

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 387 OF 2000

Lonavala Municipal Council, Lonavala,	}	
Taluka Maval, District – Pune,	}	
Through its Chief Officer.	}	... Petitioner.

V/s.

- | | |
|--------------------------------|---|
| 1. Mr. Babu Dagadu Ghule. | } |
| 2. Mr. Dagadu Sonu Kale | } |
| 3. Mr. Gajanan C. Nanaware | } |
| 4. Mr. Kishore Baburao Kambale | } |
| 5. Mr. Dinesh Krishnaji Borade | } |
| 6. Mr. Raju Shravan Gaikwad | } |
| 7. Mr. Sanjay Baburao Ghatage | } |
| 8. Mr. Shivaji Baban Andre | } |
| 9. Mr. Balu Lahu Pawar | } |

All C/o. Babu Dagadu Ghule	}
At & Post Khandala, Tal. Maval,	}
District – Pune.	}

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| 10. The Employment Exchange | } |
| Rasta Peth, Pune, | } |
| Through the Sub-Regional | } |
| Employment Officer. | } |

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| 11. Mr. Vidyasagar L. Kambale, | } |
| Member, Industrial Court, Pune, | } |
| Having his office at the P.M.T. | } |
| Building, Swargate, Pune. | } |

12. The State of Maharashtra, }
Urban Development Department. } ... Respondents.

Mr. K.S. Bapat for the Petitioner.

Mr. S.R. Nargolkar for Respondents 1 to 9.

Ms. Vaishali Nimbalkar, AGP for Respondent 12.

CORAM : N.M. JAMDAR, J.

DATE : 18 NOVEMBER, 2015.

ORAL JUDGMENT :-

This Petition is filed by the Municipal Council of Lonavala challenging the order passed by the Industrial Court, Pune directing the Petitioner – Council to make the Respondent Nos. 1 to 9 permanent in service and grant them all the benefits of permanency.

2. Respondent Nos. 1 to 9 filed a Complaint (ULP) No. 686 of 1997 in the Industrial Court, Pune under Section 28(1) of the M.R.T.U & P.U.L.P. Act, 1971 read with Items 5,6,9 and 10 of the Schedule IV of the Act. According to the Respondents, they were working with the Petitioner – Council as labourers and at the time of complaint were working in the Water Supply Department of the Petitioner – Council. It was their case that they were doing the work of permanent nature and similar to other permanent employees, however, they were not being made permanent so as to deprive them of the benefits. The complaint was resisted by the

Petitioner – Council. It was accepted that the Respondents were working since long but it was contended that they could not be granted status of permanency since the requisition was forwarded to the State Government and sanction to the post was awaited and therefore, for lack of available posts, the Respondents could not be made permanent. The Industrial Court considered the rival contentions and the stand of the Petitioner – Council. The Industrial Court held that by keeping the Respondents temporary for years together was a clear unfair labour practice which had to be remedied. The Industrial Court came to the conclusion that the Petitioner has engaged an unfair labour practice under Items 6 and 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. Consequently, the Industrial Court directed the Petitioner – Council to make the Respondents permanent in service. This order has been challenged by the Petitioner – Council by way of this Petition.

3. At present, only the cause of Respondent No.8 i.e. Shivaji Baban Andre survives, as the Respondent Nos.1 to 7 have been already made permanent in service and the Respondent No. 9 has been terminated from service by order dated 23 November 2010.

4. The Petition was admitted on 24 June 2002 and while granting interim relief, it was clarified that it was open to the Petitioner – Council to approach the State Authorities for creation of the post. Thereafter, by order dated 18 November 2010, the

factual position that Respondent Nos. 1 to 7 have been absorbed in service was noted. The only question thereafter for which the matter was adjourned from time to time since year 2011 was regarding the Respondent No.8. Since only Respondent No.8 was left out and it was not clear as to why when the Municipal Council had recommended creation of nine posts, only seven posts were sanctioned by the State Government and there was apparent discrimination, the Petitioner was granted leave to add the State of Maharashtra, Urban Development Department as party Respondent to put forth their case. Accordingly, the State of Maharashtra has been joined as a Respondent.

5. An affidavit has been filed by the Regional Deputy Director of Municipal Administration on 7 October 2015 placing on record the reason why Respondent No.8 could not be made permanent and why his post could not be sanctioned. The affidavit indicates that the seven Respondents were made permanent as they were found to be employed before 10 March 1993 which was a cut-off date for regularization of daily wage workers and Respondent No.8 was not regularized as his date of joining was 10 February 1995. Thereafter, the general position of law regarding regularization in service has been enumerated in the affidavit, however, the main ground on which Respondent No.8 has been left out is that his initial entry in service is not before 10 March 1993.

6. In the impugned order, the examination-in-chief of the Deputy Engineer of the Municipal Council has been referred to. He has stated that he joined the services of the Council in October 1993 and except Respondent No.9, all the Respondents were working before he joined the services. In the affidavit filed by the Regional Deputy Director, he has admitted that as per the available record, the Respondent No.8 was initially given work in July 1992. He has thereafter stated that the Respondent No.8 was given work after a gap of two and half years i.e. 12 February 1995, and based on this position, it is asserted by the Deputy Director that the effective joining date of the Respondent No.8 will be 10 February 1995. The fact that the Respondent No.8 was given work in July 1992 is admitted by the Regional Deputy Director. However, his conclusion that is effective date should be 10 February 1995 does not appear to be correct as there is no such gap of two and half years. The witness of the Municipal Council has admitted that Respondent No.8 was working even prior to October 1993. The factum of giving work to the Respondent No.8 in July 1992 could have been ignored, and even after July 1992 work is given to Respondent No.8 as admitted by the witness of the Municipal Council. The only requirement stated in the affidavit and the Government Resolution relied upon is that the concerned employee should be working on daily wages prior to 10 March 1993. By the record available it is clear that Respondent No.8 was given work in July 1992. The Resolution dated 28 April 2001, which is annexed, states that those who are working on daily

wages before 10 March 1993 and in service at present, can be regularized. Having held that Respondent No.8 was working on daily wages in July 1992 and that he was working thereafter, there was no rational reason not to extend the same benefit to the Respondent No.8 as given to other Respondents.

7. Though it is correct that while granting permanency in the services of a public body, the Court will have to keep in mind various parameters such as sanctioned post etc. However, the power of the Industrial Court to grant permanency in service is not completely taken away. The Apex Court in the case of ***Hari Nandan Prasad and Anr. v/s. Employer I/R. to Management of Food Corporation of India and Anr. [(2014) 7 SCC 190]*** has observed as under :-

“39. On a harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/ad-hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily-wager, etc. may amount to back door entry into the service which is an anathema to Article 14 of the

Constitution. Further, such a direction would not be given when the worker concerned does not meet the eligibility requirement of the post in question as per the recruitment rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.” (emphasis supplied).

8. Thus, one of the grounds on which relief of permanency can be granted to an employee is that there is a breach of Article 14 inasmuch as similarly situated employees have been regularized and without any reason the concerned employee is not regularized, and that there is an unfair labour practice. The fact that the Respondent No.8 is working continuously for last 23 years is not denied. In spite of last 23 years service, he is not given the benefits of permanency. The unfair labour practice and the exploitation of Respondent No.8 is clear on the face of it. In the facts and circumstances, the Industrial Court was fully justified in granting the relief. As regard the contention of the Municipal Council that it cannot absorb the Respondent No.8 as there are no

sanctioned posts available, cannot be accepted in view of the fact that for similarly situated employees provision has been made for their permanency. The only reason given by the State Government not to make Respondent No.8 permanent in service and not to extend all the benefits, as discussed above, also does not exist. In fact, allowing to such ground to be taken will be highly discriminatory. In spite of acknowledging that the Respondent No.8 was initially appointed in July 1992, the Municipal Council and the State have been unfair in their conduct in not extending the benefits of permanency to Respondent No.8 alone. The State Government for the reasons aforesaid have been joined as party Respondent in this Petition and their stand has been put-forth. Therefore, the order that is being passed in this petition will also bind on the State Government.

9. In the circumstances, I am of the opinion that it will lead to highly inequitable and unfair position to deprive the benefits granted by the Industrial Court. Respondent No.8 whose is the only cause surviving in this Petition.

10. In the circumstances, I am not inclined to interfere with the impugned order. The Respondent No.1 – Municipal Council as well as the State Government will give effect to the impugned order within period of eight weeks from today. However, the relief that is to be granted to Respondent No.8 will have to be on par with the Respondent Nos.1 to 7 who have been

granted benefits of permanency. In fact, Respondent No.8 has also acknowledged this position by filing an affidavit. The Petitioner and the State will give effect to the impugned order as regards the Respondent No. 8 as per the benefit granted to Respondent Nos. 1 to 7. As regard Respondent No.9 is concerned, since he has already terminated from service, no relief can be granted to him and the impugned order qua Respondent No.9 is set aside.

11. Writ Petition is disposed off in the above terms. No costs.

(N.M. JAMDAR, J.)