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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1735 OF 2015

MUKHYADHIKARI, NAGAR PARISHAD, TULJAPUR
VERSUS
VIJAY SUMERASINH DESHMUKH

...

Advocate for Petitioner : Shri Kulkarni Krishna K.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 14th December, 2015

Per Court:

1 On 12.02.2015, this Court had passed the following order:-

- “1. Learned Adv. Mr.K.K.Kulkarni submits that identical group of 31 matters in W.P.No.11257/2014 to 11287/2014, arising out of an identical impugned judgment of the Industrial Court, have been decided by this Court on 11/12/2014. This petition stands on identical set of facts and law and the same judgment can be made applicable to this case.
2. In the light of the above, issue notice before admission to the respondent, returnable on 27/02/2015. Hamdast allowed. Besides court notice, private service by Speed Post is permitted. Learned Advocate to produce the speed post tracking report's print out on the returnable date.”

2 By order dated 13.02.2015, paragraph 1 of the above reproduced order was corrected as under:-

- “3. For the reasons set out in the motion, the same is

allowed. Paragraph No.1, shall, therefore, stand corrected and shall read as under:-

"1. Identical group of 31 matters in W.P.No.11257/2014 to 11287/2014, arising out of an identical impugned judgment of the Industrial Court, have been decided by this Court on 11/12/2014. This petition stands on identical set of facts and law and the same judgment can be made applicable to this case."

3 The Petitioner was, therefore, permitted to serve notice by speed post on the Respondent. The notice of this Court was also issued.

4 The court notice on Respondent is still awaited. However, the Petitioner has produced the tracking report from the India Post, Ministry of Communication and Information Technology website in relation to the notice served on the Respondent. The tracking report placed on record is, therefore, marked as Exhibit X for identification.

5 I can see from the tracking report that the notice sent by the Petitioner to the Respondent has been delivered to the Respondent, namely, Vijay Sumersinh Deshmukh on 18.02.2015 at 16:01:00 at Tuljapur. No appearance has been entered, either in person or through an Advocate, by the Respondent.

6 The Petitioner submits that this matter may be heard today

since the tracking report which is an authentic representation of the notice served upon the Respondent has a presumptive value and therefore, the Respondent stands served.

7 I have heard Shri Kulkarni for sometime. He has criticized the impugned judgment dated 27.06.2014. His contention is that when the Petitioner does not have the authority to create posts, there cannot be an allegation that the Petitioner has continued daily-wagers for years together with an intent and object of depriving them of the benefits of regularization and permanency.

8 This Court has dealt with an identical issue involving the same Petitioner and identically situated workmen in a group of 31 Writ Petitions by its judgment dated 11.12.2014 in Writ Petition No.11257/2014 and connected matters in the case of *Mukhyadhikar, Nagar Parishad, Tuljapur vs. Vishal Vijay Amrutrao and others*. Since the facts of this case stand on an identical set of facts, I am not required to take a different view.

9 In the light of the above, the grievance of the petitioner to the extent of a declaration of ULP by the Industrial Court, needs to be entertained. It is settled law that when the state instrumentality cannot

create posts and cannot grant permanency to an employee, on a non existing vacant permanent post, the object of depriving the workers of the benefits and status of permanency cannot be said to be proved and which is a salient ingredient of Item 6 of Schedule IV. To this extent, the ratio laid down by this Court in *Lagwad Adhikari and others vs. Yasin Hamid Sayyad*, **2008 (2) Mh.L.J. 338**, will be applicable.

10 When the Industrial Court itself was convinced that the petitioner needs to send the proposals to the Government for approval, it should have refrained from issuing a declaration of Unfair Labour Practices. There was no evidence as regards any act of force or violence on the part of the petitioner so as to attract Item No.10 of Schedule IV. Similar was the case as regards the object required under Item No.6, which consequentially also affects Item No.9 of Schedule IV. The Industrial Court has rightly directed the petitioner to send the proposals of the respondents for approval since the Government has to take a call on the services of such respondent / workman at the earliest. However, there could not have been a declaration of ULP.

11 In the light of the above, I hereby allow this petition partly only to the extent of modifying the impugned judgment in so far as the declaration of ULP is concerned. Clause 2 of the operative part of the

impugned judgment is modified only to the extent of setting aside the declaration of ULP as against the petitioner. The remaining portion of the impugned judgment alongwith its directions to the petitioner to send the proposals to the Government for approval and for grant of permanency, is sustained. The same shall be complied with within two months from today and the State shall take a decision on the said proposals within four months after receiving them from the petitioner.

(RAVINDRA V. GHUGE, J.)