

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4745 OF 2002

MUNICIPAL COUNCIL, PARBHANI,
THROUGH ITS CHIEF OFFICER

PETITIONER

VERSUS

VISHWAS UTTAMRAO LATPATE,
AGE-37 YEARS, OCCU-SERVICE,
R/O SAMTA NAGAR,
PARBHANI

RESPONDENT

Mr.S.S.Bora, Advocate for the petitioner.

Mr.Shailendra S.Kulkarni, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/07/2015

ORAL JUDGMENT :

1. This matter was admitted by order dated 05/02/2003.
2. The petitioner is aggrieved by the impugned judgment dated 02/09/1999 delivered by the Industrial Court, Jalna in Complaint (ULP) No.973/1994.
3. I have heard the learned Advocates for the respective sides.
4. It is not in dispute that the respondent is working on daily

wages with the petitioner from 1998. A Resolution was passed by the petitioner Municipal Council to forward a proposal to the Government seeking creation of posts and regularization of daily wage workers as and when the permanent posts are created. It is also not in dispute that the posts were created in 2001 and the respondent/employee has been given effect of regularization and benefits incidental thereto w.e.f. 28/04/2001. Several other workers were regularized with him from the said date.

5. The respondent had filed the complaint alleging unfair labour practices under Item 6, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971. By the impugned judgment and order dated 02/09/1999, the Industrial Court concluded that the petitioner/Municipal Council was guilty of unfair labour practices and issued directions to regularize the services of the workman w.e.f. 02/01/1992.

6. It is not controverted that the proposal forwarded by the petitioner was accepted after a decade and several workers including the respondent were granted benefits of regularization from 28/04/2001.

7. This Court had an occasion to deal with a large group of cases concerning a similar Municipal Council of Tulzapur in Writ Petition No.11257/2014 with several connected matters and Writ Petition No.1843/2015 with connected matters. The judgments of this Court in these 2 group of cases dated 11/12/2014 and 26/02/2015 have been delivered on identical set of facts as like those in this petition.

8. This Court came to a conclusion that since a Municipal Council did not have power to create permanent posts, the allegation that the Council deliberately continued the employees as daily wagers with an intent and object of depriving them of the benefits of permanency thereby tantamounting to an unfair labour practice, was not sustainable. It is not in dispute that the Municipal Council is not empowered to create posts.

9. The respondent has put forth a specific grievance. The respondent had placed a Government Resolution dated 12/06/1990 below Exh.U-23 before the Industrial Court which indicates that handicapped persons or physically challenged persons are required to be given preference in regularization. A similarly Government Resolution of 1985 was also cited.

10. Mr.Kulkarni has, therefore, submitted that he is not interested in a paper declaration of ULP against the employer. His interest lies in getting the benefits of the Government Resolution dated 12/06/1990 which should be rightfully given to him. He, therefore, submits that though the directions given by the Industrial Court cannot be implemented by the petitioner, they can surely refer the proposal of the respondent to the Government or the appropriate department for a decision in the light of the Government Resolution dated 12/06/1990. Mr.Bora, learned Advocate for the petitioner has no objection.

11. In the light of the above and in the light of the judgments delivered by this Court in the above mentioned two groups of cases dated 11/12/2014 and 26/02/2015, the declaration made by the Industrial Court in paragraph No.2 of its order in the impugned judgment holding the petitioner guilty of ULP under Item No.6 and 9 of Schedule IV, is quashed and set aside.

12. Paragraph No.3 of the said order is modified to the extent of directing the petitioner to forward the proposal of the respondent, complete in all respects, indicating his physical disability, to the appropriate department / authority of the State Government for an

expeditious decision for granting the deemed date of regularization of the respondent in the light of the Government Resolution dated 12/06/1990.

13. The proposal shall be sent by the petitioner within a period of 6 (six) weeks from today to the appropriate department which shall decide the proposal within 4 (four) months from the date of its receipt and communicate its decision to the petitioner with a copy marked to the respondent.

14. In the event the grievance of the respondent still survives, he shall have the liberty to resort to a legal remedy, as may be available in Law.

15. In the light of the above, this petition is partly allowed and Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)