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

WRIT PETITION NO. 4660 OF 2012

- 1 Shirdi Nagar Panchayat,
Shirdi, Tq.Rahata,
District : Ahmednagar.
Through Administrator.
- 2 Shirdi Nagar Panchayat,
Shirdi, Tq.Rahata, District : Ahmednagar.
Through Chief Officer.

...PETITIONERS

-VERSUS-

- 1 The State of Maharashtra.
Through it's Secretary,
Nagar Palika Administration,
Manatralaya, Mumbai-32.

(Copy to be served on AGP
High Court of Bombay Bench at
Aurangabad.)
- 2 Ahmednagar Zilla Nagar Palika
Kamgar Union, Trade Union Center,
Tahsil, Kacheri Road, Shrirampur,
District Ahmednagar.
Through General Secretary.

...RESPONDENTS

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Advocate for Petitioners : Mrs.Renuka Ghule.
AGP for Respondent No.1 : Mrs.S.D.Shelke.
Advocate for Respondent No.2 : Mr.S.S.Wagh h/f Mr.S T Shelke.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th July, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner/ Municipal Council is aggrieved by the judgment and order dated 03.01.2011 delivered by the Industrial Court, Ahmednagar in Complaint (ULP) No.287/1999.

3 The Petitioner was earlier Gram Panchayat which was converted into Nagar Palika on 10.01.1990 and later on converted into Nagar Panchayat on 21.06.1999. 22 posts were converted from the Gram Panchayat to Municipal Council. The Municipal Council Administration sanctioned 139 posts, out of which, 58 are Class-III posts and 81 are Class-IV posts.

4 The Respondent Union is espousing the cause of Dagdu Yadav Kharat in the complaint. He was appointed on 28.06.1990 as a “Majoor” with the Municipal Council in the Water Supply Department. In Writ Petition No.4374/1998, 77 employees have been regularized under the orders of this Court. Dagdu Yadav Kharat, though appointed as a “Majoor”, had the driving licence to drive a heavy vehicle. He was granted

permanency as a “Majoor” on 01.07.1992.

5 The Respondent/ Union preferred Complaint (ULP) No.287/1999 seeking regularization of Daggu Yadav Kharat as a Driver w.e.f. his engagement on the said post. The Petitioner filed its say and written statement and opposed the complaint. By the impugned judgment dated 03.01.2011, the complaint was allowed and the Industrial Court issued the following directions:-

- “1. *The complaint is allowed.*
2. *It is hereby declared that the respondent is engaged in and continued to engage unfair labour practice under Item-9 of Sch-IV of the MRTU & PULP Act, 1971.*
3. *The respondent is hereby directed to cease and desist from continuing to engage unfair labour practice by granting the post of Driver to Shri Daggu Yadav Kharat from the date he was granted permanency i.e. July, 1999 and benefits thereof, if any, within a period of one month from today.*
4. *No order as to costs.”*

6 The contention of the Petitioner is that the Industrial Court could not have directed the Petitioner to grant permanency benefits to Daggu Yadav Kharat from July, 1999. He does not possess educational qualification to be a driver which is Xth standard. It is, however, conceded that he is working as a driver from 1997. Presently, he has been posted in the Fire Fighting Department. It is submitted that merely because Daggu Yadav Kharat was permitted to drive the vehicle, would not mean that he

is entitled for regularization as a driver and benefits incidental thereto. It is, therefore, prayed that this petition be allowed and the impugned judgment be quashed and set aside.

7 Shri Shelke, learned Advocate for Respondent No.2 Union, which represents Dagdu Yadav Kharat, submits that he has already become permanent as “Majoor” on 01.07.1992. He has put in about 18 years of service as a driver. After completing more than two years as a driver, he had preferred the complaint which has been allowed on 03.01.2011. Presently, he is working in the Fire Fighting Department.

8 It is pointed out that one post of driver is vacant. The Petitioner presented the witness, namely, Murlidhar Dasare. He was working as the Head Clerk in the Establishment Department. He stated that Dagdu Yadav Kharat is working as a driver and the said post is vacant. He further stated that Dagdu Yadav Kharat was paid the wages of a skilled worker. He has also stated that Dagdu Yadav Kharat was paid the salary of a driver.

9 The witness Murlidhar Dasare has further stated that one Mr. Fatangare and Dagdu Kharat are appointed on the same date and Dhulsundar was appointed after Dagdu Yadav Kharat. All three have the

same qualification. The Petitioner has sent the proposal of Fatangare and Dhulsundar, but did not send the proposal of Daggu Kharat.

10 Shri Shelke, therefore, submits that the statement of the Management witness brought the truth to light and this petition is, therefore, rendered without any merit.

11 I have considered the submissions of the learned Advocates who have taken me through the petition paper book. There is no dispute that Daggu Yadav Kharat is working since 28.06.1990. He was granted permanency as "Majoor" on 01.07.1992. He had worked as driver for more than 15 years and has a driving licence of a heavy vehicle.

12 The testimony of the Petitioner's witness, namely, Murlidhar Dasare has in fact settled the dust on this controversy. His admissions are recorded on the internal page nos.11 and 12 of the impugned judgment. He has conceded that the post of driver is vacant, Daggu Kharat was working as driver when the complaint was filed, Fatangare and Dhulsundar who are identically placed as like Daggu Kharat, have already been regularized since their proposal was sent by the Petitioner. The proposal of Daggu Kharat was not forwarded.

13 In the light of the above, I do not find that the impugned judgment could be said to be perverse or erroneous. The oral and documentary evidence placed before the Industrial Court has been properly considered. It is not in dispute that the benefits of regularization are made available by the State Government for which the proposal of Daggu Yadav Kharat will have to be forwarded for absorption on a vacant post of driver which is available.

14 As such, this Writ Petition is dismissed. It is expected that the Petitioner shall forward the proposal of Daggu Yadav Kharat for seeking regularization as a driver as per the directions of the Industrial Court within a period of EIGHT WEEKS (08) from today. The appropriate Government shall accordingly, pass the orders considering the directions of the Industrial Court within a period of SIXTEEN WEEKS (16) from the date of receipt of such proposal.

15 Rule is discharged.

(RAVINDRA V. GHUGE, J.)