

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2560 OF 1997

1. Dhule Agricultural Produce
Market Committee, Dhule.
(Through its Secretary)
2. The Sabhapati,
Dhule Agricultural Produce
Market Committee, Dhule. ...Petitioners.

Versus

1. Shri Dnyaneshwar Gangaram Shendge,
Deceased heirs,
i) Kamalabai Dnyaneshwar Shendge, Age. 42
ii) Santosh Dnyaneshwar Shendge, Age. 21
iii) Dipak D. Shendge, Age. 19
iv) Sunita Suresh Kolpe
All Resident of Hamal Mapadi Plot
Nr. Gurudatta Temple, Dhule.
2. Shri P. B. Akolkar,
Member, Industrial Court,
Nasik.
3. State of Maharashtra. ...Respondents.

WITH
WRIT PETITION NO. 2561 OF 1997

1. Dhule Agricultural Produce
Market Committee, Dhule.
(Through its Secretary)
2. The Sabhapati,
Dhule Agricultural Produce
Market Committee, Dhule. ...Petitioners.

Versus

1. Shri Ganesh Dhudku Fulpagare,
Age. 22, Occu. Service,
Resident of Lane No. 11,

H. No. 807, Subhashnagar, Dhule.

2. Shri P. B. Akolkar,
Member, Industrial Court,
Nasik.
3. State of Maharashtra. ...Respondents.

WITH
WRIT PETITION NO. 2562 OF 1997

1. Dhule Agricultural Produce
Market Committee, Dhule.
(Through its Secretary)
2. The Sabhapati,
Dhule Agricultural Produce
Market Committee, Dhule. ...Petitioners.

Versus

1. Shri Bhagwan Laxman Deore,
Age. 42, Occu. Service,
Resident of Plot No. 35,
Badgujar Plot, Dhule.
2. Shri P. B. Akolkar,
Member, Industrial Court,
Nasik.
3. State of Maharashtra. ...Respondents.

WITH
WRIT PETITION NO. 2563 OF 1997

1. Dhule Agricultural Produce
Market Committee, Dhule.
(Through its Secretary)
2. The Sabhapati,
Dhule Agricultural Produce
Market Committee, Dhule. ...Petitioners.

Versus

1. Shri Vijay Bhura Pagare,

Age. 49, Occu. Service,
Resident of Lilabai Chawl,
Chitod Road, Dhule.

2. Shri P. B. Akolkar,
Member, Industrial Court,
Nasik.

3. State of Maharashtra. ...Respondents.

WITH
WRIT PETITION NO. 2564 OF 1997

1. Dhule Agricultural Produce
Market Committee, Dhule.
(Through its Secretary)

2. The Sabhapati,
Dhule Agricultural Produce
Market Committee, Dhule.

...Petitioners.

Versus

1. Shri Vinayak Bajirao Patil,
Age. 33, Occu. Service,
Resident of Plot No. 15,
Manik Dalwale Plot, Vadjai Road,
Dhule.

2. Shri P. B. Akolkar,
Member, Industrial Court,
Nasik.

3. State of Maharashtra. ...Respondents.

WITH
WRIT PETITION NO. 2567 OF 1997

1. Dhule Agricultural Produce
Market Committee, Dhule.
(Through its Secretary)

2. The Sabhapati,
Dhule Agricultural Produce
Market Committee, Dhule.

...Petitioners.

Versus

1. Shri Yuvraj Deoram Jadhav,
Age. 39, Occu. Service,
Resident of Behind Cotton Market,
Dhule.
2. Shri P. B. Akolkar,
Member, Industrial Court,
Nasik.
3. State of Maharashtra. ...Respondents.

WITH
WRIT PETITION NO. 2568 OF 1997

1. Dhule Agricultural Produce
Market Committee, Dhule.
(Through its Secretary)
2. The Sabhapati,
Dhule Agricultural Produce
Market Committee, Dhule. ...Petitioners.

Versus

1. Shri Ananda Fakira Chandane,
Age. 40, Occu. Service,
Resident of Nr. Cotton Market,
Parola Road, Nr. Punjab Saw-Mill,
Dhule.
2. Shri P. B. Akolkar,
Member, Industrial Court,
Nasik.
3. State of Maharashtra. ...Respondents.

WITH
WRIT PETITION NO. 2569 OF 1997

1. Dhule Agricultural Produce
Market Committee, Dhule.
(Through its Secretary)

2. The Sabhapati,
Dhule Agricultural Produce
Market Committee, Dhule. ...Petitioners.

Versus

1. Shri Vijay Sambhaji Ahire,
Age. 43, Occu. Service,
Resident of Ambedkar Chauk,
Behind Manohar Theatre, Dhule.
2. Shri P. B. Akolkar,
Member, Industrial Court,
Nasik.
3. State of Maharashtra. ...Respondents.

WITH
WRIT PETITION NO. 2577 OF 1997

1. Dhule Agricultural Produce
Market Committee, Dhule.
(Through its Secretary)
2. The Sabhapati,
Dhule Agricultural Produce
Market Committee, Dhule. ...Petitioners.

Versus

1. Shri Satwa Suka Shinde,
Age. 49, Occu. Service,
Resident of Rajiv Gandhi Nagar,
Dhule.
2. Shri P. B. Akolkar,
Member, Industrial Court,
Nasik.
3. State of Maharashtra. ...Respondents.

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Advocate for Petitioner : Shri V.Y.Patil h/f Shri Shri B.R.Varma
Advocate for Respondent 1 : Shri Dhiraj Jethliya h/f Shri P.M.Shah
AGP for Respondent 3 : Shri N.T.Bhagat

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CORAM : RAVINDRA V. GHUGE, J.

Dated: December 15, 2016

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ORAL JUDGMENT:-

1. Respondent No.2 being the Industrial Court, stands deleted from these proceedings.

2. In all these petitions, the petitioner is aggrieved by the judgments delivered by the Industrial Court in the respective Complaints filed by the respondent / employees.

3. While admitting these petitions, this Court granted interim relief in terms of prayer clause (B) on 17.7.1997. As a consequence, the impugned judgments, by which benefits of permanency were granted to the respondents, have been stayed.

4. I have considered the submissions of the learned Advocates for the respective sides and have gone through the record available and the judgments cited.

5. The controversy in this matter is restricted to the scope of the powers of the Dhule Agricultural Produce Market Committee in creating posts and granting regularization to the respondents / employees on such posts. There is no dispute between the parties

that the Secretary or the Chairman of the Dhule APMC is neither empowered to create posts, nor can he grant permanency *de hors* the Rules to any of the respondents / employees. The petitioner has specifically put forth a contention that, it is the Director of Agricultural Produce Marketing, Pune is the competent authority for sanctioning posts / preparing the staffing pattern and granting regularization on available permanent posts.

6. This Court in the matter of Mukhyadhikari, Nagar Parishad Tuljapur Vs. Vishal Vijay Amurtrao [2015 (5) Mh. L.J. 75] and in the matter of Municipal Council, Tuljapur Vs. Baban Hussain Dhale - Writ Petition No.1823 of 2015 and other petitions, decided on 26.2.2015, has concluded that in matters of permanency concerning State instrumentalities, when the particular establishment at the local place is not empowered to create posts and grant regularization, the declaration of ULP and direction to regularize the services of the claimants upon completion of 240 days is unsustainable.

7. In a similar matter, in the case of the Commissioner, Dhule Municipal Corporation and others Vs. Pramila Ramdas Wagh and others [2015 (3) LLJ 579], this Court has concluded on the basis of the judgment of the Honourable Supreme Court in the matter of State of Haryana Vs. Piara Singh (3 Judges Bench) [1992 4 SCC 118], that necessary directions are required to be issued to

instrumentalities like the Municipal Council / Municipal Corporation to submit proposals of those employees who have been working since long for absorption on the basis of their seniority.

8. In all these cases, except Writ Petition No.2560 of 1997 (concerning the widow of the original claimant), the Industrial Court, in a single paragraph has concluded that the attendance record produced by the workmen indicates that they have worked continuously and since the petitioner / management did not lead oral and documentary evidence, the contentions of the respondents have gone unchallenged. Based on these conclusions, the Industrial Court has granted permanency from 1.1.1992 to these employees. There is no dispute that neither of the employees had pleaded in the complaint that permanent posts are vacant and available, inasmuch as, the Industrial Court has not even bothered to consider the vital issues, as to whether permanency can be granted to an employee in the absence of a permanent vacant post. Naturally, the impugned judgments cannot be sustained.

9. In the first petition, in which, the legal heirs of the deceased Dnyaneshwar are on record, the Industrial Court granted monetary benefits to the widow of Dnyaneshwar presuming that he was entitled to permanency from 1.1.1988. For the reasons recorded above, merely because the deceased Dnyaneshwar completed 240

days in 1987, such benefits could not have been granted w.e.f. 1.1.1988.

10. In the light of above, all these petitions are partly allowed. The declaration of ULP and the direction to desist from indulging in ULP set out in clause (1) and (2) of the order, stands quashed and set aside. The direction in paragraph No.3 in these petitions and the direction in paragraph No.1 in the first petition concerning the widow of the deceased Dnyaneshwar, the same shall stand modified as under:-

(A) The petitioner shall prepare a proposal in relation to Dnyaneshwar Gangaram Shendge (deceased) so as to forward the same to the Director of Marketing, Pune for considering the claim of the deceased on the basis of the deemed date on which he would have been granted regularization depending upon his seniority.

(B) In relation to all other employees, including all such similarly situated employees, who are comparable with these respondents and are not before this Court, the petitioner shall prepare a proposal for sending the said proposal to the Director of Marketing, Pune for consideration.

(C) The proposals as directed above, shall be forwarded within the period of 16 weeks from today, complete in all respects, mentioning the first date of joining, nature of work performed and the duration for which they have worked.

Extension of time shall not be sought by the petitioner.

(D) The Director of Marketing, Pune who is represented through the State in these matters shall decide the said proposals based on the available vacant posts and shall accordingly grant regularization from the date the said posts have fallen vacant, within a period of 16 weeks thereafter.

(E) All such employees inclusive of these respondents would, therefore, be granted deemed dates of regularization strictly on the basis of their seniority and would be entitled to monetary benefits accordingly. Same would apply to the case of deceased Dnyaneshwar, the monetary benefits to which he would have been entitled to, shall be paid to his widow or to any surviving legal heir within the above said period.

(F) In the event the Director of Marketing finds it necessary to create posts considering the quantum of work available and subject to the Rules, he would be expected to do so as per rules.

(G) Needless to state the above said proposals depend upon the factum of employment of these respondents keeping in view that they are in employment today and the services of these respondents shall not be discontinued merely on the ground that the proposal is pending. This protection shall not be applied to the deceased employee.

(H) The above said principle would apply even to cases of such employees, who have successfully superannuated from the employment / passed away and monetary benefits shall accordingly be extended to them based on their individual

claim.

11. Rule is made partly absolute in above terms.

(RAVINDRA V. GHUGE, J.)

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