

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4690 OF 2016

Kundalwadi Nagar Parishad,
Kundalwadi, Tq.Biloli,
District : Nanded,
Through Chief Officer,
Navnath S/o Baliram Wagwad,
Age-40 years, Occu-Service,
R/o Kundalwadi, Tq.Biloli,
District : Nanded

PETITIONER

VERSUS

1. Janardan S/o Shrikant Bhore,
Age-40 years, Occu-Service,
R/o Kundalwadi, Tq.Biloli,
Dist.Nanded,
2. The Director,
Municipal Administration,
3rd floor, Sir Pochchanwala Road,
Warli, Mumbai-30.

RESPONDENTS

Mr.S.S.Patunkar h/f J.P.Legal Associates, Advocate for the petitioner.
Mr.P.V.Jadhavar, Advocate for respondent No.1.
Mr.S.W.Munde, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 08/08/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties

2. The petitioner is aggrieved by the judgment and order dated 05/10/2015 delivered by the Industrial Court, Jalna by which Complaint (ULP) No.117/2010, filed by respondent No.1/employee, has been allowed and the petitioner is directed to grant permanency to the employee with status and privileges of permanent employee.

3. Learned Advocate for the petitioner has strenuously criticized the impugned judgment. He submits that though the employee was working from 01/10/1994 and is in employment even today, he was engaged as a daily wager without following the due process of selection. In public employment, a proper selection process is to be followed. The Municipal Council has engaged the employee by passing a Resolution. His services were approved on 08/07/1998 by Resolution No.206. Thereafter, by a Resolution No.69, his wages were increased from Rs.20/- to Rs.30/-.

4. Grievance is that the petitioner cannot be directed by the Industrial Court to create posts and consequentially the direction to grant permanency on a non-existing post is unsustainable. Reliance is placed upon the judgment of this Court in the matter of Sandip Baliram Sandbhor and others Vs. Pimpri Chinchwad Municipal Corporation and others, 2016(3) Mh.L.J. 563.

5. Learned Advocate for respondent No.1/employee has supported the impugned judgment. Reliance is placed upon the judgment of this Court in the matter of Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others, 2015(5) Mh.L.J. 75 and the unreported judgment of this Court dated 09/07/2015 in WP No.4745/2002 in the matter of Municipal Council, Parbhani Vs. Vishwas Uttamrao Latpate and dtd.21/10/2015 in WP No.1266/2015 in the matter of Udgir Municipal Council Vs. State of Maharashtra and others.

6. I have considered the submissions of the learned Advocates and have gone through the reports cited.

7. There is no dispute that the employee is working with the petitioner from 01/10/1994 and is still in employment.

8. The view taken by this Court in the Sandip Baliram case (supra) would not be applicable to this case since the contention of the workers, in their complaint itself, was that,

“h. The complainant realizing and anticipating the end and closure of contract of M/s. M.P.Enterprises with the respondents. personally met the respondent Nos.2 and 3 on or about

28/09/2004 and got them alighted of the situation that there used to be heavy working load in Talera Hospital and the current total staff of class IV employees in Talera Hospital was not sufficient to meet the exigencies of urgent hospital work, and that, the complainants were working for number of months and years in Talera Hospital and thus acquired the practical working knowledge on these posts in the Hospital, and therefore, they requested the respondent Nos. 2 and 3 to absorb them as the regular permanent employees of the corporation and to allow to continue to work them in Talera Hospital instead of appointing other employees on these posts. The respondent Nos.2 and 3 sympathetically appreciated the submissions of the complainants and promise to absorb them on the regular permanent employment of the corporation. However, the respondent Nos. 2 and 3 told to the complainants that they would have to go through some procedural and such other legal formalities in order to absorb the complainants as regular permanent employees in the corporation, and it will take some reasonable time of about $\frac{3}{4}$ months. The respondent Nos. 2 and 3 therefore asked the complainants to continue to work in Talera Hospital as probationers as Class IV employees and promised them to give due appointment orders as regular permanent employees of the corporations within a period of $\frac{3}{4}$ months, after completing such compliance and formalities and also the period of probation. The complainants in good faith believe these representations and agreed to continue to work as Class IV employees in Talera Hospital as probationers, and even without any written appointment orders with expectations that they would get due

appointment orders as permanent employees in due course. The respondent No.3 then immediately instructed telephonically to the Senior Medical Officer and in charge of Talera Hospital to allow the complainants to continue to work on the posts, they were already working as Class IV employees in Talera Hospital.”

9. It is, therefore, obvious that the workers in the Sandip Baliram case (supra) were contract labourers and they had approached the Court when they realized that the contract with their labour contractor was being terminated and they would lose their employment. In the instant case, respondent No.1 has been directly engaged by the petitioner and without any intervention of the Court, he is in employment for about 22 years.

10. In similar circumstances and set of facts, this Court has already taken a view in the 3 judgments cited by the learned Advocate for the employee. This Court had modified the judgment of the Industrial Court and had directed the Municipal Council to prepare a proposal and forward the same for granting benefits of regularization to the employee so as to be considered by the Directorate of Municipal Administration (Maharashtra).

11. Needless to state, the direction of the Industrial Court in the

impugned judgment in Clause B, C and D therefore deserves to be modified keeping in view the earlier judgments of this Court in the matter of Vishal Vijay Amrutrao, Municipal Council, Parbhani and Udgir Municipal Council (supra).

12. In the light of the above, this petition is partly allowed. Since the Municipal Council cannot create posts, the declaration of ULP under Item 6 and 9 of Schedule IV of the MRTU and PULP Act, 1971 is quashed and set aside.

13. The petitioner shall forward the proposal of respondent No.1 / employee to respondent No.2 Directorate of Municipal Administration within a period of 8 (eight) weeks from today. The petitioner shall indicate the vacancy available and the date on which the post has fallen vacant. After receiving the proposal, respondent No.2 shall pass necessary orders within 12 (weeks) for regularizing the services of the employee with effect from the date on which the first available post has fallen vacant and alongwith incidental and consequential benefits.

14. Clause Nos. B, C and D of the impugned judgment are therefore replaced by the above directions.

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

(RAVINDRA V. GHUGE, J.)