

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

WRIT PETITION NO. 5680 OF 2003
WITH
CIVIL APPLICATION NO.2337 OF 2005
IN WP/5680/2003

Kopargaon Nagar Parishad,
Kopargaon, Taluka Kopargaon,
District Ahmednagar.
Through its Chief Officer.

...PETITIONER

-VERSUS-

- 1 Rajendra s/o Baburao Ghoderao,
since deceased through his L.Rs.
- 1A Jijabai Rajendra Ghoderao,
Age : 45 years, Occupation : Household.
- 1B Kum.Awantika Rajendra Ghoderao,
Age : 15 years, Occupation : Minor.
Through her natural guardian mother
Jijabai Rajendra Ghoderao,
Age : 45 years, Occupation : Household.
R/o Bahiroba Chowk, Kopargaon,
Taluka Kopargaon, District Ahmednagar.
- 2 Bhivsen Bansi Pagare,
Age : 32 years, Occupation : Service,
R/o Tilawani, Post Kopargaon,
Taluka Kopargaon, District Ahmednagar.

...RESPONDENTS

...

Advocate for Petitioner : Shri N R Bhavar.
Advocate for Respondents : Shri Pradeep Shahane.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th December, 2016

Oral Judgment :

1 The Petitioner/ Municipal Council is aggrieved by the judgment and order dated 17.11.2003 by which the Industrial Court has allowed Complaint (ULP) No.229/1996 and the original two Complainants have been granted benefits of permanency. As the original Complainant No.1 passed away during the pendency of the complaint, the benefits consequential to the permanency have been extended to the legal heir brought on record.

2 While admitting this Writ Petition on 11.02.2004, interim relief was not granted. The Petitioner preferred an appeal before the learned Appeal Bench for seeking interim relief and the said Letters Patent Appeal No.125/2004 has also been dismissed on 30.06.2004.

3 I have heard the learned Advocates for the respective sides.

4 It is informed on the basis of the documents (five pages) tendered across the Bar by Shri Shahane, learned Advocate for the Respondents, that as the original Complainant No.1 had passed away, the Petitioner has extended all benefits consequential to permanency to

Respondent No.1A who is the wife of the deceased employee. As such, an amount of about Rs.1,03,891/- was deposited before the lower Court. Respondent No.1A has withdrawn Rs.61,890/- and Rs.42,000/- are kept in the Fixed Deposit. The documents placed on record are marked as Exhibit X for identification.

5 It is further informed by Shri Shahane that Respondent No.2/ original Complainant No.2 has been granted regularization from 07.07.2005. The said regularization is on a vacant post and is subject to the decision in this petition.

6 Though Shri Shahane has strenuously supported the impugned judgment and prayed for the dismissal of this petition, it cannot be ignored that in the State instrumentalities like the Petitioner herein, the regularization is not to be granted by virtue of completion of 240 days in continuous employment or from the date the ULP complaint is filed. It is trite law that the proposal of the claimants has to be forwarded to the appropriate authorities. Depending upon the availability of the permanent vacant posts or on creation of permanent posts, the regularization is granted from the date when the said post has become vacant. (See *Municipal Council, Tirora and another vs. Tulsidas Baliram Bindhade*, **2016(6) Mh.L.J. 867**)

7 In numerous matters, this Court has modified the directions of the Industrial Court granting permanency without taking into account as to whether, the post is vacant and this Court has then directed the appropriate authorities to consider the proposal of such employees.

8 It appears from the record and Exhibit X that the judgment of the Industrial Court has been complied with in the nature of granting monetary benefits to Respondent No.1A as the original Complainant No.1 had passed away. Insofar as Respondent No.2 is concerned, Exhibit X indicates that as the permanent post fell vacant, Respondent No.2 was granted regularization from 07.07.2005. Considering the said aspect and the law as is crystallized, I deem it appropriate to modify the impugned judgment only to the extent of the date from which the regularization and the benefits consequential thereto are to be granted to Respondent No.2.

9 In the light of the above, this Writ Petition is partly allowed. Considering that the monetary benefits have been extended to Respondent No.1A, the impugned judgment of the Industrial Court shall stand modified accordingly and Respondent No.1A would be precluded from making any further claim. So also, the regularization granted to Respondent No.2 w.e.f. 07.07.2005 would amount to compliance of the

directions of the Industrial Court. Hence, clause (5) of the operative order would stand modified accordingly and the said benefit would stand extended to Respondent No.2 from 07.07.2005.

10 Needless to state, the amount deposit before the lower Court shall be due and payable to Respondent No.1A with accrued interest. Liberty to withdraw is granted.

11 Rule is made partly absolute in the above terms.

12 The pending Civil Application does not survive and hence, stands disposed of.

kps

(RAVINDRA V. GHUGE, J.)