they are applicable to the State of Maharashtra, are amended by the Bombay Industrial Employment (Standing Orders) (Amendment) Rules, 1977. This amendment came into force on 28th September 1977 during the pendency of the reference. As the concerned workmen are employed at the Depots which are situated in the State of Maharashtra, they would be governed by the Model Standing Orders as amended by the Bombay Industrial Employment (Standing Orders) (Amendment) Rules, 1977. By the amendment, the definition of ''casual workman'' given in Sub-clause (e) of Clause (2) of Model Standing Order No. 3 stands substituted by a new definition, which defines ''casual workman'' as a workman who is employed for any work which is not incidental to, or connected with the main work or manufacturing process carried on in the establishment and which is essentially of a casual nature. It cannot be disputed that the work which is being carried on in the Depots and as demonstrated above, is not of casual nature. Hence, the petitioners and the other similarly situated workmen cannot be styled as casual workmen either under the definition given in Sub-clause (e) of Clause (2) of Standing Order No. 3 or under the definition as amended by the above referred Bombay rules. At the most, they may be covered by the definition of ''temporary workmen'' in Sub-clause (d) of Clause (2) of Model Standing Order No. 3.

17. By the aforesaid amendment Clause (4-A) to (4-D) are added to the Model Standing Orders. These clauses incorporate important provisions relating to the status of various categories of workmen. Clause (4-C) lays down that a Badli or temporary workman who has put in 190 days uninterrupted service in the aggregate in any other establishment of seasonal nature of 240 days uninterrupted service in the aggregate in any other establishment, during a period of preceding

twelve calendar months, shall be made permanent in that establishment by an order in writing signed by the Manager or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of the said 12 calendar months. It is true that this amendment came into force on 28.9.1977, but as no retrospective confirmation was sought the Tribunal was bound to take into consideration while adjudicating upon the demand for regularisation. The Tribunal was, therefore, wrong in holding that merely because the workmen completed 240 days in a period of 12 months, they would not be entitled to be confirmed. Admittedly, all of them have completed 240 working days in a period of 12 months. They are therefore, entitled to be confirmed in service of the Food Corporation of India.

35. In view of the aforesaid facts and circumstances, the findings recorded by the Industrial Court that the Forest Department has not prepared its own Standing Orders and that the provisions of the Model Standing Orders are applicable to the employees of the Forest Department do not suffer from any infirmity warranting interference by this Court. The Industrial Court rightly held that the complainants-employees were kept on temporary basis as Forest Guards for years together for no fault on their part and thus, the complainants-employees were deprived of status and privileges of permanent employees and the said action or omission on the part of the employer was covered under the mischief''s of Items 6 and 9 Schedule IV of the Unfair Labour Practices Act, 1971.

36. The finding recorded by the Industrial Court that complainant Shivdas Tulshiram Meshram has also been working continuously with the employer since 1983 and has worked as Forest Guard on time scale and has completed more than 240 days in the year, is proper and based on the various appointment orders placed on record. In this view of the matter, there is no merit in the contention of the learned counsel for the petitioner that one of the complainants viz. Shivdas Tulshiram Meshram has not completed 240 days as Forest Guard. Similarly, there is no merit in the contention raised by the learned counsel for the employer that the complainants-employees, viz. Madhukar Ramaji Undirwade, Babaji Waktuji Lengure, Vasudeo Laxman Turate, Shalik Kashinath Surankar, Arun Digambar Nikhade and Prakash Laxman Dhewale were not matriculates and, therefore, could not be made permanent. Despite opportunities given, the learned counsel for employer could not show the rules prescribing the educational qualifications for the post of Forest Guard prior to the year 1987, because all these person were appointed on the post of Forest Guard, though temporarily, in the years 1983-84 and the then existing rules prescribing such educational qualifications have not been shown by the learned counsel for employer. On the other hand, it is admitted that all these persons have been appointed as Forest Guards from time to time by various appointment orders on temporary basis and their names were sent by the Employment Exchange. It is also not the case of the employer that initial appointment made of these employees was in contravention of the rules or not in accordance with law. It is rather admitted by

the sole witness produced by the employer in the cross-examination that those who are already working as Forest Guards, were not needed to comply with the physical standard or required prescribed qualification for making them permanent. Merely because in his examination-in-chief, the witness produced by the employer has deposed that qualification required for the post of Forest Guard was matriculation, since no such rule has been produced and, therefore, the said deposition about requirement of matriculation cannot be believed. Even from Exhibit-55, it is revealed that all these persons have been declared successful in educational, physical and running test for the post of Forest Guard, though the complainants did not appear for personal interview, and, therefore, there is no merit in the contention of the learned counsel for the employer that the aforesaid persons being not matriculate, were not entitled to be made permanent.

37. For all the aforesaid reasons, I do not find any merit in the contentions raised by the learned counsel for the employer and the impugned order passed by the Industrial Court is well reasoned, based on proper appreciation of the evidence and the arguments advanced before it and consistent with the provisions contained in the Act of 1946 and the Model Standing Orders applicable in the State of Maharashtra as amended in the year 1977 and, therefore, no interference is called for in the impugned judgment in the extraordinary jurisdiction of this Court under Articles 226 and 277 of the Constitution of India.

38. Consequently, all these writ petitions are devoid of any merit and liable to be dismissed, and are hereby dismissed. Parties are directed to bear their own costs. Rule is discharged in all the writ petitions.