

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 917 OF 2016

Prakash Ghasit Dhikkyav,
Age 30 years, Occ. Labour,
R/o Walmiknagar, Bhusawal,
District Jalgaon.

..Petitioner

Versus

1. The State of Maharashtra
2. Municipal Council, Bhusawal
Through its Chief Officer,
Tq. Bhusawal, Dist. Jalgaon.

..Respondents

WITH
WRIT PETITION NO.2913 OF 2016

Mahendra Dattatraya Patil,
Age 30 years, Occ. at present nil,
R/o Bhusawal, Tq. Bhusawal,
District Jalgaon.

..Petitioner

Versus

Municipal Council Bhusawal,
Tq. Bhusawal, Dist. Jalgaon,
Through its Chief Officer.

..Respondent

WITH
WRIT PETITION NO.2915 OF 2016

Lalit Gopal Patil,
Age 39 years, Occ. at present nil,
R/o Bhusawal, Tq. Bhusawal,
District Jalgaon.

..Petitioner

Versus

Municipal Council Bhusawal,
Tq. Bhusawal, Dist. Jalgaon,
Through its Chief Officer.

..Respondent

WITH
WRIT PETITION NO.2916 OF 2016

Akash Narayan Bhoi,
Age 24 years, Occ. at present nil,
R/o Bhusawal, Tq. Bhusawal,
District Jalgaon. ..Petitioner

Versus

Municipal Council Bhusawal,
Tq. Bhusawal, Dist. Jalgaon,
Through its Chief Officer. ..Respondent

WITH
WRIT PETITION NO.3057 OF 2016

Vijay Motiram Kedare,
Age Major, Occ. Nil,
R/o Nandanvan Colony,
Bhusawal, Tq. Bhusawal,
District Jalgaon. ..Petitioner

Versus

Municipal Council Bhusawal,
Tq. Bhusawal, Dist. Jalgaon,
Through its Chief Officer. ..Respondent

WITH
WRIT PETITION NO.3073 OF 2016

Pravin Samadhan Bhalerao,
Age Major, Occ. Nil,
R/o Old RPF Barack,
Bhusawal, Tq. Bhusawal,
District Jalgaon. ..Petitioner

Versus

Municipal Council Bhusawal,
Tq. Bhusawal, Dist. Jalgaon,
Through its Chief Officer. ..Respondent

WITH
WRIT PETITION NO.3231 OF 2016

Pramod Ramdas Ahire,

Age 34 years, Occ. Labour,
R/o Sonit Chavade Wada,
Bhusawal, District Jalgaon.

..Petitioner

Versus

1. The State of Maharashtra
2. Municipal Council, Bhusawal
Through its Chief Officer,
Tq. Bhusawal, Dist. Jalgaon.

..Respondents

WITH
WRIT PETITION NO.3232 OF 2016

Vinod Ghasita Dhikkyav,
Age 35 years, Occ. Labour,
R/o Walmiknagar, Bhusawal,
District Jalgaon.

..Petitioner

Versus

1. The State of Maharashtra
2. Municipal Council, Bhusawal
Through its Chief Officer,
Tq. Bhusawal, Dist. Jalgaon.

..Respondents

WITH
WRIT PETITION NO.3233 OF 2016

Satish Suresh Sapkale,
Age 38 years, Occ. Labour,
R/o Hambardikar Chawl,
Bhusawal, District Jalgaon.

..Petitioner

Versus

1. The State of Maharashtra
2. Municipal Council, Bhusawal
Through its Chief Officer,
Tq. Bhusawal, Dist. Jalgaon.

..Respondents

WITH
WRIT PETITION NO.3234 OF 2016

Akshya @ Akshay Ramesh Gadhe,
Age 30 years, Occ. Labour,
R/o Behind Railway Hospital,

Bhusawal, District Jalgaon.

..Petitioner

Versus

1. The State of Maharashtra

2. Municipal Council, Bhusawal
Through its Chief Officer,
Tq. Bhusawal, Dist. Jalgaon.

..Respondents

WITH
WRIT PETITION NO.3235 OF 2016

Atul Balu Savkare,
Age 28 years, Occ. Labour,
R/o Tulja Bhavani Mandir,
Bhusawal, District Jalgaon.

..Petitioner

Versus

1. The State of Maharashtra

2. Municipal Council, Bhusawal
Through its Chief Officer,
Tq. Bhusawal, Dist. Jalgaon.

..Respondents

...
Advocate for Petitioners : S/Shri Satej S. Jadhav,
Vinod Prakash Patil and G.A.Nagori
AGP for Respondent 1 : Shri P.G.Borade
Advocate for Respondent 2 : Shri B.S.Deshmukh
...

CORAM : RAVINDRA V. GHUGE, J.
Dated: March 17, 2016
...

ORAL JUDGMENT :-

1. Heard.

2. Rule.

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

4. In all these matters, the petitioners are Class IV workmen, who are identically situated and fall in the same Class. The respondents in all these matters is the Municipal Council, Bhusawal. The issue involved is identical and hence all these petitions have been taken up together for common hearing.

5. I have heard Shri Patil, Shri Jadhav and Shri Nagori, learned Advocates appearing on behalf of all the petitioners. I have heard Shri Deshmukh, learned Advocate on behalf of the respondent - Municipal Council and the learned Assistant Government Pleader.

6. The petitioners have contended that they had been appointed as Field Workers in the Malaria Section of the respondent Municipal Council, in the year 2009 and 2010. Their common date of termination is 17.11.2011. All of them have completed 240 days in the continuous and uninterrupted service of the respondent, in every calendar year.

7. The petitioners had approached the Labour Court at Jalgaon, by filing their individual ULP Complaints under Section 28(1) read with item 1 of Schedule IV of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act"). Applications for interim relief under Section 30(2) were also filed praying to the Labour Court for grant of interim relief. It is contended that though the petitioners were protected by the interim orders of the Labour Court, the

respondent council has not complied with the said orders.

8. The petitioners further submit that by the judgment of the Labour Court, the Complaints were partly allowed and the order of terminating the services of the petitioners, dated 17.11.2011 were quashed and set aside. The judgment of the Labour Court in all these matters is dated 4.12.2013. The respondent was directed to reinstate the petitioners in service with continuity and 50% backwages.

9. The petitioners submit that the Municipal Council filed individual Revision (ULP) petitions before the Industrial Court at Jalgaon, bearing Nos. 27 to 49 of 2014. The petitioners are some of the respondents / employees in those revisions, who have approached this Court. By the impugned judgment and order dated 27.11.2015, all the revision petitions filed by the respondent / Council were allowed. The judgments of the Labour Court were set aside and all the complaints were dismissed.

10. It is strenuously submitted on behalf of the petitioners that the Municipal Council has issued the order of termination dated 17.11.2011 under the orders of the Collector. The Collector did not have the power to direct the Municipal Council to suspend the Resolution by virtue of which the petitioners were appointed as Class IV employees. Similarly, the Collector did not have the power to direct the Municipal Council to terminate the services of the petitioners.

11. It is then submitted that none of the petitioners were heard by the Municipal Council before terminating their services. No notice of hearing was issued. Since, there was no issue of any misconduct committed by the petitioners, there was no reason for the Municipal Council to terminate the services of the petitioners. It is also submitted that Principles of Natural Justice have been grossly violated.

12. Learned Advocates for the petitioners have further submitted that since they have completed 240 days in continuous and uninterrupted services with the respondents, their termination amounts to illegal retrenchment and hence Section 25(F) of the Industrial Disputes Act read with Rule 81 of the Industrial Disputes Bombay Rules were required to be complied with. Since the Municipal Council failed to do so, the impugned orders of termination are rendered illegal.

13. The petitioners have placed heavy reliance on the judgment of this Court dated 12.1.2016, delivered in the matter of Chief Officer, Municipal Council, Bhusawal Vs. Prashant Ashok Bhole and others - Writ Petition No.7584 of 2014 along with a group of petitions. Contention is that in these cases, the employees like the petitioners were terminated by the same Municipal Council / respondent herein. They had succeeded before the Industrial Court. The Municipal Council was the petitioner before this Court. This Court relied upon the judgment of the Honourable Supreme Court in the cases of Ajaypal Singh Vs. Haryana Warehousing Corporation, [(2015) 6 Supreme Court Cases 321], Sudarshan Rajpoot Vs. Uttar Pradesh

State Road Transport Corporation, [(2015) 2 Supreme Court Cases 317] and Mackinnon Mackenzie and Company Limited Vs. Mackinnon Employees Union [(2015) 4 Supreme Court Cases 544 and concluded that when Section 25F of the ID Act was not complied with, the employee deserves to be reinstated. It is, therefore, prayed that these petitions be allowed.

14. It is prayed in the alternative that if this Court is not inclined to entertain these petitions, compensation be awarded to the petitioners along with retrenchment compensation for having made the petitioners suffer rigors of litigation when they are not at fault.

15. Shri Deshmukh, learned Advocate appearing on behalf of the respondent / Council submits that the appointments of these petitioners have been made by way of back door entries. There was no advertisement published and no applications were called for. No procedure was followed by the respondent for recruiting the petitioners.

16. He further submits that the Standing Committee comprising of politicians and councilors has passed Resolutions on different occasions, thereby appointing the petitioners in the Class IV category. It was by virtue of such a resolution passed by the Standing Committee that these petitioners were issued with appointment orders without following any procedure. These types of appointments were brought to the notice of the Collector, who called for a report from the respondent / Council. The respondent submitted its report which was placed before the Labour Court

at Exhibit C-23, wherein, the respondent investigated into the manner of appointments of these petitioners. The fact situation was brought to the notice of the Collector through the report C-23. It was divulged that there was no procedure followed in recruiting the petitioners and they were recruited purely on the basis of the Resolutions passed by the Standing Committee on different occasions.

17. Shri Deshmukh further submits that the Collector acted on the report C-23 and directed the Municipal Council not to execute the said Resolutions. The Municipal Council is bound to obey the directions of the Collector, which were issued under Section 308 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 ("Act of 1965").

18. Shri Deshmukh further submits that had the Municipal Council not obeyed the directions of the Collector, the issue of payment of monthly wages of these petitioners would have created a serious issue as the Municipal Council could not have paid their wages in the wake of the directions of the Collector. He further submits that the decision of the Collector under Section 308(1) of the Act of 1965 has been further sustained by the Director of the Municipal Administration. The said decision has, therefore, attained finality. The order of the Collector was also placed before the Labour Court at Exhibit C-21.

19. Shri Deshmukh then draws the attention of this Court to the

judgment dated 12.1.2016, delivered by this Court in the case of the same respondent Municipal Council, Bhusawal in Writ Petition No.7584 of 2014. He submits that the judgment delivered by this Court is totally on different set of facts and would not be applicable in these cases. In the said cases, decided by this Court on 12.1.2016, the employees were working for quite some time and the Municipal Council had terminated their services. Issue of Section 308 of the Act of 1965 or a direction issued by the Collector under Section 308(1) was not a feature. In fact, no such direction was issued in those group of cases and hence the judgment of this Court dated 12.1.2016 would not be applicable.

20. He, therefore, submits that all these petitions deserve to be dismissed.

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

22. Before I delve into the contentions of the petitioners, I find it imperative to deal with the reliance placed by the petitioners on the judgment of this Court dated 12.1.2016 in the group of petitions, referred to herein above.

23. In order to appreciate the contentions of the petitioners, I called for the papers in Writ Petition No.7584 of 2014 and connected matters, which were decided by this Court on 12.1.2016. I have considered the Writ

Petition paper book threadbare. I do not find even a whisper, either by the Municipal Council, Bhusawal or by the employees in the proceedings before the Labour Court, Industrial Court or even before this Court, of any order purportedly passed by the Collector, under Section 308(1) and any order passed by the Director of the Municipal Administration under Section 308(4) of the Act of 1965. In fact, it was nobody's case, either before the Labour Court or the Industrial Court, or even before this Court that some orders were passed by the Collector under Section 308 which led the Municipal Council to terminate the services of the petitioners.

24. In the light of above, I find it necessary to observe that the judgment delivered by this Court dated 12.1.2016 in the matter of Chief Officer, Municipal Council, Bhusawal Vs. Prashant Ashok and others in the group of Writ Petition No.7584 to 7588 of 2014 is restricted to the facts emerging in those four cases and the said judgment shall, therefore, not be cited as a precedent except in matters in which identical set of facts are involved. The said judgment, therefore, would be, of no assistance to the present petitioners.

25. This Court, in an identical situation had dealt with Writ Petition No.6865 of 2015 in the matter of Sanjay Jagannath Pardeshi Vs. The Chief Officer, Municipal Council, Pachora decided on 1.2.2016. The facts emerging from the said case are practically identical to the facts emerging in these group of cases.

26. In the Sanjay Jagannath Case (supra), the issue of a Resolution having been passed by the Standing Committee of the Municipal Council, thereby appointing the petitioner Sanjay Jagannath was brought to the notice of the District Collector. He invoked his powers under Section 308 of the Act of 1965 and suspended the Resolution of the Municipal Council. It was contended by the employee that the President of the Municipal Council had appointed him on the basis of a Resolution passed and the District Collector had no authority to interject with the said Resolution or decision under Section 308 of the Act of 1965. It was contended that neither the Collector could have dealt with the said Resolution, nor the Collector could have directed the Municipal Council to stay the execution of the Resolution.

27. This Court has considered the law laid down by the learned Full Bench of this Court in the matter of Sanjay Govind Sapkal and others Vs. Collector, Dhule and others [2004 (2) Mah. L.J. 874]. The learned Full Bench in the said judgment had considered the earlier judgments delivered by the learned Division Bench in the matters of Chandrashekhar Shankarrao Zade Vs. Additional Collector 1984 MLJ 821 and Prakash Choudhary Vs. Collector, Dhule [1989 I CLR 374]. The learned Division Bench in the said two cases of Chandrashekhar and Prakash (supra) had mandated the opportunity of hearing and compliance of principles of natural justice before the Collector exercises its powers under Section 308 of the Act of 1965. The learned Full Bench, by its judgment in the matter of Sanjay Govind Sapkal (supra) has expressly overruled the two judgments of the learned Division Bench in the matters of Chandrashekhar and Prakash

(supra). In my view, the judgment of the Full Bench in the Chandrashekhar Case (supra) and the judgment delivered by this Court dated 1.2.2016 in the Sanjay Jagannath's case (supra) are squarely applicable to the facts of the petitioners in the present cases.

28. It would, therefore, be apposite to reproduce paragraph Nos.5 to 16 of the Sanjay Jagannath's judgment of this Court, dated 1.2.2016 (supra), herein under:-

“5. Mr.Tiwari, therefore, strenuously submits that when the President of the Municipal Council was authorized to appoint daily wagers, the Collector had no authority to stay the resolution confirming the services of the petitioner.

6. He further submits that Section 25F of the I.D.Act and Rule 81 of the I.D.Bombay Rules, 1957 were not complied with and hence the termination is bad in law.

7. He further submits that the Labour Court had rightly allowed the complaint and had granted reinstatement with continuity and 50% back wages. The Industrial Court, by the impugned judgment, has set aside the judgment of the Labour Court and has permitted the Municipal Council to pay retrenchment compensation to the respondent. He, therefore, prays that this petition be allowed and the judgment of the Labour Court be sustained.

8. Mr.Thoke, learned Advocate has appeared on behalf of the Municipal Council. He submits that the Council had passed a Resolution authorizing the President to issue appointment orders in the Class IV category. Similar resolution was passed empowering him to confirm the services of the daily wagers.

After the Collector invoked his powers u/s 308 and suspended the Resolution appointing the petitioner, the petitioner was terminated w.e.f. 20/06/2001. The Municipal Council had supported the petitioner and similar employees and had preferred an appeal before the Regional Director of the Municipal Administration by filing an appeal. By judgment dated 20/07/2001, the decision of the District Collector was sustained and the appeal of the Municipal Council was dismissed.

9. *He further submits that the petitioner had thereafter approached the Labour Court by filing the complaint which was partly allowed. The Municipal Council preferred Revision Petition No.76/2012. The petitioner also filed Revision (ULP) No.66/2012 for claiming full back wages. By the impugned judgment, the revision petition of the Municipal Council was allowed. He, therefore, submits that no interference is called for in the impugned judgment.*

10. *The learned AGP has appeared on behalf of respondent No.2. He submits that Section 308 empowers the Collector to suspend execution of orders and resolution of the Municipal Council on specific grounds. After such an order is passed u/s 308(1), the said order is forwarded to the Council as well as to the Director of Municipal Administration u/s 308(2). The Municipal Council is empowered to prefer an appeal u/s 308(3) before the Director. In the instant case, the Municipal Council had filed such a proceeding which was rejected by the Director u/s 308(4). The order of the Collector was, therefore, confirmed. He, therefore, submits that no interference is called for in the light of the provisions u/s 308 and the order passed by the Director. The impugned judgment of the Industrial Court, therefore, cannot be faulted and this*

petition be dismissed.

11. *I have considered the submissions of the learned Advocates for the respective sides as have been recorded hereinabove. It is not in dispute that there was no procedure followed by the Municipal Council while appointing the petitioner and similarly situated employees. No applications were invited by publishing an advertisement and no procedure was followed while recruiting him. The President of the Municipal Council was empowered to make such appointments and confirm them.*

12. *Respondent No.2/Collector has invoked his powers u/s 308 of the Act of 1965, which reads as under :*

“ Powers to suspend execution of orders and resolution of Council on certain grounds :

(1) If, in the opinion of the Collector, the execution of any order or resolution of a Council, or the doing of anything which is about to be done or is being done by or on behalf of a Council, is causing or is likely to cause injury or annoyance to the public or is against public interest or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof.

(2) When the Collector makes any order under his signature, he shall forward to the Council affected thereby a copy of the order, indicating therein the reasons for making it and also submit a report to the Director, along with a copy of such order.

(3) *Within [thirty days] from the receipt of such order of the Collector, the Council shall, if it so desires, forward a statement to the Director indicating therein why the order of the Collector should be rescinded, revised or modified. If no such statement is received by the Director within time, the Director shall presume that the Council has no objection if the order of the Collector is confirmed.*

(4) *On receipt of such report from the Collector and the Council's statement preferred to in Sub-section (3), if any, the Director may [within a period of six months, from the receipt of such report or within such period beyond six months as may, on the request of the Director, be extended by the State Government] rescind the order or may revise or modify or confirm the order or direct that the order shall continue to be in force with or without modifications :*

Provided that, the Director shall take into account the statement of a Council, if received, before such an order is made by him."

13. *An identical situation was before the Full Bench of this Court in the matter of Sanjay Govind Sapkal and others Vs. Collector, Dhule and others, 2003(3) BCR 550 = 2004(2) Mh.L.J. 874. The Full Bench considered the law laid down by the Division Bench in the matter of Chandrashekhar Shankarrao Zale Vs. Additional Collector, Nagpur, 1984 Mh.L.J. 821 and the judgment of the Division Bench of this Court in the case of Prakash Kutik Chaudhary Vs. Collector of Dhule, 1989(1) CLR 374 and expressly overruled both these judgments which mandated an opportunity of hearing and*

compliance of the principles of natural justice before the Collector exercised its power u/s 308(1).

14. *It would be apposite to reproduce the observations of this Court from paragraph Nos. 35 to 44 as under :*

“35. In the instant case, the case of the Municipal Council was that the posts were not sanctioned posts; there was no necessity of making appointments of employees, there were surplus and excess employees, no prior permission of the competent authority was taken; no applications were invited; no names from Employment Exchange were called; the provisions of the Act. Rules and Regulations were not observed; and the President made the appointments of his kiths and kins in violation of statutory provisions. A prayer was, therefore, made to the Collector to exercise power under Section 308(1) of the Act. The Collector, by a speaking order and recording reasons, suspended the said order, once it has been held that the Collector could exercise the power, the action cannot be held illegal on the ground of absence of authority. Declaration of law by different Division Benches of this Court in Chandrashekhar and Prakash Kutik reiterated in subsequent cases, in our considered opinion, did not lay down correct law on the interpretation of Section 308. We, therefore, overrule all the decisions. We hold that even if an order or resolution passed by the Municipal Council is implemented, executed or given effect to, power under Section 308(1) of the Act can be exercised and execution or implementation can be suspended by the Collector if the conditions laid down in the said provision are shown to be present.

36. *Whether in a given set of circumstances, such power could or could not be exercised or whether or not such power was exercised bona fide, is a question of fact and must be decided in the light of attenuating circumstances of the case. As a proposition of law, however, it cannot be laid down that once an order or resolution is executed, the authority of Collector comes to an end, in our judgment, therefore, the Court, in earlier cases has committed an error of law and the said view deserves to be interfered with by overruling those decisions.*

37. *It was finally contended that in any case, such an order would adversely affect the employees inasmuch as their appointments will be set aside by the Collector. It was, therefore, obligatory on the Collector even if it is assumed that he has power to invoke Sub-section (1) of Section 308 of the Act that he should comply with principles of natural justice and fair play. In the instant case, no notice was issued; no explanation was sought and no reasonable opportunity of hearing was afforded to the petitioners before taking an action of suspension of the order and on that ground also, the order passed by the Collector was liable to be set aside. For the submission, Prakash Kutik was relied upon. There, the Division Bench held, over and above the authority of the Collector, that while exercising statutory power, the Collector was obliged to comply with the principles of natural justice.*

38. *In our opinion, however, the submission of the learned Counsel for the Municipal Council is well-*

founded and deserves to be accepted that in the present proceedings, the question before the Collector related to the validity of an order passed by the Municipal Council, Dhule. If no action could have been taken by the Municipal Council or by the President and the action was unlawful, the same could have been suspended by the Collector and in exercise of power under Section 308(1) of the Act and by recording reasons, the Collector passed an order, which cannot be said to be without authority of law. If the case of employees was that the action taken by the Municipal Council was unlawful, it was open to them to take appropriate proceedings in accordance with law. But once it has been held that the Collector has power to press into service Section 308(1) of the Act and suspend an order or resolution of the Council, the matter must necessarily end there. In our opinion, therefore, even those observations in Prakash Kutik are not sound and we do not approve them.

39. We are supported in our conclusion by a decision of the Supreme Court in Subhash Chandra and Ors. v. Municipal Corporation of Delhi and Anr. There, the question of observance of principles of natural justice was raised against an order passed by the State Government under the Punjab Municipal Act, 1911. In that case, since an action of the Municipal Committee in granting certain benefits to the employees was not found to be in consonance with law, the execution was suspended. The aggrieved employees approached the Supreme Court by filing a petition under Article 32 of the Constitution.

40. It was contended on behalf of the employees that no opportunity was afforded to the Municipal Committee to show cause. Such opportunity could not be dispensed with. Non-compliance with natural justice rendered the order void and ineffective. Support was sought from a decision of the High Court of Madras in Abdul Gafoor v. State of Madras.

41. Negating the contention, interpreting the provisions of the Act and distinguishing Abdul Gafoor and holding that, the petitioners could not raise such contention, the Supreme Court stated :

"Section 235 requires the State Government to give an opportunity to the Municipality and to none else. No grievance is alleged to have been made by the Committee of the omission by the Government to give it the opportunity contemplated by "Section 235. It has to be borne in mind that an order under "Section 235 takes effect immediately and its operation is not made dependent upon the action contemplated under "Section 235. Where an order is made thereunder by an authority other than the State Government that authority has to report to the State Government. But, though such authority is bound to make a report is not inoperative or inchoate. It has to be given effect to by the Committee. It is true that till the procedure set out in "Section 235 is complied with, it cannot be regarded as final. But want of finality does not vitiate the order under "Section 232. The order is, unless modified or annulled by the State Government,

legally effective and binding on the Committee. The Committee can, therefore, acquiesce in it and waive the noncompliance by the State Government with the provisions of "Section 235 Since "Section 235 does not require an opportunity to be given to parties affected by the order other than the Municipality the petitioners are not entitled to say that the order is bad."

42. The above observations in Subhash Chandra apply with equal force in interpreting the provisions of "Section 308 of the Act as well. The Collector has passed an order and as per the requirement of Sub-section (2) of Section 308, he has forwarded the said order to the Municipal Council, Dhule, affected by the said order, indicating therein the reasons for making the order. The Collector has also submitted a report to the Director along with a copy of the order. It was, therefore, open to the Municipal Council, Dhule, to invoke Sub-section (3) of Section 308 of the Act and to forward a statement to the Director within 30 days from the receipt of the order of the Collector indicating that the order of the Collector should be rescinded, revised or modified. Sub-section (3) clarifies that if no such statement is received by the Director within time, it shall presume that the Council has no objection if the order of the Collector is confirmed. Sub-section (4) of Section 308 of the Act enjoins the Director on receipt of the report from the Collector, and Council's statement referred to in Sub-section (3), if any, to rescind the order or revise, modify or confirm it or direct that the order shall continue to remain in

force with or without modification. The proviso to the said Sub-section casts a duty on the Director to take into account the statement, if received before such an order is made by him.

43. It is thus clear that the order passed by the Collector is subject to confirmation, modification or setting aside by the Director and if the Municipal Council was aggrieved by such action or was of the view that no such order could have been made, the legislature had provided remedy and it was open to the Municipal Council to make grievance against the action taken by the Collector by invoking Sub-section (3) of Section 308. The provision expressly declares that if no such communication has been sent by the Council to the Director, the latter will presume that the former has no objection if the order passed by the Collector is confirmed. It is not the case of the Municipal Council or even the petitioners that an action was taken by the Municipal Council under Sub-section (3) of Section 308 and yet, the Director had failed to perform his statutory obligation under Sub-section (4) of Section 308 of the Act. Nor it is the case of the Municipal Council that the procedure required by the section had not been followed and in spite of objections raised by it against the report of the Collector, the Director, in violation of statutory provisions, confirmed the order passed by the Collector. It, therefore, cannot be said that the principles of natural justice were violated. The action taken by the respondents, hence cannot be said to be invalid, illegal or contrary to the principles of natural justice and fair-play.

44. For the aforesaid reasons, in our opinion, the reference deserves to be accepted. We hold that the Collector has power, authority and jurisdiction to invoke Sub-section (1) of Section 308 of the Act if he is satisfied that one of the eventualities mentioned in the said Sub-section exists. His power, authority and jurisdiction does not come to an end even if the order or resolution is implemented, executed or effected. The reference is answered accordingly. In the facts and circumstances, however, there shall be no order as to costs.” (Emphasis supplied)

15. In the light of the ratio laid down by the Full Bench of this Court and in view of the declaration that the law laid down in the case of Chandrashekhar and Prakash Kutik (supra) do not lay down the correct law on the interpretation of Section 308, the issue is therefore no longer res-integra. The observations of the Full Bench in the reproduced paragraph clearly indicate that by overruling the said two judgments of the Division Bench, the Collector was not held to be under an obligation to issue a notice of hearing, before invoking his powers u/s 308(1), to the petitioner.

16. In the instant case, the judgment of the Full Bench in the case of Sanjay Govind Sapkal (supra) was not brought to the notice of the Labour Court, which has interfered with the action of the Collector purely on the count that Section 25F was not complied with. The Industrial Court after considering the law, has concluded that at best, the complainant could be entitled to notice pay and retrenchment compensation for the period of work that he has performed."

29. Though the above factors in these cases have not been dealt with by

the Industrial Court, they have been dealt with by this Court. I, therefore, do not find any reason to cause any interference in the impugned judgments delivered by the Industrial Court.

30. The submissions of the learned Advocates for the petitioners canvassed in the alternative, need to be dealt with. First of all, despite the distinguishing features in these cases, I am inclined to grant retrenchment compensation to the petitioners, which under any circumstances, they were entitled to considering their length of service, as per Section 25F of the ID Act. The respondent Municipal Council, shall therefore, calculate the retrenchment compensation under Section 25F in each of these cases considering the length of service of the petitioners and pay the said amounts to the petitioners within eight weeks from today. Any fraction of service of six months or there beyond shall be rounded off to one year while computing the compensation. Since this compensation was due to be paid in November 2011, same shall carry simple interest at the rate of 3% p.a. which the respondent Municipal Council shall pay to the petitioners.

31. The petitioners have contended that they have been misled and on account of misrepresentation, they were made to believe that their appointments were of a regular nature. They had a legitimate expectation of continuing in employment.

32. Learned Advocate for the Municipal Council has submitted that all these petitioners had their own connections with the councilors /

politicians. Their proposals for appointment were brought to the Standing Committee by such politicians. Owing to the indulgence of the Standing Committee, these petitioners were appointed. Naturally, after their appointments were found to be irregular, they were terminated.

33. The Honourable Supreme Court in the matter of Secretary, State of Karnataka Vs. Umadevi & Others [(2006) 4 SCC 1], has observed in paragraph No.44 that irregular appointments could be regularized by framing particular schemes only for such candidates who have been working for ten years or more. The observations of the Honourable Supreme Court in the cases of Umadevi (supra) would therefore, be of no assistance to the petitioners.

34. I find some force in the submissions of Shri Deshmukh, learned Advocate for the respondent. The names of these petitioners were not called for from the Employment Exchange. Had that been the case it could have been appreciated that they were considered for appointment on the basis of their enrollment with the Employment Exchange and not on account of their proximity with the Councilors / Politicians. There is no dispute that their appointments were an out come of the Resolution passed by the Standing Committee and no procedure for recruitment in public employment had been followed. In the light of this factual matrix, I do not find the contentions of the petitioners that they are innocent and were misled in their appointments, could be accepted. I am, therefore, not inclined to grant costs / compensation to these petitioners.

35. These petitions are, therefore, disposed off with the direction to the Municipal Council to pay retrenchment compensation amount with interest to the petitioners as directed herein above. Rule in all these petitions stand discharged.

36. Learned Advocates for the petitioners submit at this juncture that liberty may be granted to the petitioners to assail the decision of the State, if arrived at, under Section 308(4) of the Act of 1965.

37. Considering the fact that the challenge of the petitioners to their termination under the Labour Legislation and their challenge to the decision of the Collector under Section 308(1) of the Act of 1965 has been put to rest by this Court, only in the event the petitioners have any legal right or remedy available for assailing the decision of the State arrived at under Section 308(4) of the Act of 1965, they are at liberty to avail of such remedy, if available. It shall not be construed that this Court has carved out a remedy for the petitioners.

(RAVINDRA V. GHUGE, J.)

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