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

**BENCH AT AURANGABAD**

**WRIT PETITION NO.4759/2007**

The Zilla Parishad, Parbhani,  
Through its chief Executive Officer,  
Zilla Parishad, Parbhani.  
Dist. Parbhani.

...Petitioner...

**Versus**

Latabai d/o Vithalrao Jamode,  
Age : 43 yrs, Occu. Service,  
R/o. Bamni (Bk), Tq. Jintoor,  
Dist. Parbhani.

...Respondent...

.....

Shri Vivek Bhavthankar, Advocate for petitioner.  
Shri D.A. Karnik, Advocate h/f Shri Vivek Dhage, Advocate  
for respondent.

.....

**CORAM: RAVINDRA V. GHUGE, J.**

**DATE: 11.02.2016**

**ORAL JUDGMENT :**

1] This petition was admitted by order dated  
5.9.2007. By way of interim relief, the petitioner –  
Zilla Parishad was permitted to make a payment of

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Rs.500/- per month to the respondent during the pendency of this petition. It is fairly stated that presently the honorarium is Rs.1200/- per month and the respondent is being paid Rs.1200/- per month.

2] The petitioner has challenged the judgment and order of the Industrial Court dated 21.12.2006 by which Complaint (ULP) No.40/2001 filed by the respondent has been allowed.

3] Shri Bhavthankar, learned Advocate for the petitioner – Zilla Parishad, has strenuously criticized the impugned judgment. He submits that by virtue of the Government resolution dated 1.10.1996 with regard to engagement of part-time lady Nurses in the sub-centres, the respondent was so engaged on an honorarium. Since 1996 till today, she continues to be a part-time female voluntary worker in the Primary Health Centre. Her duty is to act as an attendant to the Female Welfare Worker / Auxiliary Nurse / Midwife under the Family Planning Programme. Though it may appear that she has been working from 2.12.1996 till today for a period of about more than 19 years, the nature of the programme still continues to be the same.

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4] He further submits that the competent department of the Government is yet to take a policy decision with regard to the fate of such part-time female employees. Neither is there any vacant post available, nor has any such post been created in the recent past.

5] Shri Bhavthankar submits that the respondent preferred Complaint (ULP) No.40/2001 before the Industrial Court claiming regularization in the Class-IV cadre with incidental and consequential benefits. The petitioner filed its written statement opposing the complaint setting out therein that the respondent cannot be termed to be an employee of the petitioner. Since she performs the work of female voluntary worker as an attendant to the regular Female Welfare Worker / Auxiliary Nurse / Midwife, no right is created in her to seek regularization in service. She does not work for eight hours in a day. Whenever there is a case of delivery, she has to reach the Primary Health Centre and help the Nurse. Whenever she is given a call in emergency cases, she has to reach the Health Centre. He, therefore, submits that the Industrial Court has failed to consider these aspects and has allowed the complaint.

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6] He further submits that the Industrial Court has granted regularization under the misconception that the petitioner can create posts and has deliberately continued the respondent as a temporary on an honorarium with the intent and object of depriving her of regularization and benefits incidental thereto. He, therefore, prays for quashing and setting aside the impugned judgment.

7] Shri D.A. Karnik, learned Advocate h/f Shri Vivek Dhage, learned Advocate for the respondent, has strenuously supported the impugned judgment. The contention is that though the respondent has been initially appointed as an attendant, the question is as to how far and for how long would the petitioner treat the respondent as an attendant. She has already put in about 20 years in service. She is about 53 years of age today considering the fact that she was 38 years in 2001 when the complaint was filed.

8] He further submits that though the petitioner may claim to have a particular programme in operation under the Government resolution dated 1.10.1996, no employee can be kept on an honorarium for her entire

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service life time, which would deprive her of retiral benefits after she has attained the age of superannuation. If that be so, it would amount to exploitation. When the programme is continued for the last two decades and has virtually assumed perennial character, the Industrial Court has rightly granted regularization to the respondent. He, therefore, prays for the dismissal of the petition with costs.

9] I have considered the submissions of the learned Advocates.

10] It is trite law that the State instrumentalities and limbs of the Government like the petitioner – Zilla Parishad cannot create posts. There can be no direction to the Zilla Parishad to create posts. No employee can be regularized on a non-existing post. Time and again this Court has been issuing directions to establishments like the petitioner to refer the proposals of such employees to the competent department of the State Government for considering creation of posts.

11] It is undisputed that the respondent has been working as per the Government resolution dated 1.10.1996. Subsequent Government resolutions, if any, have not been

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cited before the Court. It is undisputed that it is almost 20 years that the respondent has been working with the petitioner. The issue, therefore, is as to whether the respondent would never be granted regularization in her life time and as to whether she would not be entitled for any monetary benefits after reaching the age of superannuation.

12] The Industrial Court has declared unfair labour practice against the petitioner under Items 5 and 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Items 5 and 6 read as under:-

"5] To show favoritism or partiality to one set of workers, regardless of merits.

6] To employ employee as "*badlis*", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees."

13] When the petitioner - Zilla Parishad cannot create posts and when it could not be pointed out or proved before the Industrial Court that the post of a part-time attendant is vacant and available, the

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Industrial Court could not have directed regularization in service.

14] Considering this case from the point of view of Items 5 and 6, as I have come to a conclusion that the petitioner cannot create posts, that the petitioner has not kept posts vacant and deprived the respondent of regularization, the Industrial Court could not have declared unfair labour practice against the petitioner.

15] Considering the above and the peculiar facts of this case, I find that the case of the respondent deserves to be considered by the Government as it will have to take a policy decision with regard to similarly situated lady employees all over the State.

16] As such this petition is partly allowed. The declaration of unfair labour practice made by the Industrial Court against the petitioner is quashed and set aside. The direction to regularize the services of the respondent with effect from 22.3.2001 is also set aside.

17] The petitioner is directed to prepare a proposal of the respondent and similarly situated other lady employees within a period of 12 weeks from today by

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mentioning the necessary details of their dates of joining, nature of duties performed and the honorarium being paid to them. Such proposal shall be forwarded to the department of Public Health and Family Welfare of the State.

18] After the said department receives the proposals of such female voluntary workers / attendants, the concerned department shall consider the cases of such employees as well as the similarly situated employees all over the State of Maharashtra and take a policy decision as regards whether posts can be created with each Zilla Parishad and whether such employees could be accommodated on such posts.

19] The said decision shall be arrived at by the concerned department within a period of six months from the date of receipt of the proposals. Decision taken thereon shall be communicated to the Zilla Parishads and the concerned Zilla Parishad in turn shall convey the said decision to the respondent and similarly situated employees.

20] In the event any adverse decision is taken, the respondent will be at liberty to seek redressal of her

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grievance by taking recourse to an available legal remedy.

21] Needless to state that the petitioner shall continue the respondent in employment on the same terms and conditions subject to revision in the amount of honorarium and shall not terminate her services only on the ground that she is an attendant. The petitioner shall continue to pay her the monthly honorarium on monthly basis.

22] Nevertheless this protection shall not be applicable to the case of disciplinary proceedings or act of mis-conduct if committed by the respondent. Such continuance in employment will be as per the scheme applicable.

23] Rule is made partly absolute in the above terms.  
No order as to costs.

**(RAVINDRA V. GHUGE, J.)**