

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

WRIT PETITION NO. 4836 OF 2004

Hilal Dondhu Tadale
Age: - years, Occu.: Service,
R/o Dapora, Tq. & Dist. Jalgaon. ..PETITIONER

VERSUS

Zilla Parishad, Jalgaon
(Through its Chief Executive Officer) ..RESPONDENT

**WITH
WRIT PETITION NO. 5197 OF 2004**

Suresh Narayan Patil10.WP.2538
Age: 47 years, Occu.: Service,
R/o Raver, Tq. Raver, Dist. Jalgaon. .. PETITIONER

VERSUS

Zilla Parishad, Jalgaon
(Through its Chief Executive Officer) .. RESPONDENT

**WITH
WRIT PETITION NO. 4837 OF 2004**

Galu Hiranman Koli
Age: 50 years, Occu.: Service.
R/o Asoda, Tq. & Dist. Jalgaon. ..PETITIONER

VERSUS

Zilla Parishad, Jalgaon
(Through its Chief Executive Officer) ..RESPONDENT

**WITH
WRIT PETITION NO. 4838 OF 2004**

Shirish Kashinath Vispute
(Since Deceased) through his L.Rs.

1. Smt. Savita Shirish Vispute,
Age: 36 years,

2. Sachin Shirish Vispute,
Age: 17 years (Minor),

3. Hemant Shirish Vispute,
Age: 15 years (Minor),

Petitioner Nos.2 and 3 being Minor
Through their Mother-Petitioner No.1.

..PETITIONERS

VERSUS

Zilla Parishad, Jalgaon
(Through its Chief Executive Officer)

..RESPONDENT

**WITH
WRIT PETITION NO. 4858 OF 2004**

Ramesh Shridhar Patil
Age: 45 years, Occu.: Service,
R/o Dongarkathora,
Tq. Yawal, Dist. Jalgaon.

..PETITIONER

VERSUS

Zilla Parishad, Jalgaon
(Through its Chief Executive Officer)

..RESPONDENT

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Mr. G.V. Wani, Advocate for petitioners.
Mr. P.B. Patil, Advocate for respondent.

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**WITH
WRIT PETITION NO. 6506 OF 2004**

Zilla Parishad Jalgaon ..PETITIONER

VERSUS

Galu Hiranman Koli
Age: 42 years, Occu.: Service.
R/o Raver, Tq. Raver, Dist. Jalgaon. ..RESPONDENT

**WITH
WRIT PETITION NO. 6507 OF 2004**

Zilla Parishad Jalgaon ..PETITIONER

VERSUS

Ramesh Shridhar Patil
Age: 45 years, Occu.: Service,
R/o Dongarkathora,
Tq. Yawal, Dist. Jalgaon. ..RESPONDENT

**WITH
WRIT PETITION NO. 6508 OF 2004**

Zilla Parishad Jalgaon ..PETITIONER

VERSUS

Shirish Kashinath Vispute
Died. Through L.R.
Smt. Savita Shirish Vispute
Age: 38 years, Occu.: Service,
R/o Raver, Tq. Raver, Dist. Jalgaon ..RESPONDENT

**WITH
WRIT PETITION NO. 6509 OF 2004**

Zilla Parishad Jalgaon

..PETITIONER

VERSUS

Suresh Narayan Patil

Age: 35 years, Occu.: Service,

R/o Raver, Tq. Raver, Dist. Jalgaon.

..RESPONDENT

WITH

WRIT PETITION NO. 6510 OF 2004

Zilla Parishad Jalgaon

..PETITIONER

VERSUS

Hilal Dondhu Tadale

Age: 42 years, Occu.: Service,

R/o Raver, Tq. Raver, Dist. Jalgaon.

..RESPONDENT

....

Mr. P.B. Patil, Advocate for petitioner.

Mr. G.V. Wani, Advocate for respondents.

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 4th FEBRUARY, 2016

ORAL JUDGMENT :

1. All these petitions have been admitted by this Court.
2. Since the employees as well as the employer have filed petitions challenging the same judgment, I am referring to the parties as the employees and the employer in this judgment for the sake of clarity.

3. The petitioners in Writ Petition Nos. 4836/2004, 5197/2004, 4837/2004, 4838/2004 and 4858/2004 who are also respondents in Writ Petition Nos. 6506/2004, 6507/2004, 6508/2004, 6509/2004 and 6510/2004 are identically placed employees working with the employer-Zilla Parishad, Jalgaon. Considering the common issue involved and the identical cause of action put forthwith, I have taken up all these petitions for hearing together.

4. For the sake of clarity, the names of the employee, their petition numbers, their complaint ULP numbers and the date from which they are working are set out in a chart here under:

Sr. No	Name of Petitioner-employees	Date of Joining	ULP No.	Writ Petition No.
1	Galu H. Koli	12/05/80	645/1997	4837/2004
2	Hilal D. Tandale	15/05/80	643/1997	4836/2004
3	Shirish K. Vispute (since deceased through L.Rs.)	21/04/79	642/1997	4838/2004
4	Suresh N. Patil	21/04/79	641/1997	5197/2004
5	Ramesh S. Patil (since deceased through L.Rs.)	23/04/79	644/1997	4858/2004

5. The submissions of the employees in common is that all of them are working with the employer as Class IV employees from 1979 onwards. Some of them were mechanics and some of them were helpers. Their dates of joining were set out in the complaints before the Industrial Court. It is undisputed that permanency benefits were extended by the employer to all the employees from 17.10.1992. The claim put forth by the employees in their complaints was that they are entitled for permanency with effect from 1980 on the ground that since they had completed 240 days in the continuous and uninterrupted employment with the respondent, they were entitled for confirmation from 1980 onwards.

6. Mr. Wani submits that their complaints were partly allowed by the Industrial Court. The declaration of having indulged in unfair labour practice under Item 6 and 9 of Schedule IV of M.R.T.U. & P.U.L.P. Act, 1971 was made against the employer. The employees were granted benefit of permanency from 17.10.1989.

7. Mr. Wani submits that counter petitions have also been filed by the Zilla Parishad (which are before this Court today) contending that the benefits granted from 17.10.1992 deserve to be sustained and no benefits deserved to be extended to the employees from 1980.

8. Mr. Wani therefore submits that going by general law, a workman is entitled for regularisation after completing 240 days in the continuous and uninterrupted service of the employer. The employees are therefore entitled for benefits of permanency and consequential reliefs from 1989.

9. Mr. Patil, learned Counsel for employer-Zilla Parishad has opposed the petitions filed by the employees. He8.WP.1458.16.doc submits that the impugned judgment has been challenged by the employer. The provision under standing order 4(C) of the Industrial Employment (Standing Orders) Act, 1946 cannot be made applicable in this case. Such standing orders are not applicable to the Zilla Parishad. It has its own acts and rules

applicable. The financial condition/strength of the Zilla Parishad, number of vacancies available, number of sanctioned posts created, etc. have to be considered by the Zilla Parishad before granting any confirmation/regularisation.

10. He therefore submits that the employer has considered the entire position and finally took a decision of granting of benefits of permanency to the employees from 17.10.1992. Since then, these employees have been working. Most of them have by now superannuated.

11. He therefore submits that the petitions filed by the employees deserve to be dismissed and those petitions filed by the employer deserve to be allowed. He prays that the directions under clause 2 and 3 of the impugned judgment deserve to be quashed and set aside.

12. I have considered the submissions of the learned Counsel for both the sides.

13. The Industrial Court has partly allowed the complaints by the impugned judgment dated 26.04.2004. It would be apposite to reproduce Clause 2 and 3 of the operative part of the order as follows:

“(2) It is hereby declared that the respondent has committed unfair labour practices under Item Nos. 6 and 9 of Schedule IV of the MRTU & PULP Act, 1971 and directed to desist from continuing the same.

(3) The respondent is directed to grant permanency with attendant benefits thereof to the complainants w.e.f. 17.10.1989 and to pay the arrears accordingly after adjusting the payment already made to them within two months from the receipt of this order.”

14. It is trite law that when it comes to state instrumentalities, the financial strength of the establishment, nature of work done, quantum of work available, number of posts created and available vacant posts are the factors that have to be considered while granting regularisation. If, there are no vacant posts, benefits of regularisation cannot be made available to the employees since there is no post available on which they could be

absorbed. The concept of permanency and regularisation are distinct.

15. It appears that the employer has taken a conscious decision of granting benefits of permanency to the employees from 17.10.1992. I do not find in the impugned judgment any such conclusion arrived at by the Industrial Court by which the reasons behind granting regularisation from 17.10.1992 are considered to be unjustified or unsustainable. In my view, the Industrial Court was expected to go into the aspect as to why the employer has granted regularisation from 17.10.1992. In the absence of such reasons, the Industrial Court could not have concluded that the benefits deserved to be granted from 17.10.1989.

16. The issue as to whether permanent vacant posts were available prior to 17.10.1992 or as on 17.10.1989 has also not been considered by the Industrial Court.

17. I find from the impugned judgment that the Industrial Court has granted benefits of regularisation to the employees from

17.10.1989 only because they had earlier filed a complaint in 1989 before the Industrial Court at Nashik for claiming same reliefs. The said complaint was withdrawn purportedly on the ground that there was an understanding between the employees and the employer that they would be granted benefits of regularisation. Taking the date on which the grievance was voiced by the employees, that the Industrial Court has concluded that the benefits deserved to be granted from 17.10.1989.

18. It appears from the analysis of the evidence in the impugned judgment, that the 1989 ULP complaint was withdrawn since the employer stated that the proposal was sent to the government for absorbing the employees in regular employment. The Industrial Court further considered that the complaint was withdrawn with the said understanding and as the employees were engaged in continuous employment from 1987 onwards and not there before, they deserve regularisation from 17.10.1989.

19. I am unable to concur with these conclusions of the Industrial Court for the reasons that mere completion of 240 days

by the employees in state instrumentalities is not the ground for granting regularisation. As observed above, the nature of work, availability of work, availability of permanent vacant posts, creation of posts, budgetary sanction and financial approvals are required before an employee could be regularised in the employment of a state instrumentality.

20. However, it cannot be ignored that the proposal of the employees was forwarded by the employer in 1989. Reasonably, it can be safely presumed that the said proposal must have been cleared in a period of 2 years. Therefore, the benefits granted by the employer from 17.10.1992 are advanced to 17.10.1991 considering the fact that the proposals for regularisation of the employees were forwarded at the end of 1989 and could have reasonably being approved in a span of a year or two.

21. In the light of the above, the petitions filed by the employees i.e. 4836/2004, 5197/2004, 4837/2004, 4838/2004 and 4858/2004 stand dismissed. Rule is discharged.

22. The petitions filed by the employer i.e. Writ Petition Nos. 6506/2004, 6507/2004, 6508/2004, 6509/2004 and 6510/2004 are partly allowed. The declaration of ULP under Item 6 and 9 of Schedule IV is quashed and set aside.

23. The operative part of the impugned judgment in clause 2 and 3 is therefore modified as under :-

The employer is directed to grant permanency with consequential benefits to the original complainants with effect from 17.10.1991 and to pay the arrears accordingly, after adjusting the payments already made to them. These benefits be now made available to the employees not withstanding whether they are presently in employment or are superannuated, within a period of 12 weeks from today.

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

(RAVINDRA V. GHUGE, J.)