

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4050 OF 2004

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

1 Shaikh Rafik Shaikh Kadar
Age. 34 Years, Occ. Service,
R/o Ghodapir, Maliwada Road,
Nandurbar.

2 Ravindra Vithal Choudhari
Age. 22, Occu. Service,
R/o. Behind Desai Petrol Pump,
Galiwada, Nandurbar.
Dist. Nandurbar.

3 Bharat Hiralal Kumbhar
Age. 20 Year, Occu. Service,
New Kumbhar Wada, Nandurbar,
Dist. Nandurbar.

4 Jayant Krishnasingh Raghuvanshi
Age. 24 Years, Occu. Service,
R/o. Oppo. Nagar Parishad,
In front of Krishi Seva Kendra,
Nandurbar, Dist. Nandurbar.

5 The State of Maharashtra
Through Secretary Finance Department,
Mantralaya, Mumbai.

..Respondents

**WITH
WRIT PETITION NO. 4124 OF 2004**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

1 Eknath Lala Mali
Age. 30 Years, Occu. Service,
R/o. Lahanmaliwada, Shivaji Nagar,

Nandurbar, Tq. Nandurbar,
Dist. Nandurbar.

- 2 Smt. Geeta Narayan Marathe
Age. 36 Years, Occu. Service,
R/o. Near Amar Takies, Nandurbar,
Dist. Nandurbar.
- 3 Lotan Hiranman Vasaikar
Age. 48 years, Occu. Labour,
R/o. Chavan Chowk, Nandurbar,
Dist. Nandurbar.
- 4 Santosh Prabhakar Pawar,
Age. 23 Years, Occu. Labour,
R/o. Mangalbazar, Nandurbar,
Dist. Nandurbar.
- 5 Satish Sardarsingh Rajput
Age. 44 Years, Occu. Labour,
R/o. Desaipur, Nandurbar.
- 6 The State of Maharashtra
Through Secretary Finance Department,
Mantralaya, Mumbai. ..Respondents

**WITH
WRIT PETITION NO. 4372 OF 2004**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar. ..Petitioner

Versus

- 1 Raju Hiranman Bagul
Age. 29 Year,
R/o. Ambedkar Chowk School,
No. 9 Nandurbar.
- 2 The State of Maharashtra
Through Secretary Finance Department,
Mantralaya, Mumbai. ..Respondents

**WITH
WRIT PETITION NO. 4467 OF 2004**

Nandurbar Municipal Council, Nandurbar,

Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

- 1 Leelabai D/o Narayan Pendharkar
Age. 36 Year, Occu. Service
R/o. Ambedkar Chowk, Nandurbar,
Tq. And Dist. Nandurbar.
- 2 The State of Maharashtra
Through Secretary Finance Department,
Mantralaya, Mumbai.

..Respondents

**WITH
WRIT PETITION NO. 5948 OF 2004**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

- 1 Ishwara Ratan Gondhali,
R/o. Navhind Hsg. Society,
Juna Bail Bazar, Gondhali
Galli, Nandurbar, Dist. Nandurbar.
- 2 Santosh Bhatu Chaudhari
R/o. Bhatgalli, Opp. Shani Mandir,
Nandurbar.
- 3 Smt. Laxmibai Chindha Pendharkar
R/o. Ambedkar Chowk, Nandurbar,
Dist. Nandurbar.
- 4 Bebibai Sitaram Wagh
R/o. Ambedkar Chowk,
Nandurbar, Dist. Nandurbar.
- 5 Taibai Anirudh Pendharkar
R/o. Ambedkar Chowk,
Nandurbar, Dist. Nandurbar.
- 6 Savitribai Supadu Sapkale,
R/o. Ambedkar Chowk,
Nandurbar, Dist. Nandurbar.
- 7 Reshabai R. Pendharkar

- R/o. Ambedkar Chowk, Nandurbar,
Tq. Nandurbar, Dist. Nandurbar.
- 8 Indubai Raman Pendharkar
R/o. Ambedkar Chowk, Nandurbar,
Tq. Nandurbar, Dist. Nandurbar.
- 9 Devidas Tumadu Birare
R/o. Ambedkar Chowk, Nandurbar,
Tq. Nandurbar, Dist. Nandurbar.
- 10 Diwan Onkar Pendharkar
R/o. Ambedkar Chowk, Nandurbar,
Tq. Nandurbar, Dist. Nandurbar.
- 11 Vanji Chiman Ishi
R/o. Ambedkar Chowk, Nandurbar,
Tq. Nandurbar, Dist. Nandurbar.
- 12 Sakhubai Sudhakar Pendharkar
R/o. Ambedkar Chowk, Nandurbar,
Tq. Nandurbar, Dist. Nandurbar.
- 13 Manglabai D. Sonar
R/o. Near Sidhi Vinayan Temple,
Desaipura, Nandurbar.
- 14 Rupa Phulaji Thakare,
R/o. Tokar Talao, Post.
Songirpada, Tq. Nandurbar,
Dist. Nandurbar.
- 15 Rajendrasingh K. Valvi
R/o. Baherpura Near Tadipeth,
Nandurbar.
- 16 Kailas Mogya Gavit
R/o. Tokar Talao, Post.
Songirpada, Tq. Nandurbar,
Dist. Nandurbar.
- 17 Kishor Puna Tawar
R/o. Barud Galli,
Sidhi Vinayan Temple Road,
Dana Bazaar, Nandurbar.
- 18 Parigbai Ramesh Shinde
R/o. Near Amar Talkies,
Nandurbar.

- 19 Satyavan B. Pendharkar
R/o. Ambedkar Chowk,
Nandurbar.
- 20 Bhagwan Tapiram Bhil,
R/o. Tokar Talao, Post.
Songripada, Tq. Nandurbar,
Dist. Nandurbar.
- 21 Bhageshri Prakash Pathak,
R/o. Near Dhule Octroi,
Dhule Road, Nandurbar.
- 22 Prakash Vithal Wagh
R/o. Dr. Ambedkar Chowk,
Nandurbar, Dist. Nandurbar.
- 23 Laxmibai B. Sirare
R/o. Dr. Ambedkar Chowk,
Nandurbar, Dist. Nandurbar.
- 24 Smt. S. D. Pendharkar
R/o. Dr. Ambedkar Chowk,
Nandurbar, Dist. Nandurbar.
- 25 Sukdeo Lekhaji Pendharkar
R/o. Dr. Ambedkar Chowk,
Nandurbar, Dist. Nandurbar.
- 26 Vimalbai Punam Bagul
R/o. Dr. Ambedkar Chowk,
Nandurbar, Dist. Nandurbar.
- 27 Sau. Shantibai B. Pendharkar
R/o. Dr. Ambedkar Chowk,
Nandurbar, Dist. Nandurbar.
- 28 Mandabai Jagdeo Pendharkar
R/o. Dr. Ambedkar Chowk,
Nandurbar, Dist. Nandurbar.
- 29 Chandrabhaga Devidas Birare
R/o. Dr. Ambedkar Chowk,
Nandurbar, Dist. Nandurbar.
- 30 The State of Maharashtra
Through Secretary Finance Department,
Mantralaya, Mumbai.

..Respondents

**WITH
WRIT PETITION NO. 5030 OF 2005**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

- 1 Rajashri @ Usha Walmik Ahire,
R/o. Ambedkar Chowk, Nandurbar,
Tq. Nandurbar, Dist. Nandurbar.
- 2 Ravindra Asaram Mali
R/o. Mali Wada, Shivaji Nagar,
Nandurbar, Dist. Nandurbar.
- 3 Dhanraj Vithal Mali,
R/o. Mali Wada, Shivaji Nagar,
Nandurbar, Dist. Nandurbar.
- 4 Kishor Suklal Wadile
R/o. Plot No. 12, Neharu Nagar,
Nandurbar. (Deleted)
- 5 Sau. Jaishariben Arvindabai Majithiya
R/o. Shivaji Road, Meenawala
Chakki, Nandurbar. (Abated)
- 6 Shantilal Dhulchand Suryawanshi
R/o. C/o. Vijay Naik, Shetki Sangh,
Nandurbar, Dist. Nandurbar. (Dismissed)
- 7 Kiran Raghunath Chavan
R/o. At & Post. Ranade
Brahman lane, Nandurbar,
Dist. Nandurbar.
- 8 Kishor Chunnilal Chaudhari
R/o. Desaipura Kumbhar Galli,
Nandurbar.
- 9 The State of Maharashtra
Through Secretary Finance Department,
Mantralaya, Mumbai.

..Respondents

**WITH
WRIT PETITION NO. 555 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Arvind Manda Choudhari
R/o. Old Bullock Market,
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 625 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Arjun Barku Malve
R/o. Motha Maruti, Desaipura,
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 626 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Vasant Raju Bhil
R/o. Balvand. Po : Ranjale,
Tal : Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 627 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Nasimbano Sk. Nazir
R/o. Satpirr Galli, Near B & C Office,

Fish Market, Nandurbar,
Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 628 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Dharmendra Matusing Rajput
R/o. Kumbhar Galli, Desaipura,
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 629 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Rajendra Popat Patil
R/o. Mali Wada, Near Patil Lane,
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 630 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Sunil Bhika Marathe,
Age : Major,
R/o. Raisinghpura Behind Amar Theater,
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 631 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Vajid Ali Mustak Ali Sayyed
R/o. Maniyar Mohalla, Nandurbar,
Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 632 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Mohd. Ali Mohd. Yusuf Patel,
R/o. Ghodapir Mohalla,
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 633 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Rajesh Gopalsing Pardeshi,
R/o. Pardeshipura, Near the House of
Govardhanshaikh, Nandurbar,
Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 634 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Shantaram Makdu Gaikwad

R/o Maniyar Mohalla, Nandurbar,
Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 635 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Magan Babulal Gangurde,
R/o. Kaltolambi, Post. Waghale,
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 636 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Sau Savitribai Bansilal Chaudhary
R/o. Desai Pura, Near Akrit Laboratory
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 637 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Prakash Shena Kumbhar,
R/o. Juna Kumbharwada,
Near Ahilyabai Well,
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 638 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Suresh Dattatraya Marathe,
R/o. Behind Dhule Octroi, Dhule Road,
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 718 OF 2006**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Sanjay Magan Marathel
R/o. Old Bullock Market,
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 4691 OF 2007
WITH
CIVIL APPLICATION NO. 12343 OF 2010
WITH
CIVIL APPLICATION NO. 5927 OF 2015
IN
WRIT PETITION NO. 4691 OF 2007**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Ananda Supadu Saindane
Age 24 years, Occu. Service,
R/o. Mangal Bazar,
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 4693 OF 2007
WITH
CIVIL APPLICATION NO. 12344 OF 2010**

**WITH
CIVIL APPLICATION NO. 5930 OF 2015
IN
WRIT PETITION NO. 4693 OF 2007**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Motilal Omkar Marathe
Age : 47 years, Occu. Service
R/o. Raisingpura, Near Bathwal Theatre,
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 4699 OF 2007
WITH
CIVIL APPLICATION NO. 12346 OF 2010
IN
WRIT PETITION NO. 4699 OF 2007**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Ganesh Barku Shinde,
Age. 26 years, Occu. Service,
R/o. Sindhi Colony,
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 4748 OF 2007
WITH
CIVIL APPLICATION NO. 12348 OF 2010
IN
WRIT PETITION NO. 4748 OF 2007**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Sharad Gajanan Bhavsar
Age : 28 years, Occu. Service,

R/o. Satpeer Lane, Damuseth Galli,
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 5999 OF 2007
WITH
CIVIL APPLICATION NO. 12345 OF 2010
IN
WRIT PETITION NO. 5999 OF 2007**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Vinod Vasant Koli
Age : 27 years, Occu. Service,
R/o. Walmik Chowk,
Nandurbar, Dist. Nandurbar.

..Respondent

**WITH
WRIT PETITION NO. 6004 OF 2007
WITH
CIVIL APPLICATION NO. 12342 OF 2010
IN
WRIT PETITION NO. 6004 OF 2007**

Nandurbar Municipal Council, Nandurbar,
Through its Chief Officer,
Dist. Nandurbar.

..Petitioner

Versus

Manjulabai Bhaurao Musale
Age : 43 years, Occu. Service,
R/o. Raisingpura Near Bathwal Theatre
Nandurbar, Dist. Nandurbar.

..Respondent

...
Mr. A. B. Girase, Adv. For Petitioners.
Mr. G. D. Jain, Adv. For Petitioner
(in Writ Petition Nos. 4467, 4050, 5948 of 2004)
Mr. A. D. Pawar, Mr. Yogesh B. Bolkar, Adv.
h/f Mr. R. S. Shinde, Adv. For Respondents.
Mr. V. S. Badakh, AGP for State.
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CORAM : RAVINDRA V. GHUGE, J.

Dated: January 19, 2016

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ORAL JUDGMENT :-

1. All these petitions have been admitted by this Court. The petitioner in all these petitions is Nandurbar Municipal Council. All the respondents in these petitions are identically placed Class IV employees of the Municipal Council.

2. In all these petitions, the Municipal Council has challenged the judgments and orders of the Industrial Court, Jalgaon delivered in the Complaints filed by the respondents invoking items 5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act "). Since, there is no dispute as regards the complaints filed and the judgments delivered by the Industrial Court, which are impugned in this petition, the details of the complaints are not being set out in this judgment.

3. Since an identical issue is involved in all these matters, I have taken up all the matters together for a hearing by the consent of the learned Advocates for the litigating sides. For the sake of brevity, the petitioners in all these petitions shall be referred to as the "Municipal Council" and the respondents shall be referred to as the "employees".

4. I have considered the submissions of the learned Advocates for the respective sides.

5. This Court, by its judgment dated 1.2.2011, delivered in the cases of Municipal Council, Sawda, Tq. Raver, District Jalgaon Vs. Madhusudan Narayan Patil and others in Writ Petition Nos. 4557 to 4559 of 2005, has dealt with an identical situation. Considering the controversy involved in these three petitions, this Court, (Coram : B.P.Dharmadhikari, J.) has observed from paragraph No. 17 to 24 as under:-

“17. As already noted above, the findings of unfair labour practice under Item 9 of Schedule IV is reached because of denial of equal pay for equal work. The judgment reported at “State of Haryana & Another V/s Tilak Raj & others (Supra), shows that the daily wager can not invoke such doctrine. The reliance upon said concept therefore by Industrial Court is misconceived.

18. It is true that the Industrial Court has not directed Municipal Council to absorb the complainants before it on any particular posts or to pay them wages in particular pay scale and has also not asked it to create post. It has only directed it to pay salary and consequential benefits like that of permanent employee. How in absence of posts/vacancies the said benefit can be directed to be extended, has not been explained by the respondents. In case of “Maharashtra State Road Transport Corporation and Anr V/s Casteribe Rajya P. Karmchari Sanghatana (Supra)” in paragraph no.27, the Hon’ble Apex Court has noted observations made by it in its earlier judgment reported at “Mahatma Phule Agricultural University and Others V/s Nasik Zilla Sheth Kamgar Union and others (Supra)”. In paragraph no. 13, the Hon'ble Apex Court has found that a thing which could not have been done directly, can not be done indirectly.

19. Learned counsel for respondents has relied upon certain other judgments. Perusal of judgment in the case of "**Municipal Council, Hinganghat V/s Sanjay Dhanraj Yenorkar (Supra)**" shows that there defence of employer-Municipal Council was of employment under a particular scheme and its closure in 1995. In that background, this Court has found that nothing prevented that petitioner from tendering oral as well as documentary evidence before Industrial Court to substantiate this contentions. The reliance also being placed on the judgment of the Hon'ble Apex Court reported at "**(1996)2 SCC 293**" (**Chief Conservator of Forests V/s Jagannath Maruti Kondhare**), where the Hon'ble Apex Court has found that burden was upon the employer to show absence of intention or object on its part to deprive the employees working on daily wages of their benefits of permanency. Again it is to be noted that the employer was of Forest Department of State Government and it therefore had necessary powers to sanction or create posts. That is not the position in the present facts. This judgment is also distinguished by the Hon'ble Apex Court in the case of "**Gangadhar Pillai V/s Siemens Ltd.,**" reported at **(2007) 1 SCC 533**. The judgment of the learned Single Judge reported in the case of "**Burroughs Welcome (I) Ltd., (M/s.) & others V/s D.H. Ghosle & others (supra)**", considers the aspect of unfair labour practice qua a private employer and hence, discussion therein is not very relevant in this matter. In "**2001(1) Bom.C.R. 753**" (**National Textile Corporation (NM) Limited V/s Shivaji Gopal Gorule (Shri) and others**), this Court has found that existence of vacancies was not in dispute. In "**2009(2) Bom.C.R. 262**" (**Lokmat Proprietors, Lokmat Newspapers Limited V/s Prabhakar Rambhauji Choudhari**), I was required to consider defence of private employer that employees were not in its employment but were private hands engaged by its Officers.

20. In "**2007 (6) AIR SCW 6807**" (**State of Uttaranchal and anr**

V/s Prantiya Sinchai Avam Bandh Yogana Shramik Mahaparishad), the Hon'ble Apex Court has found directions by the Industrial Court to regularise the services of the daily wagers working for six years on the ground of completion of 240 days service in calender year, issued without considering availability of sanctioned posts, unsustainable. All these judgments clearly show that unless and until the Court records a finding that the sanctioned post is available, direction to give permanency can not be issued. Here Industrial Court has not recorded any such finding.

21. The last resort by respondents to seek permanency or regularisation against three posts of fireman is already found to be unsustainable by this Court. The petitioners have only with a view to avoid action for contempt of Court in peculiar situation, degraded one of those posts and accommodated one Shri Thosare against it. It is not a precedent which can be pressed into service to claim parity at least in present matter.

22. *In view of this discussion, I find that Industrial Court has erred in directing the employer to pay to complainants before it salary and other benefits like that of other permanent employees from the date of filing of complaints. The said direction can not be sustained. The findings of Industrial Court that the petitioner employer has indulged into unfair labour practices under Item 6 and Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act are also unsustainable. Same are accordingly quashed and set aside.*

23. *However, it can not be ignored that the respondents are in employment since last about 15 to 17 years. The Municipal Council has forwarded the proposals for their regularisation and permanency to State Government. The Municipal Council shall therefore pursue those proposals and try to obtain the necessary directions from the State Government upon it at the earliest. The respondents are also*

given liberty to make representation independently to State Government in this respect.

24. With these directions and observations Writ Petitions are allowed. The impugned judgments of the Industrial Court dated 19.01.2004 in Complaint (ULP) Nos. 2152 of 1999, 2154 of 1999 and 2156 of 1999 are quashed and set aside. Rule made absolute accordingly.” (Emphasis supplied).

6. Shri Girase, learned Advocate for the Municipal Council submits that an earlier proposal pertaining to these respondents sent in the year 2008 to the appropriate authority of the State Government i.e. the Directorate of Municipal Administration, Government of Maharashtra, was rejected by orders dated 17.2.2011 and 20.3.2012, copies of which are taken on record and marked as Exhibits “X” and “Y” for identification.

7. Notwithstanding the above, Shri Girase submits that the Nandurbar Municipal Council is a growing Municipal Council. The population has grown multi fold times. All the respondent / employees are still in employment since the petitioner is required to extend services and civic amenities to the residents under the Municipal Council.

8. He, however, clarifies that since the Municipal Council cannot create posts having no authority to do so, the allegation of deliberately and intentionally continuing the employees on daily wages with the intent and object of depriving them of the status and benefits of permanency, cannot be sustained against the Municipal Council. As on date, the daily wages of

the employees are being paid by the Municipal Council.

9. Learned Advocates for the respondent employees jointly submit that they have been working for years together. On an average, these employees have put in more than 20 years on daily wages with the Municipal Council. Their services are required since civic amenities have to be provided to the residents falling under the Municipal Council.

10. They submit that the petitioner, in fairness, can continue to pursue the matter with the Directorate of Municipal Administration and seek creation of posts, which can be allocated by seniority to the employees based on the number of posts created. The competent authorities can take a decision with regard to the date from which regularisation can be effected. The Industrial Court in the impugned judgment has issued such directions with the intention of ensuring that the employees are not kept on daily wages for their entire lifetime.

11. They submit that in the event the employees are aggrieved by the date from which regularisation could be effected, they might resort to a remedy available for the redressal of their grievances including by making a representation to the Municipal Council and the Government to reconsider the said issue. It is, therefore, submitted that these petitions can be disposed off with the direction for considering the proposal of the employees and in the light of the judgment of this Court dated 1.2.2011, portion of which is reproduced as above.

12. Shri Girase submits that the Municipal Council has no animosity against the employees and would continue to pursue the competent authority for creation of posts. These petitions can, therefore, be disposed off in the light of the view taken by this Court in the judgment dated 1.2.2011.

13. As such, these petitions are partly allowed. The impugned judgments of the Industrial Court are modified to the extent of setting aside the declaration of unfair labour practices against the petitioner council.

14. The petitioner / Municipal Council is directed to once again prepare the proposals of the respondent / employees, complete in all respects by setting out their dates of joining as daily wagers, nature of work performed and the duration for which they have been working, within a period of 12 weeks from today. These proposals shall then be forwarded to the Directorate of Municipal Administration, Government of Maharashtra, Mumbai, for consideration, for creation of posts and for granting regularisation to the respondents / employees. In doing so, the competent authority shall consider the seniority of the respondents / employees. Such decision be taken by the competent authority within a period of five months from the date of receipt of the said proposal.

15. Needless to state, the respondents / employees shall not be terminated by the Municipal Council solely for the reason of they being

daily wagers. They shall be continued in employment till the decision of the competent authority. This protection against termination shall not include acts of mis-conducts / disciplinary proceedings.

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

17. All pending Civil Applications stand disposed off.

(RAVINDRA V. GHUGE, J.)

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akl/d