

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.17 OF 2014

- 1 Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.
- 2 Umbrella Society,
For Reproductive & Child Health
(RCH) Programme through
Commissioner, Ahmednagar
Municipal Corporation. ..PETITIONERS

VERSUS

- 1 Pallavi Divakar Sagalgile
Age : 25 yrs, Occu : Service,
R/o. Baship Loid Colony,
Savedi, Ahmednagar.
- 2 The State of Maharashtra,
Through its Secretary,
Nagar Urban Development Department,
Mantralaya,
Mumbai 400 032. ..RESPONDENTS

WITH

WRIT PETITION NO. 18 OF 2014

- 1 Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.
- 2 Umbrella Society,
For Reproductive & Child Health
(RCH) Programme through
Commissioner, Ahmednagar
Municipal Corporation. ..PETITIONERS

VERSUS

- 1 Mandakini Digambar Dalve
Age : 36 yrs, Occu : Service,
R/o. Saraswati Colony,
Near Kohinoor Mangal Karyalaya,
Savedi,
Ahmednagar.
- 2 The State of Maharashtra,
Through its Secretary,
Nagar Urban Development Department,
Mantralaya,
Mumbai 400 032.

..RESPONDENTS

WITH
WRIT PETITION NO. 19 OF 2014

- 1 Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.
- 2 Umbrella Society,
For Reproductive & Child Health
(RCH) Programme through
Commissioner, Ahmednagar
Municipal Corporation.

..PETITIONERS

VERSUS

- 1 Nalini Pandurang Gawali,
Age : 29 yrs, Occu : Service,
R/o. Ganat, Plot No. 35,
Opp. Nikhil Row Housing Society,
Bolegaon-Phata,
Ahmednagar.
- 2 The State of Maharashtra,
Through its Secretary,
Nagar Urban Development Department,
Mantralaya,
Mumbai 400 032.

..RESPONDENTS

WITH
WRIT PETITION NO. 20 OF 2014

- 1 Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.
- 2 Umbrella Society,
For Reproductive & Child Health
(RCH) Programme through
Commissioner, Ahmednagar
Municipal Corporation. ..PETITIONERS

VERSUS

- 1 Rekha Anandrao Chandne
Age : 31 years, Occu : Service,
R/o. B-16, Dashrath Apartment,
Siddharth Nagar,
Ahmednagar.
- 2 The State of Maharashtra,
Through its Secretary,
Nagar Urban Development Department,
Mantralaya,
Mumbai 400 032. ..RESPONDENTS

WITH
WRIT PETITION NO. 21 OF 2014

- 1 Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.
- 2 Umbrella Society,
For Reproductive & Child Health
(RCH) Programme through
Commissioner, Ahmednagar
Municipal Corporation. ..PETITIONERS

VERSUS

- 1 Meena Nanasaheb Dalvi,
Age : 28 years, Occu : Service,
R/o. Deorai, Tq. Pathardi,
Dist. Ahmednagar.
- 2 The State of Maharashtra,
Through its Secretary,
Nagar Urban Development Department,
Mantralaya,
Mumbai 400 032 ..RESPONDENTS

WITH
WRIT PETITION NO. 22 OF 2014

- 1 Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.
- 2 Umbrella Society,
For Reproductive & Child Health
(RCH) Programme through
Commissioner, Ahmednagar
Municipal Corporation. . .PETITIONERS

VERSUS

- 1 Varsha Sudhakar Kolhe
Age : 25 years, Occu : Service,
R/o. Kapileshwar Nagar,
Behind Renuka Mata Mandir,
Nam-ganga Road, Saras Nagar,
Aurangabad.
- 2 The State of Maharashtra,
Through its Secretary,
Nagar Urban Development Department,
Mantralaya,
Mumbai 400 032 ..RESPONDENTS

WITH
WRIT PETITION NO. 23 OF 2014

- 1 Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.
 - 2 Umbrella Society,
For Reproductive & Child Health
(RCH) Programme through
Commissioner, Ahmednagar
Municipal Corporation.
- ..PETITIONERS

VERSUS

- 1 Vaishali Sahebrao Anandkar
Age : 25 years, Occu :Service,
R/o. Plot No. 4-A,
Udhay Housing Society,
Behind Renavikar High School,
Savedi, Ahmednagar.
 - 2 The State of Maharashtra,
Through its Secretary,
Nagar Urban Development Department,
Mantralaya,
Mumbai 400 032
- ..RESPONDENTS

WITH

WRIT PETITION NO. 24 OF 2014

- 1 Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.
 - 2 Umbrella Society,
For Reproductive & Child Health
(RCH) Programme through
Commissioner, Ahmednagar
Municipal Corporation.
- ..PETITIONERS

VERSUS

- 1 Swati Pandurang Kamble,
Age : 26 years, Occu : Service,
R/o. 129/736,

Civil Hudco Flat System,
Ahmednagar.

- 2 The State of Maharashtra,
Through its Secretary,
Nagar Urban Development Department,
Mantralaya,
Mumbai 400 032 ..RESPONDENTS

WITH

WRIT PETITION NO. 25 OF 2014

- 1 Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.
- 2 Umbrella Society,
For Reproductive & Child Health
(RCH) Programme through
Commissioner, Ahmednagar
Municipal Corporation. ..PETITIONERS

VERSUS

- 1 Sangita Dattatraya Kaware
Age : 27 years, Occu : Service,
R/o. Chobe Row – Housing,
Gandhi Nagar,
Ahmednagar.
- 2 The State of Maharashtra,
Through its Secretary,
Nagar Urban Development Department,
Mantralaya,
Mumbai 400 032 ..RESPONDENTS

WITH

WRIT PETITION NO. 3563 OF 2014

- 1 Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.

- 2 Umbrella Society,
For Reproductive & Child Health
(RCH) Programme through
Commissioner, Ahmednagar
Municipal Corporation. ..PETITIONERS

VERSUS

- 1 Sunita Narayan Chaudhari,
Age : 26 years, Occu : Service,
R/o. Plot No. 28, Saiban Colony,
Savedi, Ahmednagar
- 2 The State of Maharashtra,
Through its Secretary,
Nagar Urban Development Department,
Mantralaya,
Mumbai 400 032 ..RESPONDENTS

WITH

WRIT PETITION NO. 3564 OF 2014

- 1 Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.
- 2 Umbrella Society,
For Reproductive & Child Health
(RCH) Programme through
Commissioner, Ahmednagar
Municipal Corporation. ..PETITIONERS

VERSUS

- 1 Archana Arun Bhakre
Age : 28 years, Occu : Service,
R/o. Near Mahadev Temple,
Nagapur,
Ahmednagar.
- 2 The State of Maharashtra,
Through its Secretary,
Nagar Urban Development Department,

Mantralaya,
Mumbai 400 032

..RESPONDENTS

WITH

WRIT PETITION NO. 3565 OF 2014

1 Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.

2 Umbrella Society,
For Reproductive & Child Health
(RCH) Programme through
Commissioner, Ahmednagar
Municipal Corporation.

..PETITIONERS

VERSUS

1 Rajeshree Dashrath Dhongade
Age : 26 years, Occu : Service,
R/o. Dashi Wada, Manik Chowk,
Ahmednagar.

2 The State of Maharashtra,
Through its Secretary,
Nagar Urban Development Department,
Mantralaya,
Mumbai 400 032

..RESPONDENTS

WITH

WRIT PETITION NO. 3384 OF 2014

1 Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.

2 Umbrella Society,
For Reproductive & Child Health
(RCH) Programme through
Commissioner, Ahmednagar
Municipal Corporation.

..PETITIONERS

VERSUS

- 1 Sarla Hansraj Khatik
Age : 29 years, Occu : Service,
R/o. Pawannagar, Bhistbag Naka,
Savedi, Ahmednagar.
- 2 The State of Maharashtra,
Through its Secretary,
Nagar Urban Development Department,
Mantralaya,
Mumbai 400 032 ..RESPONDENTS

WITH
WRIT PETITION NO. 3399 OF 2014

- 1 Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.
- 2 Umbrella Society,
For Reproductive & Child Health
(RCH) Programme through
Commissioner, Ahmednagar
Municipal Corporation. ..PETITIONERS

VERSUS

- 1 Girija Dharmaji Datal
Age : 30 years, Occu : Service,
R/o. Athwad, Chinchodi Patil,
Tq, & Dist. Ahmednagar.
- 2 The State of Maharashtra,
Through its Secretary,
Nagar Urban Development Department,
Mantralaya,
Mumbai 400 032 ..RESPONDENTS

WITH
WRIT PETITION NO. 3690 OF 2014

- 1 Ahmednagar Mahanagar Palika,
Ahmednagar, Through its,
Commissioner.

2 Umbrella Society,
For Reproductive & Child Health
(RCH) Programme through
Commissioner, Ahmednagar
Municipal Corporation. ..PETITIONERS

VERSUS

1 Neelam Santosh Parkhe
Age : 33 years, Occu : Business,
R/o. Makasare Chal, Kothi,
Station Road, Ahmednagar.

2 The State of Maharashtra,
Through its Secretary,
Nagar Urban Development Department,
Mantralaya,
Mumbai 400 032 ..RESPONDENTS

Mr. V. S. Bedre, Advocate for the Petitioners.
Mr. P. V. Barde, Advocate for Respondent No.1.
Mr. V. G. Shelke, AGP for Respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/11/2015

ORAL JUDGMENT :

1. Leave to add Urban Development Department / State of Maharashtra as respondent No.2, is granted. Addition be carried out forthwith.

2. Learned AGP appears on behalf of respondent No.2 in all these petitions.

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

4. The petitioners / Ahmednagar Municipal Corporation is aggrieved by the common judgment and order dated 17/07/2013 delivered by the Industrial Court, Ahmednagar in Complaint (ULP) Nos. 37/2012 to 40/2012 and 88/2012 to 98/2012.

5. Respondent No.1 / employees in all these petitions had been working with the petitioner / Corporation, having been appointed under the Reproductive and Child Health (RCH) Programme. The said programme has been implemented by the State Government through the petitioner/Corporation.

6. The respondent No.1/ employees were deployed in 2007. There are various centres under the RCH Scheme which are functioning at areas like Tofkhana Hospital, Maliwada Center, Mukund Nagar Center, Civil Hospital Center, Jijamata Hospital Center, Nagapur Center and Kedgaon Center. All these centers are provided with employees like respondent No.1 in categories which include Medical Officers, Technicians, Clerks, Peons and Nurses etc.

7. The petitioner submits that on account of growing population and modernization of the city as well as its industrialization, there is a large sized population, which can be termed to be 'below poverty line'. The Government has introduced the RCH scheme with a view to provide proper health services. Intention is to ensure that the mortality rate at the time of child birth and thereafter is reduced. Such population is given health services and medical assistance at various centres. Nurses are also engaged so as to take care of the mother-child and monitor their well-being. Government of Maharashtra provides grants from which the said scheme is operated. Salary structuring is also done by the State Government.

8. The petitioner submits that the RCH Scheme also facilitates organizing of camps and ante-natal care for pregnant women, immunization services and family planning etc. The respondent/employees, who comprise of Programme Managers, Lady Medical Officers, Lady Health Officers, Lab Technicians, Nurses, are engaged on year to year contractual basis. Initially they were appointed for a period of 6 months and were continued ever since their appointments.

9. The petitioner submits that the respondent/employees preferred the above referred complaints before the Industrial Court at Ahmednagar alleging unfair labour practices (ULP) under Items 5, 6, 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 (hereinafter referred to as the Act of 1971). Allegation was that the petitioner is intentionally and willfully continuing the respondent No.1/employees as “temporaries” for years and is depriving them of the benefits and privileges of permanency.

10. Mr.Bedre, learned Advocate submits that these allegations of ULP were totally false. The petitioner filed its written statement in each of these complaints. It was contended that the petitioner cannot create posts. In the absence of the power to create posts and in the absence of permanent vacant posts, none of the ULP as alleged by the respondent / employees, could be proved.

11. He further submits that merely because the respondents may have completed 240 days in continuous employment, would not lead to a conclusion that they are entitled for permanency and benefits incidental thereto. He, therefore, prays that the impugned judgment of the Industrial Court, by which all these complaints were allowed and the petitioner was held guilty of ULP, deserves to be quashed and

set aside. He also submits that the direction to grant permanency with incidental benefits from the date of filing of the complaints also deserves to be set aside.

12. The respondents / employees have opposed these petitions. Mr.Barde, learned Advocate submits that it was established before the Industrial Court that the posts were created by the respondents / authorities. The employees cannot be kept on temporary basis in perpetuity. All of them have been working from 2007 onwards. It is for the petitioner and respondent No.2 to ensure that the respondents / employees are not kept temporary throughout their service tenure. Having completed 240 days in each calendar year in continuous employment preceding the date of reference, naturally led to the allowing of the complaint.

13. He further submits that the RCH Scheme is not being implemented either temporarily or for a particular phase. The said scheme has been introduced to ensure that proper pre-natal and post-natal medical services and other health facilities, which are required to ensure reduction of mortality and proper physical growth of the new born children, is to be operated perennially.

14. He further submits that merely because the said scheme has been introduced in 2007 and is termed as a scheme for the welfare of the poor and needy, would not mean that it would be implemented only for some duration.

15. He strenuously submits that respondent No.2 / appropriate authority has created posts and the said posts are available. Respondent No.1 / employees had preferred their complaints out of an apprehension that they would be continued as temporaries for years together. Security of employment is necessary if the respondent / employees are to live with dignity and work wholeheartedly.

16. He further submits that the employees are not interested in attaching the stigma of ULP to the petitioner. Their interest lie in their regularization and for which purpose the Industrial Court has issued necessary directions. He, therefore, submits that these petitions need not be entertained.

17. The learned AGP appearing on behalf of respondent No.2 in all these matters submits that the said Department was not a party to the complaints before the Industrial Court. He, however, does not dispute that the R.C.H. Scheme was introduced by the State

Government and was granted 100% financial assistance initially. Gradually, the financial assistance has been reduced and the petitioner / Corporation is now to operate the said scheme as a part of its health services and welfare services.

18. I have considered the submissions of the learned Advocates, as have been recorded hereinabove.

19. Matters of similar nature were before this Court in the group of petitions in between Municipal Council, Tulzapur and Baban Hussain Dhale (dead), through his LR and others in WP Nos.1843/2015 and connected matters and this Court has delivered its judgment on 26/02/2015. This Court has come to a conclusion that as the Municipal Council did not have the power to create posts, declaration of ULP under Items 5 and 6 of Schedule IV could not be sustained against the Municipal Council.

20. In the Municipal Council, Tulzapur cases (supra), this Court had issued directions to the appropriate authority / State Government in paragraph Nos. 24 and 25, which read as under :-

“24. In the light of the above, these petitions are partly allowed. The declaration of ULP under Item 9 of Schedule IV of the State Act against the petitioner is set aside. The directions

of the Industrial Court in clause No.3, reproduced hereinabove, are confirmed.

25. The petitioner is, therefore, directed to submit the complete proposals of all the respondents/workmen in this petition to the Government and Appropriate Authorities within a period of 2 (two) months from today. Upon receipt of the said proposals, the Government / Appropriate Authorities shall decide the said proposals taking into account the fact that the respondents / employees have already been made permanent w.e.f. 01/10/1993, within a period of 4 (four) months thereafter.”

21. Considering the fact situation as above, I am unable to concur with the Industrial Court in its declaration that the petitioner is guilty of ULP under Items 6 and 9. The respondents / employees have established that they have worked for 240 days in each calendar year and they are in employment even today. Each of them were issued with appointment orders, though projected to be in the form of contracts. The scheme is being operated continuously and hence, the appropriate authorities can consider these employees for regularization.

22. In these circumstances, these petitions are partly allowed with the following directions :-

a. The declaration of ULP under Item 6 and 9 of Schedule IV under

the Act of 1971 stands quashed and set aside.

- b. Permanency with benefits incidental thereto, as has been granted by the Industrial Court in Clause 3 of the Order, is sustained.
- c. The petitioner shall prepare individual proposals of the respondent / employees indicating their service details alongwith the information as to whether a post for the nature of duties performed by the said employee, is vacant or not. These proposals shall be forwarded to respondent No.2 within a period of 3 (three) months from today.
- d. Respondent No.2, upon receipt of the said proposals shall take into account the directions of the Industrial Court and the observations of this court and accordingly accord its approval for regularizing the services of the respondents / employees within a period of 4 (four) months.
- e. The respondents / employees shall not be terminated by the petitioner only on the ground that their proposals are pending. This protection shall not include acts of mis-conduct / disciplinary action.
- f. The decision arrived at by respondent No.2 shall be communicated to the petitioners and respondent No.1 /employees in these petitions, expeditiously.
- g. Any party aggrieved by the decision of respondent No.2 would be at liberty to seek redressal of its grievance in accordance with Law.

22. Rule is made partly absolute in the above terms.

23. No order as to costs.

(RAVINDRA V. GHUGE, J.)