

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.10373 OF 2004
WITH
INTERIM APPLICATION (STAMP) NO.19212 OF 2022
IN
WRIT PETITION NO.10373 OF 2004**

Sunil Jyotiram Mangalekar and Anr. ***...Petitioners***

V/s.

Municipal Commissioner,
Ichalkaranji Municipal Corporation
and Anr. ***...Respondents***

**WITH
INTERIM APPLICATION (STAMP) NO.22568 OF 2022
IN
WRIT PETITION NO.10373 OF 2004**

Aayub Maula Kotwal since deceased
through his legal heirs-
Miss. Simran Ayub Kotwal and Ors. ***...Applicants***

In the matter between

Sunil Jyotiram Mangalekar and Anr. ***...Petitioners***

V/s.

Municipal Commissioner,
Ichalkaranji Municipal Corporation
and Anr. ***...Respondents***

**WITH
INTERIM APPLICATION (STAMP) NO.22528 OF 2022
IN
WRIT PETITION NO.10373 OF 2004**

Indubai Gulab Awale decd. Through
Legal heirs-
Anil Gulab Awale and Anr.

...Applicants

In the matter between:
Sunil Jyotiram Mangalekar and Anr.

...Petitioners

V/s.

Municipal Commissioner,
Ichalkaranji Municipal Corporation
and Anr.

...Respondents

Ms. Seema Sarnaik, *Senior Advocate i /b. Ms. Sangeeta Dalvi for
the Petitioners.*

Mr. Akshay P. Shinde *for the Respondent No.1.*

CORAM: SANDEEP V. MARNE, J.

Dated: 28 March 2025.

P.C.:

1) Petition challenges judgment and order dated 31 July 2004 passed by the Member, Industrial Court, Maharashtra, Kolhapur, to the limited extent of refusal of relief of regularisation of services on the ground that they were part of Writ Petition No.1163 of 1994. The Industrial Court has otherwise granted the relief of regularisation to the remaining complainants, who were not part of Writ Petition No.1163 of 1994. It is Petitioners' case that they have been discriminated only on account of the fact that their names were included in the

list of workers alongwith others in Writ Petition No.1163 of 1994. They complained that they have not secured the relief of regularisation either through Writ Petition No.1163 of 1994 nor the Industrial Court has granted them the relief of regularisation.

2) I have heard Ms. Sarnaik, the learned senior advocate appearing for the Petitioners and Mr. Shinde, the learned counsel appearing for Respondent No.1-Municipal Corporation.

3) It appears that Petitioners were engaged as *badli* workers by the erstwhile Respondent-Municipal Council from time to time. It is the case of the Respondent that the engagement was against leave vacancies on account of leave availed by the permanent employees. It appears that Writ Petition No.1163 of 1994 was filed by the Ichalkaranji Municipal Council Workers Union (INTUC) in this Court seeking filling up of vacancies of Class-IV employees in Safai Kamgar category from amongst the lists submitted by the Union. In that Petition, interim order dated 14 June 1994 was passed, under which various *badli* workers were absorbed in service from time to time. It appears that Directorate of Municipal administration had sanctioned 100 posts, which were taken up for filling by considering the cases of *badli* workers. 25 *badli* workers were already appointed and 35 workers were eligible to be appointed. At that stage Minutes of Order dated 5 February 1999 came to be filed in Writ Petition No.1163 of 1994, under which it was agreed

that the balance vacancies would be filled by considering the names of persons from the lists submitted by the Union. This Court therefore noted that the list of *badli* workers submitted by the Union stood exhausted and that neither the Union nor persons from the said list had any further claim or grievance.

4) It is the case of the Petitioners that their names also figured in the lists submitted by the Union. That though assurance was given to this Court that the balance vacancies would be filled up by considering names of all persons in the lists, Petitioners were actually not absorbed in service in breach of Minutes of Order dated 5 February 1999. Petitioners therefore filed Civil Application for recall of order dated 5 February 1999. During pendency of that Civil Application, Petitioners were advised to file Complaint of unfair labour practice before the Industrial Court by joining hands with other workers. On account of Petitioners availing the remedy of filing of Complaint, it appears that the Civil Application seeking recall of consent Minutes of Order came to be disposed of. While Petitioners were hoping grant of relief by the Industrial Court, the claim of Petitioners were held to be not maintainable on account of the fact that they are already covered by orders passed by the High Court in Writ Petition No.1163 of 1994. Petitioners had apparently filed Complaint (ULP) No.82 of 2000 alongwith several other workers. The Industrial Court has upheld the claim for regularization of many of the workers. However, the Industrial Court held that since Petitioners were already

governed by order passed by this Court in Writ Petition No.1163 of 1994, the relief of regularization is therefore denied to them. It is therefore the claim of Petitioners that they are left remediless both in the proceedings filed before this Court as well as in Complaint filed before the Industrial Court. While this contention does appear to be true, in my view it is not possible to grant any relief in favour of the Petitioners at this distant point of time. If Petitioners felt that non-grant of regularization in their favour was in breach of consent Minutes of Order dated 5 February 1999, they ought to have exercised appropriate remedy in respect of their grievances. Though they filed Civil Application seeking recall of order dated 5 February 1999, the same was disposed of granting liberty to the Petitioners to pursue the Complaint of unfair labour practice. In the result, the grievance of the Petitioners has remained undecided. Petitioners have lost job many years ago and are no longer in service. Status of Municipal Council is also now changed and which has now become Ichalkaranji Municipal Corporation. It is therefore too late in a day to now decide the claim of Petitioners for regularization.

5) Though plea of discrimination is sought to be raised on behalf of the Petitioners as other complainants in Complaint (ULP) No.82 of 2000 are granted the relief of regularization, in my view, whether such regularization could have been granted to the remaining complainants was itself questionable. The Municipal Corporation had taken a specific stand that the

engagement was purely against leave vacancies. In ordinary course, engagement during the period of leave vacancy, does not give rise to right of regularization. Be that as it may. It is too late in the day to disturb regularization already granted to the remaining complainants of Complaint (ULP) No.82 of 2000. However, merely because the remaining complainants are granted the relief of regularization, the same cannot be a ground to regularise the Petitioners in services at this belated stage. Their initial engagements were not in accordance with law. They were engaged as *badli* workers against leave vacancies. They were not subjected to selection process at the time of their engagement. Their engagements were not against sanctioned posts. They worked intermittently only during leave of regular employee. In such circumstances, relief of regularization is otherwise impermissible in law. If a person works against the leave vacancy on a temporary basis, he must vacate the said post immediately after regular employee resumes duty after leave. Granting regularization against leave vacancy would result in two persons working against one sanctioned post. This indirectly results in creation of posts on the establishment of Municipal Council/ Corporation.

6) In my view therefore, no case is otherwise made out by Petitioners for grant of relief of regularization. Petition is thus, devoid of merits. It is accordingly dismissed without any orders as to costs. Rule is discharged.

7) Pending application(s), if any, stand disposed of.

[SANDEEP V. MARNE, J.]

MEGHA
SHREEDHAR
PARAB

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