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

WRIT PETITION NO. 11291 OF 2015

MUNICIPAL COUNCIL PATHARDI THROUGH ITS CHIEF OFFICER
NANBHAU VISHWNATH MAHANWAR

VERSUS

DATTATRAYA VISHWANATH TEKE AND OTHERS

...

Advocate for Petitioner : Shri Naiknavare Ramesh V.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd December, 2015

Per Court:

1 The Petitioner/ Municipal Council is aggrieved by the judgment and order dated 20.07.2015 delivered by the Industrial Court, Ahmednagar by which Complaint (ULP) No.58/2011 filed by the Respondents/ Employees, has been partly allowed.

2 Shri Naiknavare, learned Advocate for the Petitioner, has strenuously criticized the impugned judgment. He points out the operative part at Clause-3 of the impugned order which reads as under:-

“3) *The respondent Municipal Council is directed to send proposal of complainants to the Government for sanctioning the posts within 30 days and after getting the sanction of the posts from the Government within a period of three months, the services of these complainants shall be made permanent by the*

respondent within a period of one month.”

3 He, therefore, submits that the Industrial Court has committed an error in directing the Petitioner to send the proposal of the Respondents for creation of posts and for sanctioning their appointments. He further submits that some of the Respondents were appointed prior to 1993 and some of them have been appointed after 1993. He does not dispute that the Respondents are working for more than 20 years with the Petitioner.

4 He relies upon the judgment of the Apex Court in the case of *Secretary, State of Karnataka v/s Umadevi* reported at **AIR 2006 SC 1806 : 2006(4) SCC 1** in support of his contention that there cannot be a direction for regularizing the services of the Respondents as has been done by the Industrial Court.

5 I have considered the submissions of the learned Advocate for the Petitioner as have been recorded herein above.

6 Paragraph 44 of the judgment of the Apex Court in the case of Umadevi (supra) reads as under:-

“44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal

appointments) as explained in *S.V.Narayanappa (supra)* [AIR 1967 SC 1071], *R.N.Nanjundappa (supra)* [AIR 1972 SC 1767], and *B.N.Nagrajan (supra)* [AIR 1979 SC 1676], and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

7 It is not in dispute that the Apex Court, in the case of *MSRTC v/s Casteribe Rajya Parivahan Karmchari Sanghatana*, **(2009) 8 SCC 556**, has concluded that the powers of the Industrial Court and the Labour Court under the MRTU & PULP Act, 1971 are not denuded by the judgment of the Apex Court in the case of Umadevi (supra).

8 In the instant case, the Respondents have been working with the Petitioner for more than 20 years. The direction given by the Industrial Court is to the extent of placing the Petitioner/ Municipal Council under an obligation to prepare the proposal of the Respondents/ Employees and send it to the Government so as to enable the Government to sanction the posts and after such sanction was accorded, the services of the Respondents would be made permanent.

9 I do not find that the impugned judgment and especially the direction criticized by the Petitioner could be said to be perverse or erroneous. The said direction does not cause grave injustice to the Petitioner. In fact it takes care of the interest of the Petitioner/ Municipal Council by which it is left to the Government to sanction the posts and pursuant to which the services of the Respondents would be regularized.

10 This petition being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)