Supreme Court of India
Maharashtra State Cooperative ... vs Employees' Union And Anr. on 24 January, 1994
Equivalent citations: JT 1994 (1) SC 163, (1995) ILLJ 53 SC, 1994 (1) SCALE 225, 1994 Supp (3) SCC 385, 1994 1 SCR 289
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Bench: P Sawant, R Sahai
JUDGMENT P.B. Sawant, J.

1. The crucial question that falls for consideration in the present case is whether the award dated August 31, 1984 of the Industrial Tribunal (hereinafter referred to as "Patankar Award") is applicable to the seasonal employees involved in the present proceedings. To appreciate the controversy between the parties, the facts and events which preceded and succeeded the said award have also to be looked into.

2. The State Government under Section 42 of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971, appointed the Maharashtra Co-operative Marketing Federation (hereinafter referred to as Marketing Federation), a co-operative society, as the chief agent to implement the Cotton Monopoly Procurement Scheme (the 'Cotton Scheme')- The Marketing Federation was before that date engaged in the marketing of several commodities. From that date onwards till August 31, 1984, it continued to act as the chief agent of the State Government for procurement, processing and marketing of cotton as well. For this purpose it recruited and maintained a separate section with a separate staff. The staff consisted of those who were needed throughout the year and those who were needed only during the season. The cotton trade (which expression will include procurement, processing and manufacturing of cotton) in Maharashtra is mostly in Vidarbha, Marathwada and Khandesh region and commences roughly in the first week of November and extends upto April of the next year. In Western Maharashtra, there is hardly any crop of cotton and the season there commences in August and ends in November of the same year. The Cotton Scheme introduced by the Government has three aspects, (i) procurement, (ii) processing and (iii) marketing. The first two activities extend over four to six months in a year depending upon the extent of the availability of the crop. The third stage viz., marketing and also the function of maintenance of accounts are spread over throughout the year. The seasonal employees are needed only for the first two stages viz., procurement and processing which last for a limited period as stated above. The seasonal employees engaged in the said two activities consist of Weighment clerks, Seed clerks, Heap clerks, Ginning Supervisors, Press Supervisors etc. who work at the collection centers and the processing centers. On an average, the seasonal employees are about twice the number of the perennial employees.

3. It appears that an industrial dispute having arisen between the employees and the Marketing Federation, the same was referred by the State Government for adjudication to the Industrial Tribunal consisting of Shri G.K. Patankar by the reference order of May 30, 1973. The terms of reference show that in all 16 demands of the employees were referred to the said Tribunal and one of the demands with which we are concerned was demand No. 4 relating to permanency. The demand read as follows:

Demand No. 4 : Permanency: All the workmen who have put in three months aggregate service for 78 or more working days in aggregate in spite of any intervening breaks should be immediately confirmed in writing as permanent workmen.

None of the demands referred to the Tribunal including the aforesaid demand No. 4 suggested hat they related to the seasonal employees. All he demands were in relation to the perennial employees. The statement of claim filed in the Reference by the Union on behalf of the work-men, did not also refer anywhere to the seasonal employees. On the other hand, in relation to the aforesaid demand for permanency, it referred to ill temporary workmen and specifically pointed out that at that time, there were about 400 workmen who had put in more than five years' service. But still they were termed as temporary. It also observed that the work of the Marketing Federation had increased considerably and it required a large number of permanent staff, and hat the services of the temporary workmen could be terminated at any time which was in-equitable. In its written statement, the Marketing Federation also proceeded on the basis that ill the said demands related only to the perennial employees. While, however, referring to the aforesaid demand for permanency, the written statement observed as follows:

9. With regard to demand No. 4 "Permanency", the Federation states that it is willing to make permanent all employees who have completed 3 years of continuous service. The period mentioned in the statement of claim for all employees who have put in 3 months continuous service for making them permanent is too small a period to judge the capacity and ability of the employee. The Federation, therefore, agrees in principle that an employee should not remain temporary for along time and 3 months period of service for permanency is too short for judging the capacity and ability of an employee before he is made permanent in the organisation.

10. With regard to the contents of para 13 of the statement of claim, the Federation states that for carrying out the activities of the Federation it has to employ workmen either on temporary basis or on seasonal basis depending upon the nature, of work load of different activities that the Federation has to discharge at the instance of the State Government. The Federation, therefore, feels that no period should be laid down in respect of purely temporary and in seasonal employment. In the submission, therefore, of the Federation, the rule of permanency should apply only to employees who are recruited against the permanent post and it should not apply to the purely temporary or causal employees or seasonal employees who have to be recruited in times of "emergency".

4. We have quoted the aforesaid two paragraphs from the said written statement verbatim, for an argument has been advanced by the respondent Union of workmen, that notwithstanding the fact that the demands as raised and the statement of claim filed on behalf of the workmen in the reference did nowhere refer to the seasonal employees, the reference by the Marketing Federation to the workmen employed on seasonal basis in the written statement as above, shows that the industrial dispute referred to the Tribunal and the Tribunal's award related to the seasonal employees as well. We will deal with this argument at its proper place.

5. Shri Patankar while giving his award on August 31, 1984 disposed of the said demand for permanency in para 19 of the award in the following cryptic language:

19. The next demand is in respect of permanency. It is allowed by the Union that the workers who have put in three months of aggregate service and have put in 78 or more days as working days in spite of any breaks in service, be made permanent. The federation opposes this demand and contends that it is willing to confirm all the employees who have put in three years of continuous service. Considering, therefore, the arguments advanced for both the sides, it appears that it would be proper to direct that those employees who have put in 240 days of continuous service be treated as permanent employees.

It will be apparent from the aforesaid portion of the award, which is the only direction in the award relating to said demand, that the direction also did not refer to the seasonal employees. There is no dispute that after this award, the same system of seasonal employees continued till the present order dated September 14, 1990 of the Industrial Court with which we are concerned and from which the present proceedings have arisen. There is also no dispute that as per the Patankar Award, the temporary perennial employees were made permanent but the seasonal employees on the date of the award continued as such without demur. On the other hand, subsequently, there were four settlements entered into between the Marketing Federation and the Union of seasonal employees. The first settlement is of June 12, 1980 and related to (i) revision of consolidated salary and annual increment in the consolidated salary of certain categories of the seasonal employees; (ii) redefinition of some of the categories of the said employees; (iii) retention allowance to be paid to them; and (iv) absorption of the seasonal employees in the permanent vacancies in the perennial posts according to seniority and merit. It may be mentioned here that the settlements on increments in the consolidated salary specifically stated that those of the seasonal employees who had to put in more than three seasons of employment would be entitled to two increments. So also, the settlement on retention allowance stated that the seasonal employees on consolidated salary shall be disengaged at the end of the season, and during the period of non-employment, they would be entitled to 25 per cent of the monthly wages prevailing in the past cotton season and that it would not exceed half month's wages during the year. It, however, mentions that the retention allowance would be paid to the seasonal employees till they were reemployed at the commencement of the next cotton season. The next settlement is of December 11, 1981. It spoke of the vacancies of the perennial clerks, stenographers, peons and watchmen at the Head Office and Divisional and Sub-Divisional offices being filled in from the seasonal employees on seniority- cum-merit basis and the seasonal employees above 58 years of age being not eligible for such appointments. It also spoke of all vacancies in class III and IV cadres of the cotton department of the Marketing Federation being filled in from among the seasonal employees again on seniority-cum-merit basis. It then spoke of the seasonal employees, excluding watchmen, who had put in eleven months or more of employment during 1979-80 season including technical breaks being regularised in the pay-scale of Rs. 130- 400/-. That term of the settlement was clarified by further stating that the said seasonal employees would be regularised according to divisional seniority and on the basis of seniority-cum-merit. The clarification further mentions that the said appointment would not change the nature of their duties and they would not be paid retention allowance. The settlement further stated that excluding the said employees who were regularised, others would be entitled to the interim hikes of certain amounts in their consolidated salaries. The settlement also provided that the agricultural graduates from among the seasonal employees would be suitably trained and appointed as Graders. This settlement made an important provision for appointment of a committee to

consider the problems of the seasonal employees. The Committee was to consist of a representative each of the cotton cultivators, the Marketing Federation, the State Government and the seasonal employees. The Committee was to submit its recommendations before February, 1982 and the State Government was to take a decision thereon within one month of the recommendations and implement the acceptable recommendations. The matters which were to be referred to the committee were mentioned in the schedule to the settlement and they were (i) the strength of the seasonal employees required to be employed in every zone considering the nature or duties, features of cotton season etc (ii) whether the technical breaks were necessary in the case of some of the seasonal employees who were then employed for nine to twelve months; (iii) ways and means to ensure employment for maximum period for seasonal employees; (iv) the strength of the permanent, i.e. perennial employees; (v) pay-scales to be granted to the seasonal employees who were to be regularised and to decide the modality of annual increment to be granted to them; (vi) the need to change the then system of paying retention allowance and to suggest change in the system.

6. There is no dispute that pursuant to this settlement, a committee headed by one Shri Bhuibhar was appointed. Before the report of the said Committee was received, there was yet another settlement on December 22, 1982 between the Union of the seasonal employees and the Marketing Federation. One of the terms of the settlement was that the Bhuibhar Committee should submit its report to the Government within one month of the date of that settlement and that the Government should take decision on the said report at the earliest. There was also a provision made for interim increase in the monthly consolidated wages of some of the categories of the seasonal employees. The said interim relief was to be adjustable while implementing the recommendations of the Committee. It is obvious from this settlement that it was necessitated because of the delay in I the submission of the report by the Committee.

7. The Bhuibhar Committee submitted its report on December 1, 1983. Some of the recommendations and the Government's reaction on the same are relevant for our purpose. They are mentioned below:

(1) Since, if the demand of the seasonal employees for employment throughout the year was accepted the financial burden would fall on the cultivators and would affect the Cotton Monopoly Procurement Scheme, it was not proper to provide 12 months' employment to the seasonal employees and burden the said scheme. The Government accepted this recommendation.

(2) There should be increase in the sanctioned strength of the perennial employees viz. Clerks, Peons and Watchmen in different zones and at different Sub-Zonal offices. The Government accepted it.

(3) There should be an increase in the sanctioned strength of the seasonal employees. However, since this aspect required an in-depth study, the matter should be entrusted to a management consultant. The Government accepted this suggestion.

(4) The seasonal employees should be given pay-scale of Rs. 160-10-210-15-285-EB-20-465. The Government accepted the said pay-scale.

(5) The part-time seasonal employees should be given the pay-scale of Rs. 105-5-145-10-205-15-210/-. An annual increment for three years of completed seasonal employment was also recommended. The Government accepted the recommendation.

(6) The vacancies in Class III and IV cadres in all offices (including the cotton and non-cotton department) should be filled in from the seasonal employees. The Government accepted the recommendation (7) In regions other than Western Maharashtra, the seasonal employees should be given employment for a minimum period of six months, and in Western Maharashtra, annual plans should be made to make it possible to furnish employment for a minimum period of six months to them. The Government accepted the recommendation in principle, but also suggested to the Federation that they make necessary planning for sending seasonal employees from Western Maharashtra to Vidarbha for a minimum period of six months.

8. Pursuant to the said report, and the Government's reactions to it, an agreement was entered into between the Marketing Federation and the Union of the seasonal employees on January 18, 1984. In the preamble, it was stated that the agreement was entered into pursuant to the recommendations of the Bhuibhar Committee as accepted by the Government and the agreement was to be effective from November 1, 1982. The agreement also stated that the Government had suggested that the agreement should ensure that for the next five years, Cotton Scheme shall not be burdened and it was pursuant to the aforesaid directive of the State Government that the Marketing Federation and the seasonal employees, Union had agreed to its terms. Incidentally it may be stated that it is the same Union which signed the said agreement which is the contesting respondent before us. The agreement then specifically stated that the Marketing Federation had agreed to implement the decision of the Government in respect of the recommendations of the Bhuibhar Committee except recommendation No. 33 which had suggested that the vacancies in Class III and IV cadre in all the offices of the Federation including the cotton and non-cotton departments should be filled in from the seasonal employees. Instead, the agreement provided that it is only the vacancies in the cotton department which will be filled in from among the seasonal employees. The agreement stated that during the period of five years, the Union shall not raise any demand tending to impose additional financial burden on the Cotton Scheme.

9. On August 31, 1984, the present appellant No. 1 viz., the Maharashtra State Co-operative Cotton Growers' Marketing Federation Ltd. was constituted for the first time as a society registered under the Maharashtra Co-operative Societies Act, 1960 with the express object of taking over from the Marketing Federation as the chief agent of the State Government, the Cotton Monopoly Procurement Scheme. The staff of the Marketing Federation engaged in the Cotton Scheme was to be taken over by the appellant- Federation. Accordingly, the entire staff of the Marketing Federation including the seasonal staff engaged under the Scheme was taken over by the appellant - Federation on the relevant date had perennial staff of about 2200 on same terms and conditions. As a result, the appellant-Federation on the persons and seasonal staff of about 4500 persons.

10. On September 27, 1988, for the first time, certain complaints were filed by the Union of the seasonal employees, Aurangabad, under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the 'Act'). In the complaints, it was stated that since as per the Patankar Award, the seasonal employees who had put in 240 days of service were not made permanent, the appellant-Federation had committed an unfair labour practice within the meaning of the said Act. The Industrial Court dismissed the said complaint holding that the Patankar Award did not apply to the seasonal employees. On September 28, 1989 some seasonal employees from Amravati Zone made the very same complaint under the Act before the Industrial Court, Nagpur. The same was also dismissed.

11. Thereafter on April 20, 1990, the respondent-Union filed the present complaint under the Act before the Industrial Court, Nagpur which has given rise to the present proceedings. This complaint was heard by another member constituting the Industrial Court. The grievance made in the complaint was that those seasonal employees who had worked for 240 days in 1982-83 and 1983-84 were not made permanent and inasmuch as the Patankar Award had directed the Marketing Federation to make permanent seasonal employees who had completed 240 days of service, there was an unfair labour practice under Items 5,6, and 9 of Schedule IV to the Act. The relief claimed was to quash the termination of the services of the said employees at the end of the season and to make the employees permanent from the date they completed 240 days of continuous service in 1983-84 Cotton Season. The further relief claimed was that the practice of continuing the employees under reference as seasonal or casual be declared as unfair labour practice and the direction be issued to the appellants to cease to indulge in it. The incidental relief claimed was that the appellants should be directed to pay the arrears of wages and all service benefits to the concerned employees treating them as permanent from 1983-84 Cotton Season. The Industrial Court by its impugned order of September 14, 1990 (i) allowed the said complaint, (ii) declared that the appellants had engaged in and were engaging in unfair labour practices as contemplated by Items 5,6, and 9 of Schedule IV to the Act, (iii) directed the appellants to cease and desist from indulging in the said unfair labour practices and (iv) directed them not to terminate the services of the concerned employees w.e.f. April 30, 1990, (v) directed the appellants to absorb and make permanent the said employees in compliance with the provisions of the Patankar Award and the agreement dated January 18, 1984 and also by giving the benefit of the Government letter dated January 18, 1985 and to grant arrears of wages by processing their cases in the light of the directions given in the said letter which was referred to by the High Court in its decision in Shripati Pandurang Khade and Ors. v. Zonal Manager, Co.op. Marketing Federation Ltd. and Ors. 1987. MH.L.J. 694.

12. The appellants challenged the said order by a writ petition in the High Court. The learned Single Judge dismissed the petition holding that the Patankar Award had become final and since it had given the direction to make permanent even the seasonal employees who had put in more than 240 days of service, the writ petition had no merit. The Letters Patent Appeal tiled before the Division Bench of the High Court was also dismissed on the same ground by the impugned decision dated March 27, 1992. It is against the said decision that the present appeals have come before us.

13. Before we advert to the respective contentions of the parties, it would be advantageous to clear some conceptions regarding the nature of the operations involved in the Cotton Scheme, the

category of the staff employed and the character of the seasonal employment under it. Although some attempt was made before us on behalf of the respondent- Union to show that the operation of procuring and processing of cotton is carried on throughout the year, there is nothing on record to support the said contention. On the other hand, the record shows that out of the three operations under the Scheme, the procurement and processing of cotton lasts on an average only for six months from November to April in the principal cotton regions, viz., Vidharbha, Marathwada and West Khandesh and rarely extends beyond that period depending upon the cotton crop. In fact, if the crop is less, the said period even ends earlier. In Western Maharashtra where there is scant crop of cotton, the procurement and processing season lasts only for about four months from August to November. Hence the staff needed for procurement and processing is only for about six months on an average but never beyond 7 to 8 months in any year. It is only the operation of marketing which goes on throughout the year and for the marketing as well as for the maintenance of accounts the staff is needed throughout the year. The seasonal staff is further classified into permanent, temporary, casual and part-time . The permanent seasonal employees have scales of wages different from those of the perennial staff. So also the part-time employees have scales of pay different from those of the full-time seasonal employees. The permanent seasonal employees are paid their full wages during the season, i.e., when they are in employment, according to the scale of pay. They are also paid their annual increments in that scale. During the off-season, they are paid monthly retention allowance equivalent to 25 percent of their monthly salary. In respect of the said employees, further a seniority list is maintained and this seniority list is scrupulously adhered to while employing them. If there is any vacancy in the perennial posts, the recruitment is first made from the seasonal employees according to the said seniority list. In addition, the following facilities are given to them:

(i) Specified grades and annual increments in said grades; (ii) Bonus in accordance with the provisions of the Payment of Bonus Act at the same rate at which it is paid to the perennial employees; (iii) Leave with wages; (iv) Casual leave at the rate of one day's casual leave for every month; (v) Paid holidays or salary in lieu of holidays;(vi) Gratuity in accordance with provisions of the Payment of Gratuity Act; (vii) Benefit of Provident Fund Scheme and Family Pension Scheme; (viii) Festival advance for Diwali, Ganapati festivals etc; (ix) Travelling Allowance and Daily Allowances as are paid to perennial employees; (x) Dearness Allowance; (xi) Benefit of Group Accident Insurance Scheme;(xii) Model standing orders are made applicable mutatis mutandis to give security of employment; (xiii) Family Planning incentives; and (xiv) fifteen days' salary at the end of every season towards overtime work.

The temporary and casual seasonal employees are engaged as and when needed on account of occasional increase in work and they are paid consolidated salary.

14. What is further necessary to note is that there is a difference between seasonal employment and seasonal employees. The employments which are only seasonal may require only seasonal employees and there are no perennial employees on their staff. On the other hand, an employment may have both perennial and seasonal work as in the present case, and hence require both kinds of workmen. Further, seasonal employees may be permanent or temporary. The permanent employees are employed from season to season successively and are entitled on that account for retention

allowance and all other benefits referred to above during the off-season because of their permanency as seasonal employees which is different from permanency as perennial employees. The temporary seasonal employees are not obviously entitled to the said benefits as the permanent seasonal employees since the temporary employees are not engaged from season to season but only when there is an increase in work. So is the case with the casual employees. There are also part-time seasonal employees and they carry different scales of wages by the very nature of their employment as pointed out above. The seasonal employees like the perennial employees also belong to different categories and grades. As stated above, at the relevant time the perennial employees of all categories were 2200 whereas the seasonal employees were 4500. We have to stress this aspect because we find that there is a good deal of confusion by the Tribunal and the Courts below on these aspects of the matter which has contributed to their erroneous conclusions.

15. Coming now to the contentions of the parties, the appellants urged before us that the present order of the Industrial Court as well as the decisions of the learned Single Judge and the Division Bench of the High Court have granted relief to the seasonal employees on the basis that the Patankar Award had directed the then Marketing Federation to give permanency also to the seasonal employees who had put in 240 days' work in a year. This assumption is itself erroneous since the terms of reference, the statement of claim of the workmen, the written statement filed by the Marketing Federation and the award would themselves show that the said dispute related to, and, therefore, the relief was given in respect of only the perennial employees. While not disputing the fact that there was no specific reference to the seasonal employees in either the terms of reference or the statement of claim of the workmen or in the award, the respondent-Union relied upon paragraph 10 in the written statement filed by the Marketing Federation in the said reference to urge that since the Marketing Federation had itself referred to the seasonal employees in the said paragraph, it had understood the demand for permanency as being related to the seasonal employees as well. We have quoted earlier the said paragraph in the written statement of the Federation. That paragraph has to be read in the context of not only the preceding paragraph (which is also quoted above) but also in the context of the statement of claim and the demand made. The relevant demand No. 4 for permanency has also been quoted by us above. Without mentioning whether it was in respect of perennial or seasonal employees, it proceeded to state that all the workmen who have put in three months aggregate service for 78 or more working days in aggregate, in spite of any intervening breaks, should be immediately confirmed in writing as permanent workmen. Since it is not, and cannot be, disputed that there is seasonal work under the Cotton Scheme and some workmen have necessarily to be employed for such work, it is difficult to hold that the Union had made the said demand also in respect of the seasonal employees. There is further nothing in the statement of claim filed on behalf of the Union in support of the said demand to suggest that the Union had in contemplation the case of any seasonal employees. On the other hand, in paragraphs 12 and 13 of the Statement of claim which related to the said demand, the Union had stated as follows:

12. It would be rather surprising for any authority to moot that such a gigantic organisation like Federation (employing about 3000 number of workmen) throughout the State of Maharashtra is having majority of the workmen as temporary workmen. The Union further points out that there are about 400 workmen who have put in more than 5 years service but still they have been termed as

"temporary" workmen by the Federation. The Union further points out that the business of the Federation is stable and has been continued progressively and, therefore, it is desirable that such of the workmen who have put in three months aggregate or who have put in 78 days minimum service in aggregate in spite of any (breaks) should be confirmed as permanent workmen.

13. It is a matter of regret that there are many workmen who have put in long number of years of service are being continued as temporary workmen, and, therefore, in the interest of justice, equity and fair play the demand may be given due consideration by the authorities itself. It is respectfully submitted that the work of the Federation has increased considerably during last seven years and the new projects have been coming up every now and then which require a large number of permanent staff and, therefore, it is necessary to make the workmen permanent as demanded by the Union. The Union further points out that service of temporary workmen on the ground of being a temporary can be terminated at any time in spite of the fact that such workman has put in a number of years of service, which is inequitable, unjust and improper and that under the circumstances the demand of the Union is just and proper.

16. This would show that the Union was concerned with the temporary perennial workmen and not with seasonal workmen. The Union knew that even among the perennial workmen there were some permanent and others temporary and they were espousing the cause of the said temporary workmen. That is also clear from the facts that the demand is raised in the context of the alleged requirement of the large number of permanent staff. The Union was particular in pointing out that the temporary workmen could be terminated at any time. As regards the seasonal employees, their services are terminated every year, after every season, and they are re-engaged according to the seniority list for the successive seasons. Therefore, the statement made in the statement of claim could not even remotely be connected with the seasonal employees. If at all the meaning of the said two paragraphs is stretched, it can at best be construed to refer to the temporary seasonal employees and not to the permanent seasonal employees. In that case, it would only mean that the Union wanted the temporary seasonal employees to be made permanent seasonal employees. But that is not how either the demand or the statement of claim can be read, and we do not read them so. Now coming to paragraph 10 in the written statement of the Marketing Federation, in paragraph 9, it showed its willingness to make permanent those employees who had completed three years of continuous service. This showed that even the Federation had understood the demand as relating only to the perennial employees and not to seasonal employees. In that Paragraph the Federation also pointed out that the Union's demand for making permanent the employees who had put in three months' continuous service was not justified since the said period was too short to judge the capacity and ability of the employee. These statements in paragraph 9 make it clear that knowing fully well that it had also seasonal employees who had to be continued from season to season for seasonal work, the Federation could not have made the statement in connection with the permanent seasonal employees. Paragraph 10 of the written statement has, therefore, to be read in that context. In further support of its opposition to the Union's demand, the Federation went on to point put that it required for carrying out its activities workmen both on temporary basis and on seasonal basis depending upon the nature of the workload. It then went on to point out the no period should be laid down in respect of such purely temporary and seasonal employees and the rule of permanency should apply only to employees who are recruited against the permanent posts and that it should

not apply to purely temporary or casual employees or seasonal employees. Read as a whole, these statements made in paragraph 10 will also show that if at all the seasonal employees were in the contemplation of the Marketing Federation, they were the temporary seasonal employees and not the permanent seasonal employees. By the very nature of their employment, the temporary seasonal employees can be made permanent only as permanent seasonal employees and not as permanent perennial employees. In any case, it is difficult to sustain the argument that the Federation was there referring to the permanency of the permanent seasonal employees. What is further, the Patankar Award does not even refer to the seasonal employees. It also does not make any distinction between the two and give reasons either to accept or reject the contentions of the parties. It merely summarises the arguments of the parties and gives a direction which is quoted above. The operative portion reads "considering, therefore, the arguments advanced on both sides, it appears that it would be proper to direct that those employees who have put in 240 days of continuous service be treated as permanent employees". The direction can be read either as a direction to make the temporary perennial employees and temporary seasonal employees as permanent perennial employees and temporary seasonal employees respectively or as a direction relating only to the temporary perennial employees. But in no case, it can be read as a direction to make seasonal employees as permanent employees as in the nature of things such a direction could not have been given. There are other reasons why the Tribunal could not have given such a direction and if such a direction was given, it would have been highly inequitous and discriminatory to the perennial employees, whether temporary or permanent. On the undisputed fact, that the procurement and processing operations under the Cotton Scheme do not last for more than 4 to 6 months and in any case not more than 8 months, to make the seasonal employees permanent and give them all the benefits of the perennial employees would mean that they would get the salary and all other benefits throughout the year as the perennial employees do, without putting in work throughout the year as the latter have to do. On the admitted fact that there is a need of seasonal employees and there is no work available to be given to them for a part of the year, the Cotton Scheme has always to maintain a distinction between the perennial employees and seasonal employees and has to provide them with different service conditions though some of the service conditions may be common. It is the failure to understand the nature of the operations and the nature of the employment required under the Cotton Scheme which is responsible for the impugned decisions of the Industrial Court and the High Court.

17. Further, the fact that even the seasonal workmen and their Union did not understand either the said demand adjudicated by Shri Patankar or the award given by him as referring to the seasonal employees is clear from the subsequent events to which we have already made a reference; We have pointed out that after the Patankar Award which was given on August 31, 1984 all the then seasonal employees continued as seasonal employees throughout, and the Marketing Federation made only the temporary perennial employees permanent perennial employees as per the direction of the said Award. None of the seasonal employees was made permanent except when he was recruited in the vacancies occurring in the post of permanent perennial employees. But that was not because of the Patankar Award. It was as per the understanding between the parties. The Union never raised any objection to the same. In fact, as pointed out earlier, there were three settlements between the parties on June 12, 1980, December 11, 1981 and December 22, 1982 which not only did not speak a word about making any seasonal employee who had put in 240 days of work, permanent but spoke

about all other matters relating to them. The settlement of December 11, 1981 in fact spoke about the setting up of the Committee for examining problems of the seasonal employees. The problems referred to there would show that not only was the system of seasonal employees to continue but the strength of such seasonal employees was to be assessed zone-wise. They were to be ensured maximum period of employment during the season. In fact, one of the problems which was to be investigated was whether the technical breaks which were given to employees who were employed for 9 to 12 months were necessary. This meant that the Patankar Award had no bearing on the seasonal employees. In fact, the recommendation made by the Bhuibhar Committee, as accepted by the State Government , showed that the seasonal employees were not on the agenda of the industrial dispute adjudicated by Shri Patankar.

18. On the other hand, recommendation 11 made in the said report categorically stated that the demand made by the seasonal employees subsequent to the said Award [pursuant to which the committee itself was appointed] for employment throughout 12 months could not be accepted since the financial burden would fall on the cultivators and consequently would affect the Cotton Scheme itself. That recommendation was accepted by the Government. So also the recommendation 24 stated that the increase in the sanctioned strength of the seasonal employees at Zonal and Sub-Zonal offices which was suggested to the Committee required in-depth study of the matter. That recommendation was also accepted by the Government. Recommendations 25 and 27 suggested new pay scales for the full-time and part-time seasonal employees respectively. The report also suggested the recruitment of seasonal employees in the vacancies of the perennial employees. The agreement of January 18, 1984 between the Marketing Federation and the respondent-Union which followed the said report, records the relevant facts. Thus, apart from the agreement of June 12, 1980, agreement dated December 11, 1981 under which the Committee was appointed and the agreement of January 18, 1984 by which the recommendations of the Committee were accepted, show that the problems of the seasonal employees were all along kept separate and were dealt with separately from the problems of the perennial employees. Had the dispute with regard to the permanency of the seasonal employees been referred for adjudication to the Industrial Tribunal of Shri Patankar and had the said Award related to the seasonal employees, there would have been no need to enter into the agreements of June 12, 1980, December 11, 1981 and December 22, 1982. There would also have been no need to appoint the Special Committee to study the problems of the seasonal i employees including the problem of their permanency, and there would have been no need for the agreement of January 18, 1984 which followed the recommendations of the Committee. We are, therefore, more than satisfied that there is no substance in the contention of the respondent-Union that either the Industrial Tribunal of Shri Patankar was called upon to adjudicate the dispute with regard to the permanency of the seasonal employees or that the award made by i the said Tribunal had directed the seasonal employees who had put in 240 days of work to be made permanent.

19. As has been pointed out above, in fact no such direction could have been given by the said Tribunal, in the circumstances of the case. The question whether there was a need of the seasonal employees, and for what period, was essentially a matter of in- depth investigation. To answer the said question, it was necessary to collect facts from each of the Cotton Zones since the seasons varied from zone to zone, and to assess the need for each category of workmen for each of the zones

and for each of the processes of procuring and processing of cotton. It was also necessary to assess the required strength of each of the categories of the seasonal workmen by taking into consideration the compliment of the perennial workmen. For this purpose, it is necessary to raise a specific demand for abolition of the category of the seasonal employees. If such a demand is referred for adjudication, the adjudicator would have to formulate specific questions, give opportunity to the parties to lead evidence on each of the questions and to give his specific findings on them. There cannot be a common demand for permanency of perennial and seasonal employees, the nature of their employment being different. As pointed out above, if the demand is for making temporary seasonal employees permanent seasonal employees, it would have to be stated so clearly and the finding thereon has to be in specific terms. On the other hand if the seasonal employees have to be made permanent meaning perennial, in the sense that they have to be given work for all the 12 months, they would still be temporary perennial employees, and not necessarily permanent perennial employees. That is why the demand of the seasonal employees even before the Bhuibhar Committee was to give employment to them for 12 months. The demand was not for making them perennial employees. A demand merely for permanency in their case in effect involves two demands, viz., (i) to abolish the seasonal employment and to make it perennial and (ii) after making it perennial, to make the erstwhile seasonal employees permanent. These are two different things and its is the omission to understand the significance of the said difference, which has led to the present confusion.

20. Being faced with this problem it was urged on behalf of the respondent Union that firstly, the Marketing Federation as per the decision of this Court in Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. v. Shripati Pandurang Khade and Ors. 1989-I-LLJ-57 had implemented the decision of the Patankar Award. Secondly, it was urged that since the appointment letter given to the seasonal employees shows that the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 were applicable to them and since one of the Model Standing Orders, viz., Order No. 4-B reads as under:

A temporary workman, who has put in 190 days uninterrupted service in the aggregate in any establishment of a seasonal nature or 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 other 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 twelve months.

21. The seasonal employees were entitled to be made permanent after they had put in 240 days' uninterrupted service. None of these arguments has any merit. In Pandurang Khade's case (supra) the employees involved belonged to Phaltan Zone in the Western Maharastra, where, as stated earlier, the cotton season does not last for more than 4 months. They had made a complaint before the Industrial Court on the ground of unfair labour practice by the Marketing Federation referred to in items 5,6, and 9 of Schedule IV to the Act. The Industrial Court had dismissed the said complaint holding that the grievance made was not covered by the said items but it came under Item 1 of the Schedule and there was no complaint under the said item. The Industrial Court had also dismissed the complaint as being barred by limitation. The High Court allowed the writ petition of the

respondent- Union against the said decision and that is how the matter had reached this Court. It is evident from paragraphs 8, 11 and 12 of the judgment of this Court that firstly, the Court had proceeded on the footing that the expressions 'temporary employees' and 'seasonal employees' were synonymous. Secondly, the court had assumed that before the Industrial Tribunal of Patankar, there was a demand for the permanency of seasonal employees and that the Patankar Award had granted permanency to the seasonal employees. The Court had also proceeded on the footing that since the letter of the Government dated November 9, 1984 had directed the appellant to finally absorb all staff employed with the Marketing Federation as on January 1, 1985, the appellant was under an obligation to absorb the six seasonal workmen concerned therein who had, according to the Court, become permanent pursuant to the Patankar Award. The court for the purpose also relied upon the letter dated January 18, 1985 to which a reference was made by the High Court in its judgment under appeal in that case to hold that those who had put in 240 days of service were to be given all the benefits mentioned in the said letter, whether the employees were perennially or seasonally employed.

22. As has been pointed out earlier, this Court in Pandurang Khade's case supra had proceeded on the footing that the Patankar Award had directed even the seasonal employees to be made permanent which presumption was not borne out by the facts. As far as the letter of November 9, 1984 is concerned, it only speaks of the employees who were with the Marketing Federation to be absorbed on the 'as is' basis by the appellant Federation which means that the perennial and seasonal employees were to be taken over as such employees only. The letter did not mean that those who were seasonal employees should be taken over as perennial employees. As far as letter of January 18, 1985 is concerned, it is addressed to one of the employees concerned in the Pandurang Khade's case (supra). That letter was relied upon both by the High Court as well as this Court in that case to hold that Patankar Award applied to the seasonal employees. We have pointed out that the presumption was contrary to facts and, therefore, the decision was per incurium. That letter does not improve the matter. Hence, the reliance placed on the two letters for contending that the seasonal employees who had put in 240 days of service were to be made permanent or that the appellant Federation had accepted them as perennial permanent employees, is not well merited.

23. The reliance placed by the respondent -Union, therefore, on the fact that the seasonal employees belonging to the Phaltan Zone were made permanent although they were junior to the other seasonal employees to contend that all the seasonal employees who had put in 240 days of service should be made permanent is misconceived. The cases of the said employees having been decided on incorrect facts will have therefore to be treated as isolated instances and cannot be made the basis of the contention that the seasonal employees who have put in 240 days' work should be made permanent perennial employees.

24. Coming now to the next contention, viz., that in the appointment letters of the seasonal employees it has been specifically mentioned that their conditions will be governed by the Model Standing Orders and Model Standing Order No. 4-B, which is quoted above, requires that the employees who have put in 240 or more days of service should be made permanent. We are of the view that the contention has no substance. It must in the first instance be remembered that the Model Standing Orders do not apply to seasonal employees. Secondly, the seasonal employees in the

present case are governed by their own service conditions, which, as pointed out above, have in material respects no relation to the service conditions of the perennial employees who are governed by the said Model Standing Orders. It is, therefore, incorrect to say that all the Model Standing Orders are applicable to the seasonal employees. By the appointment letters, the Model Standing Orders have only been incorporated in the other service conditions of the seasonal employees only to the extent that the specific service conditions of the seasonal employees are silent on the aspect covered by the Model Standing Orders and which orders would necessarily apply to the seasonal employees. The Model Standing Orders, therefore, are applicable to the seasonal employees mutatis mutandis. The Model Standing Order No. 4-B in particular will be inapplicable to the seasonal employees because of the very nature of their employment and hence it cannot be read into the service conditions of the seasonal employees. Lastly, a reading of the said Model Standing Order No. 4-B would itself make it clear that it is applicable to the perennial employees only. It speaks of temporary workmen in any establishment of a seasonal nature or in other establishments during a period of preceding twelve months. Admittedly, the appellant-Federation's establishment is not of a seasonal nature. It is only some employees employed therein who are seasonal. Secondly, as far as the employees in the other establishments spoken of there, are concerned, they can only be such employees who are employed for perennial work but for some reason or the other are not allowed to complete 240 days in such perennial work. It is, therefore, clear that the said Model Standing Order does not apply to seasonal employees. Hence this contention has also to be rejected.

25. In the result, we allow the appeals and set aside the decisions of the Industrial Court and of the High Court. In the facts and circumstances of the case, there will be no order as to costs.