

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

WRIT PETITION NO. 8363 OF 2015

Sandip Suresh Patil,
Age : 43 years,
Occupation : Nil,
R/o Sambhaji Nagar,
Pachora, Taluka Pachora,
District Jalgaon.

...PETITIONER

-VERSUS-

- 1 The Municipal Council,
 Pachora, Taluka Pachora,
 District Jalgaon.
 Through its Chief Officer.
- 2 The Directorate of Municipal
 Administration, Thane,
 District Thane.
- 3 The State of Maharashtra.
 Through the Secretary,
 Urban Development Department,
 Mantralaya, Mumbai-32.

...RESPONDENTS

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Advocate for Petitioner : Shri Sant Kishor C.
Advocate for Respondent No.1 : Shri Thoke D.B.
AGP for Respondents 2 and 3 : Shri N.T.Bhagat.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 14th December, 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
20.03.2015 delivered by the Industrial Court by which Revision (ULP)
No.69/2012 filed by the Petitioner was rejected and Revision (ULP)
No.77/2012 filed by the Respondent/ Municipal Council was allowed.
Consequentially, the judgment of the Labour Court dated 22.06.2012
allowing the Petitioner's Complaint (ULP) No.102/2001 has been set
aside.

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

4 There is no dispute that after the name of the Petitioner was
called from the Employment Exchange and Social Welfare Officer, the
Petitioner was selected on 13.04.1999 for appointment as a Sweeper. After
issuance of the appointment order, the District Collector exercised his
powers under Section 308(1) of the Maharashtra Municipal Councils,
Nagar Panchayats and Industrial Townships Act, 1965 (for short "the 1965
Act") and suspended the resolution appointing the Petitioner.

5 After the resolution was suspended, the appeal preferred by the Municipal Council under Section 308(3) of the 1965 Act was considered and the decision of the Collector was sustained by the appropriate authority which is the Director of Municipal Administration and the appeal of the Municipal Council was rejected. It is informed that thereafter, the matter was taken up before the State Government under Section 318 of the 1965 Act and the decision of the Collector has been sustained.

6 Thereafter, instead of approaching this Court upon being aggrieved by the decision of the State Government, the Petitioner approached the Labour Court by filing the ULP complaint which was allowed on 22.06.2012. He was granted reinstatement with continuity and 50% back wages.

7 The Industrial Court, while dealing with the group of such revision petitions filed by the Municipal Council as well as by the employees, concluded that after the procedure under Section 308 of the 1965 Act was complied with and after the decision of the Collector was sustained upto the level of the State Government, the Petitioner could not have approached the Labour Court alleging victimization, violation of

principles of natural justice and wrongful exercise of the employer's right. The Industrial Court has concluded that the judgment of the Labour Court deserves to be quashed and set aside as the Petitioner should have taken steps in the light of the provisions of the 1965 Act.

8 The learned Division Bench of this Court in the matter of *Municipal Council Tirora vs. Tulsidar Baliram Bindhade*, **2016 (6) Mh.L.J. 867**, has concluded that unless the prescribed procedure under Section 76 of the 1965 Act is followed, the appointments of candidates cannot be legalized. The learned Division Bench came to the conclusion that the Industrial Court could not have granted regularization in service in the face of non compliance of Section 76 of the 1965 Act.

9 At this juncture, the learned Advocate for the Petitioner submits that he would prefer to raise a grievance against his termination considering that the State Government has exercised its powers under Section 318 and has sustained the order of the District Collector.

10 In the light of the above, this Writ Petition is disposed of without causing interference in the impugned judgment of the Industrial Court. Rule is discharged.

11 Insofar as the request of the Petitioner is concerned, this Court need not make any observation regarding granting liberty in a particular way to the Petitioner, considering the fact that in the event he desires to act on the basis of the decision of the State Government under Section 318 of the 1965 Act, it would be for the Petitioner to take a decision subject to the legal remedy that may be available.

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(RAVINDRA V. GHUGE, J.)