

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2710 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Umesh Totaram Bhavsar,
Age. Major, Occ. Service,
Panchayat Samiti [PWD]
Dhadgaon, Dist. Dhule.

...Respondent.

WITH

WRIT PETITION NO. 2711 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Mahendra L. Chavhan,
Age. Major, Occ. Service,
R/o. Panchayat Samiti, Sakri.

...Respondent.

WITH

WRIT PETITION NO. 2712 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri. Y.D. Patil,
Assistant to Junior Engineer,
Age. Major, Occ. Service,
R/o. Akkalkuwa.

...Respondent.

WITH

WRIT PETITION NO. 2713 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Subhash N. Mahajan,
Assistant to Junior Engineer,
Age. Major, Occ. Service,
R/o. Nandurbar.

...Respondent.

WITH

WRIT PETITION NO. 2714 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri R. M. Sarote,
Assistant to Junior Engineer,
Age. Major, Occ. Service,
R/o. Minor Irrigation Div.
Shahada, Dist. Dhule.
...Respondent.

WITH

WRIT PETITION NO. 2715 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule. ...Petitioner.

Versus

Shri Tanaji Kalu Thakare,
Age. Major, Occ. Service,
R/o. Navapur, Dist. Dhule. ...Respondent.

WITH

WRIT PETITION NO. 2716 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule. ...Petitioner.

Versus

Shri C. J. Raghuwanshi,

Junior Engineer,
Age. Major, Occ. Service,
R/o. Dhule. ...Respondent.

WITH
WRIT PETITION NO. 2717 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule. ...Petitioner.

Versus

Shri Rajendra Ramchandra Nerkar,
Age. Major, Occ. Service ...Respondent.

WITH
WRIT PETITION NO. 2718 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule. ...Petitioner.

Versus

Shri K. D. Desale,
Assistant to Junior Engineer,
Age. Major, Occ. Service,
R/o. Panchayat Samiti, P.W.D.,
Shirpur, Dist. Dhule. ...Respondent.

WITH
WRIT PETITION NO. 2719 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule. ...Petitioner.

Versus

Shri. R. A. Girase,
Age. Major, Occ. Service,
R/o. Panchayat Samiti, Shahada. ...Respondent.

WITH
WRIT PETITION NO. 2720 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule. ...Petitioner.

Versus

Shri. S. P. Patil,
Age. Major, Occ. Service,
R/o. Shindkheda, Dist. Dhule. ...Respondent.

WITH
WRIT PETITION NO. 2722 OF 1997

Chief Executive Officer,

Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Ramesh Balu More,
Age. Major, Occ. Service,
R/o. Minor Irrigation Division,
Navapur.

...Respondent.

WITH

WRIT PETITION NO. 2723 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

1. Shri V. T. Patil,
Junior Engineer,
Age. Major, Occ. Service,
R/o. Dhule.
2. Shri Narendra Shridhar Patil,
Age. Major, Occ. Service,
(MIN) Irrigation Sub Division,
Nandurbar, Dist. Dhule.
3. Shri Sanjay Bhaulal Pathyar,
(MIN) Irrigation Sub Division,

Panchayat Samiti, Nandurbar,
Dist. Dhule.

4. Shri Mahendra Madhukar Borase,
(MIN) Irrigation Sub Division,
Panchayat Samiti, Shindkheda,
Dist. Dhule.
5. Shri Nitin Raghunathrao Patil,
Age. Major, Occ. Service,
R/o. Zilla Parishad, Sub-Division B & C,
Shindkheda, Dist. Dhule.
6. Shri Rajendra Tulsiram More,
Age. Major, Occ. Service,
R/o. Zilla Parishad, Sub-Division B & C,
Shindkheda, Dist. Dhule.
7. Shri Sunil Pandharinath Patil,
Age. Major, Occ. Service,
R/o. Zilla Parishad, Sub-Division,
Dhule, Dist. Dhule.
8. Shri Ravindra Daulatrao Patil,
Age. Major, Occ. Service,
R/o. (MIN) Irrigation Sub Division,
Panchayat Samiti, Nandurbar,
Dist. Dhule.

9. Shri Prashantkumar Lotanrao Bedase,
Age. Major, Occ. Service,
R/o. Zilla Parishad, Sub-Division B & C,
Bhadane, Dist. Dhule.
10. Shri Mahesh Prataprao Patil,
Age. Major, Occ. Service,
R/o (MIN) Irrigation Sub Division,
Dist. Dhule.
11. Shri Deepak Sahebrao Baviskar,
Age. Major, Occ. Service,
R/o. (MIN) Irrigation, Sub Division,
Shirpur, Dist. Dhule.
12. Shri Mahesh Sahebrao Bhadane,
Age. Major, Occ. Service,
R/o. Zilla Parishad, Sub-Division B & C,
Bhadane, Dist. Dhule.
13. Shri Ajay Prabhakar Nikumb,
Age. Major, Occ. Service,
R/o. (MIN) Irrigation Sub Division,
Shahada, Dist. Dhule.
14. Shri Deepak Devidas Chauhan,
Age. Major, Occ. Service,
R/o. Zilla Parishad B & C,
Sub-Division Taloda,

Dist. Dhule.

15. Shri Kishor Laxman Chauhan,
Age. Major, Occ. Service,
R/o. (MIN) Irrigation Sub Division,
Dhule, Dist. Dhule.
16. Shri Anil Vishwanath Kandalkar,
Age. Major, Occ. Service,
R/o. (MIN) Irrigation Sub Division,
Shirpur, Dist. Dhule.
17. Shri Laxmikant Pyarelal Hire,
Age. Major, Occ. Service,
R/o. (MIN) Irrigation Sub Division,
Shinkheda, Dist. Dhule.
18. Shri Harichandra Genda Pawar,
Age. Major, Occ. Service,
R/o. Zilla Parishad B & C,
Sub-Division Sakri,
Dist. Dhule.
19. Shri Dinkar Panya Gavit,
Age. Major, Occ. Service,
R/o. (MIN) Irrigation Sub Division,
Navapur, Dist. Dhule.
20. Shri Sunil Gulabrao Shinde,

Age. Major, Occ. Service,
R/o. (MIN) Irrigation Sub Division,
Nandurbar, Dist. Dhule.

...Respondents

WITH

WRIT PETITION NO. 2724 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri V. A. Chambhar,
Assistant to Junior Engineer,
Age. Major, Occ. Service,

...Respondent.

WITH

WRIT PETITION NO. 2725 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri S. K. Kale,
Age. Major, Occ. Service,
R/o. Panchayat Samiti (P.W.D.),
Dhule.

...Respondent

WITH
WRIT PETITION NO. 2726 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule. ...Petitioner.

Versus

Shri Chhottu Fakira Patawe,
Age. Major, Occ. Service,
R/o. P. W. D. Sakri. ...Respondent.

WITH
WRIT PETITION NO. 2727 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule. ...Petitioner.

Versus

Shri Anil Bhanudas Borade,
Age. Major, Occ. Service,
R/o. Khandbara,
Dist. Dhule. ...Respondent.

WITH
WRIT PETITION NO. 2728 OF 1997

Chief Executive Officer,

Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri S. D. Patil,

Assistant to Junior Engineer,

Age. Major, Occ. Service,

R/o. Shindkheda,

Dist. Dhule.

...Respondent.

WITH

WRIT PETITION NO. 2729 OF 1997

Chief Executive Officer,

Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri S. J. Thakare,

Assistant to Junior Engineer,

Age. Major, Occ. Service,

R/o. P. W. D. Division, Shindkheda,

Dist. Dhule.

...Respondent.

WITH

WRIT PETITION NO. 2730 OF 1997

Chief Executive Officer,

Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Popat Rambhau Chaudhari,
Age. Major, Occ. Service,
R/o. Chimthana, Tq. Shindkheda,
Dist. Dhule.

...Respondent.

WITH

WRIT PETITION NO. 2731 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Tukaram Savaji Gavit,
Age. Major, Occ. Service,
R/o. Z. P. Minor Irrigation,
Sub-Div. P.S. Navapur.

...Respondent.

WITH

WRIT PETITION NO. 2732 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Yashwant Magan Gaikwad,
Age. Major, Occ. Service,
R/o. Nandurbar.

...Respondent.

WITH
WRIT PETITION NO. 2733 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Y. R. Chaudhari,
Junior Engineer,
Age. Major, Occ. Service

...Respondent.

WITH
WRIT PETITION NO. 2734 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri D. P. Patil,
Assistant to Junior Engineer,
Age. Major, Occ. Service,
R/o. Dhule.

...Respondent.

WITH
WRIT PETITION NO. 2736 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Eknath G. Bhamre,
Assistant to Junior Engineer,
Age. Major, Occ. Service,
R/o. B & C Div. Dhadgaon,
Dist. Dhule.

...Respondent.

WITH
WRIT PETITION NO. 2737 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri S. M. Patil,
Assistant to Junior Engineer,
Age. Major, Occ. Service,
R/o. Shindkheda.

...Respondent.

WITH
WRIT PETITION NO. 2738 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri P. S. Chavan,
Assistant to Junior Engineer,
Age. Major, Occ. Service,
R/o. P. W. D. Shahada,
Dist. Dhule.

...Respondent.

WITH

WRIT PETITION NO. 2739 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri B. V. Sonawane,
Assistant to Junior Engineer,
Age. Major, Occ. Service,
R/o. Shindhkheda, Dist. Dhule.

...Respondent.

WITH

WRIT PETITION NO. 2740 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri D. P. Wasave,
Assistant to Junior Engineer,
Age. Major, Occ. Service,
R/o. Navapur, Dist. Dhule.

...Respondent.

WITH

WRIT PETITION NO. 2741 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Gaurav Daulat Patil,
Age. Major, Occ. Service,
R/o. P. W. D., Taloda.

...Respondent.

WITH

WRIT PETITION NO. 2742 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Sampatlal S. Mahajan,
Age. Major, Occ. Service,

R/o. P. W. D., Nandurbar.

...Respondent.

WITH

WRIT PETITION NO. 2743 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Vishwas Bhila Ishi,
Age. Major, Occ. Service,
R/o. Nandurbar.

...Respondent.

WITH

WRIT PETITION NO. 2744 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Jagdish Arjun Patil,
Age. Major, Occ. Service,
R/o. Panchayat Samiti Sakri.

...Respondent.

WITH

WRIT PETITION NO. 2745 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri N. S. Wankhede,
Assistant to Junior Engineer,
Age. Major, Occ. Service,
R/o. Shindkheda.

...Respondent.

WITH

WRIT PETITION NO. 2746 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri B. R. Borse,
Age. Major, Occ. Service,
R/o. P. W. D. Taloda, Dist. Dhule.

...Respondent.

WITH

WRIT PETITION NO. 2748 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Arun Raghunath Patil,
Age. Major, Occ. Service,
R/o. Panchayat Samiti,
Minor Irrigation Sub. Div. Shirpur. ...Respondent.

WITH
WRIT PETITION NO. 2749 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule. ...Petitioner.

Versus

Shri Kashinath Dhudku Deore,
Assistant to Junior Engineer,
Age. Major, Occ. Service,
R/o. Sakri. ...Respondent.

WITH
WRIT PETITION NO. 2750 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule. ...Petitioner.

Versus

Shri Subhash S. Ahire,
Assistant to Junior Engineer,
Age. Major, Occ. Service,

R/o. Deopur, Dhule. ...Respondent.

WITH

WRIT PETITION NO. 2751 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule. ...Petitioner.

Versus

Shri R. R. Nerkar,
Assistant to Junior Engineer,
Age. Major, Occ. Service,
R/o. Panchayat Samiti,
District. (P.W.D.), Sakri. ...Respondent.

WITH

WRIT PETITION NO. 2752 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule. ...Petitioner.

Versus

Shri C. F. Patwe,
Age. Major, Occ. Service,
R/o. Panchayat Samiti, (P.W.D.),
Sakri, Dist. Dhule. ...Respondent.

WITH

WRIT PETITION NO. 2753 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri R. R. Patil,
Assistant to Junior Engineer,
Age. Major, Occ. Service,
R/o. Minor Irrigation Div. Shahada.

...Respondent.

WITH

WRIT PETITION NO. 2754 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Rajendra B. Mahajan,
Age. Major, Occ. Service,
R/o. Sakri.

...Respondent.

WITH

WRIT PETITION NO. 2763 OF 1997

Chief Executive Officer,
Zilla Parishad, Dhule.

...Petitioner.

Versus

Shri Sahebrao Rambhau Chaudhari,
Age. Major, Occ. Service,
R/o. Shindkheda.

...Respondent.

Mr.N.N.Desale, Advocate for the petitioner.
Mr.K.C.Sant, Advocate for the respondents.
Mr.N.T.Bhagat, AGP for State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 07/12/2016

ORAL JUDGMENT :

1. In all these petitions, the petitioner / Zilla Parishad, Dhule is aggrieved by the judgments of the Industrial Court dated 27/08/1996 delivered in all the ULP complaints filed by the respondents / employees, by which the respondents have been granted permanency and all consequential benefits. While admitting these petitions on 09/10/1997, this Court granted interim relief in terms of prayer clause "D" and as a consequence of which, the execution and operation of the impugned judgments was stayed.

2. Since the Zilla Parishad, Dhule is the petitioner in all these matters and as the respondents are identically situated employees, all these matters have been taken up together for hearing by the

consent of the parties. For the sake of brevity, the parties would be referred to as the petitioner/Establishment and the respondents/employees.

3. The issue raised in these petitions by the Establishment is as to whether the Zilla Parishad can create posts, whether the Zilla Parishad can grant permanency or regularization under the orders of the Chief Executive Officer and whether the Zilla Parishad could be held guilty of unfair labour practices for having continued the daily wage employees as 'temporaries' or 'daily wagers' for years together.

4. This Court, by its judgment dated 26/02/2015 in WP No.1843/2015 and other connected matters, in the case of Municipal Council, Tuljapur Vs. Baban Hussain Dhale and others and in the matter of Mukhyadhikari, Nagar Parishad, Tuljapur Versus Vishal Vijay Amrutrao, [2015(5) Mh.L.J. 75] has concluded that the Industrial Court can neither direct the Zilla Parishad or the Municipal Council and similar State Instrumentalities to grant permanency to an employee within one year or similar periods in service and that such State Instrumentalities have to refer the matter to the Competent Authority for creation of posts and for grant of regularization and benefits incidental thereto from the date the post

is created or has fallen vacant against which a particular employee has been granted regularization.

5. In the case of Mukhyadhikari, Nagar Parishad, Tuljapur (supra), this Court concluded that as the Municipal Council did not have the power to create posts and hence cannot be held guilty of unfair labour practices by continuing the daily wagers as temporaries for years together, the declaration of unfair labour practices against the Municipal Council was set aside by this Court.

6. In the present cases, the Industrial Court has allowed the complaints. It would be apposite to reproduce the operative part of the order passed by the Industrial Court as under :-

"1. It is hereby declared that the respondent has committed an unfair labour practice under Item 6 of Schedule IV of the MRTU and PULP Act, 1971.

2. The respondent is directed to cease and desist from the said unfair labour practice forthwith.

3. The respondent is also directed to extent the permanency benefits to the complaint as Asstt. to Jr.Engineer w.e.f. 01/04/1991.

4. The respondent is directed to deposit the amount of back wages in this Court payable to the complainant for the benefit of permanency extended to him within two months from the date of order."

7. Identical orders have been passed in all these matters and particular dates and posts have been mentioned by the Industrial Court in Clause 3 as above.

8. In the matter of The Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade in WP No.5191/2004 and other connected matters, dated 22/07/2016 [2016(6) Mh.L.J.867], the learned Division Bench of this Court was considering the cases, which are practically identical to all these cases. The learned Division Bench was dealing with a reference made to it's Court in the light of the observations made in paragraph No.1 of the judgment in the case of Municipal Council, Tirora (supra) as under:-

"1. The Hon'ble The Chief Justice has in view of the following orders dated 22.01.2015 passed by the learned Single Judge in Writ Petition Nos. 5191/2004, 5199 to 5205/2004, 5207 & 5520 of 2004, referred to this Division Bench the following question:-

"1. An unfortunate situation has arisen in the present matters. Writ Petition No. 1209 of 2002 along with connected matters in respect of Class-IV employees of Municipal Council, Tumsar, were allowed by a common judgment and order delivered by the learned Single Judge of this Court (Smt. Vasanti A. Naik, J.) on 20-8-2011, and the common order passed by the Industrial Court directing

regularization on the basis of Clause 4C of the Model Standing Orders under the Industrial Employment (Standing Orders) Act read with Item 6 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, has been quashed and set aside and the complaints have been dismissed. Same is the view taken by me in respect of Class-IV employees of the same Municipal Council, in Writ Petition No. 1207 of 2002 along with connected matters decided by common judgment and order dated 23-12-2013. In another set of Writ Petition No. 3087 of 2001 along with connected matters decided by me by common judgment and order dated 17-6-2013, same view is followed. In Writ Petition No. 3436 of 2001 in respect of the employees from the same Municipal Council, a different view is taken by the learned Single Judge of this Court (Shri Z.A. Haq, J.) in the judgment and order dated 22-11-2014, and the writ petition filed by Municipal Council, Tumsar, has been dismissed, confirming the judgment and order passed by the Industrial Court, directing regularization of the complainant in service, on the basis of Clause 4C of the Model Standing Orders. I do not find any distinction on facts in Writ Petition Nos. 1209 of 2002, 1207 of 2002 and 3087 of 2001.

2. All these petitions arise out of the common order passed by the Industrial Court in the

complaints under Section 28 read with Items 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 directing regularization of the complainants in service upon completion of 240 days' continuous service as per Clause 4C of the Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946. It is an undisputed fact that all the complainants were appointed and working as daily wagers for years together. They were neither working as badli or temporary employees. There is neither any pleading nor any evidence to prove that all of them were appointed and working on the posts, which are sanctioned, as required by Section 76 of the Maharashtra Municipal Council, Nagar Panchayats & Industrial Townships Act, 1965. It is also not the case either of the complainants or the employer- Municipal Council, that the proposal to create or sanction the posts of Class-IV employees to accommodate the complainants was forwarded to the Director of Municipal Administration under Section 76 of the said Act. Even if any such proposal is forwarded, no orders are passed to create or sanction the posts to accommodate the complainants as regular employees.

3. In the background of the aforesaid undisputed factual position, the Industrial Court has recorded the

finding in all the matters that in terms of Clause 4C of the Model Standing Orders under the Industrial Employment (Standing Orders) Act, which are applicable to the employees working in the Municipal Council, the complainants have rendered 240 days' continuous service and hence they are entitled to regularization.

4. The facts stated in para 2 and the findings recorded by the Industrial Court are similar in all these decisions. There cannot be different view in the similar facts and circumstances. In the decision given in Writ Petition No. 3436 of 2001, delivered by Shri Z.A. Haq, J., I do not find any distinction on facts in Writ petition Nos. 1209 of 2002, 1207 of 2002 and 3087 of 2001. The judicial discipline, therefore, requires all these matters to be placed before the Larger Bench to resolve the conflicting views and decide the following question of law so as to avoid a different view being taken in respect of Class-IV employees working in the same Municipal Council:

Whether, in the absence of creation or sanction of the posts under Section 76 of the Maharashtra Municipal Council, Nagar Panchayats & Industrial Townships Act, 1965, the complainants were entitled to claim permanency or regularization in service on the basis of Clause 4C of the Model Standing

*Orders under the Industrial Employment
(Standing Orders) Act, 1946?*

5. The matters be, therefore, placed before Hon'ble the Chief Justice for constitution of appropriate Bench in terms of Rule 7 of Chapter I of the Bombay High Court Appellate Side Rules, 1960 to decide the aforesaid question of law."

9. It is observed by the learned Division Bench in paragraph No.2 of the case of Municipal Council, Tirora (supra) as under :-

"2. We find that the controversy already answered by at least two Division Benches of this Court in 2006 & in 2008 in 2 LPAs and by at least two learned Single Judges S/Shri S.J. Vazifdar J. & B.P. Dharmadhikari J, after appreciating the binding precedents of the Hon'ble Apex Court. We have therefore rejected the request of Adv. M.P. Jaiswal to place the reference before Full Bench. Judgments of the Division Benches of this Court in LPA 37 of 2006 in case of Pune Municipal Corporation v. Dhananjay Prabhakar Gokhale, (2006) 7 LJ Soft page 107 : (2006) 4 Mah. L.J. page 66 (RMS Khandeparkar J. & Roshan Dalvi J.) & in LPA 14 of 2008 dated 31-7-2008 reported at : 2008 (5) All M.R. 497 : 2008 (10) LJ SOFT 53 -State of Maharashtra and Anr. v. Pandurang Sitaram Jadhav (Swatanter Kumar, C.J., A.P. Deshpande, J.) as also of Single Judge (S.J. Vazifdar, J.) in Ramesh Vitthal Patil & Ors. v. Kalyan Dombivali Municipal Corporation & Ors. -- 2010(6) Bom. C.R. 661 - 2010 (8) LJ SOFT 39 and another judgment of a Single Judge (One of us- B.P.

Dharmadhikari J.) reported at 2011 (2) CLR 336 : 2011 (4) Mh.L.J. 875-- Shrirampur Municipal Council v. V.K. Barde, Member, Industrial Tribunal & Ors., are helpful here. In fact, the respective learned Single Judges whose concurring orders lead to this reference have also taken note of this legal position. Though Shri Jaiswal made request to place the matter before the Full Bench, he did not invite our attention to any contrary view of the Division Bench in the matter of public employment reached after considering the binding precedents. The third learned Single Judge to whom these two concurring views have been pointed out, noted the difference in facts presented to him and therefore, arrived at a different conclusion. As a question of law not requiring factual investigation is before us, respective Counsel have avoided to comment on merits of any of these orders and we also do not find it necessary to delve into it."

10. Finally, the learned Division Bench concluded in paragraph No.19 as under:-

"19. In this reference, the position emerging before us is similar. There is no conflict between the provisions of M.S.O. 4-C and the provisions of the S. 76 of the 1965 Act. In the event of the appointment having been made validly, it may be possible to invoke the provisions Cl. 4-C of M.S.O. A view to the contrary would result in regularizing/validating a void act. Cl. 4-C neither permits nor contemplates the same. As held in the above judgments, if the appointment is not made in accordance with the constitutional scheme, it is void ab-initio and, therefore, there

can be no claim to its regularization or for grant of permanency in any manner. This is all the more so as Cl. 32 of the M.S.O. clarifies that the Standing Orders are not to operate in derogation of any other law i.e. S. 76 of 1965 Act. Definitely any interpretation of Clause 4C conducive to defeating the Constitutional mandate is unwarranted. Violation of Clause 4C of the MSO may tantamount to an unfair labour practice under item 9 of Sch. IV of the 1971 Act but unless & until, other additional factors are proved on record, finding of indulgence in an unfair labour practice under item 6 of Sch. IV thereof can not be reached. As explained by the Hon. Apex Court in case of Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana, (supra), existence of a legal vacancy must be established & as discussed above, the power to recruit with the employer must also be demonstrated. In absence thereof, workman can not succeed in proving the commission of unfair labour practice under item 6 by the employer. These two ingredients, therefore, also must be established when benefit of Cl. 4-C is being claimed. Unless availability of a vacancy is shown or then power with the employer to create the post and to fill it is brought on record, mere continuation of 240 days can not and does not enable the workman to claim permanency by taking recourse to Cl. 4C read with item 9 of Sch. IV of 1971 Act. Clause 4C does not employ word "regularisation" but then it is implicit in it as no "permanency" is possible without it. Conversely, it follows that when a statutory provision like S. 76 disables the employer either from creating or filling in the posts, such a claim can not be sustained. This also nullifies the reliance

upon the judgment of learned Single Judge in case of *Maharashtra Lok Kamgar Sanghatana v. Ballarpur Industries Limited* (supra) where the employer was a private Company not subjected to such regulatory measures by any Statute and enjoyed full freedom to create the posts and to recruit. One of us (B.P. Dharmadhikari, J.) is party to the judgment of this Court in *Raymond UCO Denim Private Ltd. v. Praful Warade & Ors.* (supra) which again needs to be distinguished for the same reasons. The judgment of learned Single Judge in case of *Indian Tobacco Company Ltd. v. The Industrial Court and Ors.* (supra), judgment of Hon'ble Apex Court affirming it or then judgment of Hon'ble Apex Court reported at *Western India Match Company Ltd. and Workmen* are all considered therein & are distinguishable as the same do not pertain to the province of public employment or consider inherent Constitutional restraints (the *suprema lex* - see *Mahendra L. Jain v. Indore Development Authority and others* (supra) and Cl. 32 of the MSO. For same reasons, law laid down by the Full Bench judgment of this Court in 2007 (1) CLR 460- 2007 (1) Mah. L.J. 754- *Gangadhar Balgopal Nair v. Voltas Limited & Anr.* does not advance the cause of workmen. The Division Bench of this Court in *May & Baker Ltd. v. Kishore Jaikishandas Icchaporia* (supra) while construing Section held that the expression "other law" would not refer to the model standing orders or the certified standing orders since they are laws made under the provisions of parent act itself and not under any other law. The Model Standing Orders and Certified Standing Orders, held the Division Bench, "are laws no doubt but they are laws made under the provisions of

the Act". They were held not to be provisions under any other law. This discussion therefore shows how these words "in derogation of any law for the time being in force" in Cl. 32 of MSO need to be understood & does not help Adv. Jaiswal or Adv. Khan."

11. As such, this issue is no longer *res-integra*. Considering the fact that in all these cases, the Industrial Court has held the petitioner guilty of unfair labour practice under Item 6 of Schedule IV and has granted benefits of permanency on particular posts from particular dates, all these impugned judgments deserve to be modified.

12. Mr.Sant, learned Advocate for the respondents/employees has made a valiant attempt to support the impugned judgments. He has contended that these employees have been working for years together. All of them are likely to be in their early 50's. There are several posts available and rather than inducting fresh hands or new faces, these employees who have been working for decades and do not suffer any legal impediment, deserve to be granted the benefits, which the Industrial Court has so granted.

13. He further submits that the writ and/or supervisory

jurisdiction of this Court, being limited, would create fetters on this Court in upsetting findings on facts. Unless the impugned judgment is perverse and erroneous and is likely to cause grave injustice, no interference is called for.

14. Though the submissions of Mr.Sant appear to be attractive, I am unable to accept the same in the light of the judgment delivered in the case of Municipal Council, Tuljapur (supra) Municipal Council, Tirora (supra).

15. Hence, all these petitions are partly allowed. The impugned judgments to the extent of the directions in the operative part stand modified as under :-

- [a] Clause (1) and (2) of the impugned order declaring ULP against the petitioner, is quashed and set aside.
- [b] Clause (3), granting permanency benefits on particular posts w.e.f. particular dates, is modified and the petitioner is directed to forward the individual proposals of each of these respondents/employees, complete in all respects, within 12 weeks from today, to the appropriate authority, which is Rural Development and Water Conservation Department, Mantralaya, Mumbai.
- [c] The proposals to be forwarded by the petitioner shall mention the exact date of first joining of the respondent, the position on

which he has been working, the nature of his duties and his last drawn wages.

- [d] After the competent authority receives the proposal, it shall take a decision on the same within a period of 16 weeks and there shall be no extension of time considering the fact that these respondents are likely to be in their early or mid 50's.
- [e] The competent authority shall ensure that the posts on which the respondents are regularized, all consequential benefits including monetary benefits shall be calculated from the particular date on which the post had fallen vacant and that would be the date of deemed regularization to each of these respondents.
- [f] Consequential and monetary benefits shall thereafter be extended to these respondents within 16 weeks.
- [g] Until the said proposals are decided, all the respondents who are in employment, would be continued as such and their services would not be dispensed with only for the reason that their proposals are pending. Needless to state, this protection would not be applicable to the cases of disciplinary proceedings / enquiries.
- [h] In the event, any amongst these respondents has already been granted regularization from a particular date, the said date shall be the deemed date of regularization for the said employee.
- [i] The above contingency shall be equally applicable to those respondents who have been absorbed in other departments of the State or State Instrumentalities and they shall therefore be deemed to be regularized from the dates on which they have been so absorbed.

[j] Since it is stated that some of the Talukas under the erstwhile Zilla Parishad, Dhule are now part of Zilla Parishad, Nandurbar, these directions would squarely apply to the Zilla Parishad, Nandurbar in relation to those employees to have been transferred to the Zilla Parishad, Nandurbar. The learned Advocates appearing for the petitioner as well as the respondents shall intimate the C.E.O. of Zilla Parishad, Nandurbar accordingly.

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

17. Pending civil applications, do not survive, and hence are disposed of.

(RAVINDRA V. GHUGE, J.)