

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1266 OF 2015

Udgir Municipal Council,
Udgir, Taluka Udgir,
District Latur, through
its Chief Executive Officer.

..Petitioner

Versus

1. State of Maharashtra
Through Secretary for Urban
Development Department,
Mantralaya, Mumbai.

2. Director of Municipal
Administration, Government
Transport Services Building,
3rd Floor, Sir Pochkhanwala Marg,
Worli, Mumbai.

3. The Divisional Commissioner &
Deputy Director, Directorate of
Municipal Administration,
Aurangabad Division, Aurangabad.

4. Sunil Mahadappa Bhavikatte,
Age 41 years, Occ. Labour,
R/o c/o C.N. Shinde,
Secretary, Trade Union Office,
Jalkot Road, Udgir, Dist. Latur.

..Respondents

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Advocate for Petitioner : Shri Barde Parag Vijay
AGP for Respondents 1 to 3 : Shri Lokhande K.N.
Advocate for Respondent 4 : Shri Gaddime A.N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 21, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the judgment and order dated 9.7.2014 delivered by the Industrial Court, Latur in Complaint (ULP) No.127 of 2010.

5. The Industrial Court has granted the following reliefs to the respondent No.4 - original complainant:-

“1. Com/ULP/No.127/2010 stands disposed of against respondent No.1 and 2 and is allowed against respondent No.3.

2. The respondent No.3 is directed to make the complainant permanent in the employment from 12.4.1994 and extend him all consequential benefit to which he is entitled under law.”

6. The petitioner submits that there is no dispute as regards respondent No.4 working with the petitioner as a Lineman in the Water Supply Department from 16.8.1993. It is further contended that the petitioner neither has the authority to create posts nor grant confirmation to any daily wage employee. Respondent No.4 had claimed permanency and benefits incidental and consequential thereto against the petitioner and respondent Nos.2 and 3. However, by the impugned judgment the Industrial Court disposed off the complaint against respondent Nos.2 and 3 herein and issued

directions to the petitioner to make respondent No.4 permanent in employment from 12.4.1993.

7. Shri Barde, learned Advocate relies upon the judgment delivered by this Court on 26.2.2015 in a group of matters in the case of Municipal Council, Tuljapur Vs. Baban Hussain Dhale (dead) through his L.Rs. and others in Writ Petition No.1843 of 2015 and connected matters. He submits that the said judgment was delivered in identical set of facts. A similar judgment has also been delivered by this Court in the Dhule Municipal Corporation case.

8. He, therefore, submits that the ratio laid down in the Municipal Council, Tuljapur's judgment (supra) can be made applicable to the instant case since the petitioner does not have the authority to grant regularisation and there can be no declaration of unfair labour practice against the petitioner for keeping daily wagers as temporaries.

9. Shri Gaddime, learned Advocate appearing on behalf of respondent No.4 submits that he has been working for the past more than 22 years. The petitioner as well as respondent Nos. 1 to 3 will have to grant regularisation to him considering the long service rendered coupled with the fact that he would attain the age of superannuation in 10-12 years' time.

10. He further submits that if the directions issued by this Court in the

Municipal Council Tuljapur's case (supra) are issued to the petitioner and respondent Nos.2 and 3, his grievance would stand redressed. He, however, prays that his service be protected during the pendency and decision on his proposal for regularisation.

11. The learned AGP appearing on behalf of respondents 1 to 3 submits that this Court had issued directions in the Municipal Council Tuljapur's case (supra). Unless the proposal of respondent No.4 does not reach this authority, they will not be in a position to take a decision with regard to the regularisation of the services of respondent No.4.

12. I have considered the submissions of the learned Advocates and have gone through the petition paper book with their assistance.

13. I find that the Industrial Court has issued directions to the petitioner in the operative part of the impugned judgment. The reasons assigned in the judgment indicate that the Industrial Court has arrived at a conclusion that the petitioner is guilty of keeping respondent No.4 as a temporary for years together. As a result, in paragraph No.12 of the impugned judgment, the Industrial Court has held the petitioner guilty of unfair labour practices under items 5, 6 and 9 of the Schedule IV of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act ").

14. It would be apposite to reproduce the conclusions of this Court in the

Municipal Council, Tuljapur judgment (supra) as follows:-

“18. This Court, in similar set of facts, delivered a judgment dated 11/12/2014 in Writ Petition Nos.11257/2014 and other connected matters. It is concluded that the Municipal Council, which does not have the powers to create or sanction posts, cannot be held guilty of unfair labour practices under Items 5 and 9 of Schedule IV of the State Act. In the instant cases as well the petitioner is the same Municipal Council. The Industrial Court has not made any declaration as regards ULP under Item 5 of Schedule IV against the petitioner.

19. The petitioner has relied upon the judgment of this Court in the matter of Prakash Cotton Mills Ltd., Vs. Chandrakant Maruti and others, 2005(1) Mh.L.J. 1105 and in the matter of Maharashtra Rajya Shetki Mahamandal Karmachari Sanghatana Vs. M.D. Maharashtra State Farming Corporation Ltd., and another, 2006(1) Mh.L.J. 223. It is pointed out that this Court has held that the foundation of an unfair labour practice under Item 9 of Schedule IV lies in the failure of the employer to implement a settlement, agreement or award.

22. I have held that alteration in service conditions would be covered by Item 9 of Schedule IV. The facts in the case of Prakash Cotton Mill (supra) were in relation to a demand for permanency without there being any settlement or agreement between the parties. In the instant case, it is not disputed that the concerned workmen were granted permanency w.e.f. 01/10/1993 and the same was unilaterally altered and the date of permanency was unilaterally postponed to 06/05/2000 by the State authorities by imposing new service conditions on the concerned workmen. The said alteration is however not at the behest of the petitioner.

23. In so far as the Maharashtra Rajya Shetki judgment (supra) is

concerned, the Union had sought an auto applicability of the notification dated 01/10/1988 issued by the State Government for revising the pay scales of its employees. The Union demanded that the said notification should be made applicable to the employees of the respondent Corporation. This Court had concluded that the respondent/Corporation is not an entity of the State Government and the said notification would not become automatically applicable. The facts being distinct and different, ratio laid down would not be applicable to this case.

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.”

15. As such, this petition is partly allowed. The declaration of unfair labour practices against the petitioner under items 5, 6 and 9 of Schedule IV are set aside. The directions of the Industrial Court in clause 2 of the operative part reproduced above, are confirmed.

16. The petitioner shall prepare the proposal of respondent No.4 for confirmation in employment and submit the same to respondent No.2 within

a period of six weeks from today. Upon receipt of the said proposal, the respondent - appropriate authority shall decide the proposal in the light of the direction of the Industrial Court that respondent No.4 - workman shall be granted permanency from 12.4.1994 with all consequential benefits, within a period of sixteen weeks thereafter.

17. Rule is made partly absolute in the above terms. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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