

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

WRIT PETITION NO.3210 of 2015

The Dhule Municipal Corporation, Dhule,
District Dhule, through its Commissioner.

**...PETITIONER
(Orig. Respondent)**

VERSUS

Shri. Kishor s/o. Sudam Waghmare,
Age : 38 years, Occu. Service,
R/o : Krushna Nagar, Moglai, Dhule,
District Dhule.

**...RESPONDENTS
(Orig.Complainant)**

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WRIT PETITION NO.3227 OF 2015

The Dhule Municipal Corporation,
Dhule, District Dhule,
Through its Commissioner.

**...PETITIONER
(Orig.Respondent)**

VERSUS

Shri Kashinath s/o Phula Khairnar,
Age 42 years, Occu: Service,
R/o. Dakshata Colony,
Dhule, District Dhule.

**.RESPONDENT
(Orig.Complainant)**

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Mr.N.N.Desale, Adv., for petitioner.
Mr.N.L.Choudhary, Adv., for respondent (sole).

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CORAM: P.R.BORA, J.

Date: 27.6.2016

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JUDGMENT:

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of the learned Counsel for the parties.

2. Since both the writ petitions are arising out of the common judgment and order passed by the Industrial Court, Dhule, I deem it appropriate to decide these writ petitions by common reasoning. The petitioners have filed the present petitions against the common judgment and order passed by the Industrial Court, Dhule, in Complaint (ULP) Nos.76/2012 and 77/2012.

3. The Industrial Court has passed the following order:

"(1) Complaint (ULP) No.76/2012 & Complaint (ULP) No.77/2012 are hereby allowed as under:-

(2) It is hereby declared that, the Respondent - Corporation has been indulged in unfair labour practice under Item (6), (9) and (10) of Scheduled IV of the MRTU & PULP Act, 1971. Respondent is

hereby directed to cease and desist from such unfair labour practice.

(3) Respondent - Corporation shall prepare Seniority List of all the temporary and badli employees including the complainants within the period of three months from the date of this order.

(4) Respondent - Corporation is hereby directed to give benefits of permanency and all other consequential monetary benefits to the Complainants as per the Seniority List and whenever the vacant and sanctioned posts on which the Complainants are working exist.

(5) Respondent shall take necessary steps for the sanction of the post on which the Complainants are working within the period of three months from the date of this order.

(6) No order as to costs.

(7) Copy of this Judgment shall be kept in Complaint (ULP) No. 77/2012."

Shri Desale, learned Counsel appearing for the petitioner Corporation, assailed the order passed by the Industrial Court, Dhule, on various grounds. Learned Counsel submitted that without considering the fact that the respondents i.e. the original complainants were not appointed by following due process of law, and were having the status of only daily wagers, the order has been passed for regularizing their services. Learned Counsel further submitted that the petitioner Corporation does not

possess any power to create posts and, as such, the Industrial Court ought not have issued any direction for making the complainants permanent on their respective posts and to extend the benefits of permanency to them. Learned Counsel further submitted that in absence of any power to create the posts, the allegation that the petitioner Corporation desires to continue the respondents as daily wagers for years together, with an intent and object of depriving them of the status and benefits of permanency, was unsustainable and, as such, the Industrial Court should not have declared that the petitioner Corporation is guilty of commission of unfair labour practices. Learned Counsel, therefore, prayed for setting aside the impugned judgment.

4. Shri N.L.Chaudhari, learned Counsel appearing for the respondents i.e. the original complainants supported the impugned order. Learned Counsel submitted that the complainants have produced ample evidence on record showing that the complainants were kept as temporary and Badali workers for years together with the only intention of depriving them from the benefits

of permanency. Learned Counsel further submitted that the work being performed by the complainants is of permanent nature and, as such, the petitioner Corporation must have exerted for creating the additional posts so that the workers who are working with the petitioner Corporation for years together can be absorbed on the permanent posts but since no such attempt has been made by the respondent Corporation, the Industrial Court has rightly declared that the petitioner Corporation is indulging in commission of unfair labour practices. Learned Counsel, therefore, prayed for dismissal of the petition.

5. I have carefully considered the submissions advanced on behalf of the learned Counsel appearing for the respective parties and perused the impugned judgment and the material on record. The petitioner Corporation has not disputed the fact that the respondents are working with the petitioner Corporation as Safai Kamgar since last several years. From the material on record, there cannot be a dispute that the respondent workers / complainants had been continuously serving with the petitioner

Corporation and in each calendar year had worked for more than 240 days. The grievance of the Corporation is that in not making the respondents permanent, it is not the intention of the Corporation to deprive them from the benefits of permanency but in absence of any power to create posts, the petitioner Corporation is unable to make the respondents permanent and to extend them the benefits of permanency and for this reason it has been contended on behalf of the Corporation that it should not have been held guilty of commission of unfair labour practices.

6. It is true that the petitioner Corporation does not have any power to create the posts and such power lies with the State Government. As such, there appears substance in the contention raised by the learned Counsel appearing for the petitioner Corporation that the petitioner Corporation cannot be held guilty of commission of unfair labour practices and to that extent some interference is required in the impugned order. However, considering the admitted fact that the respondents are continuously working as Safai Kamgar for years together with the

petitioner Corporation, there appears no reason for causing any interference in clause Nos.3, 4 and 5 of the impugned order. Otherwise also, the directions issued by the learned Industrial Court in the aforesaid clauses cannot be in any way said to be against the petitioner Corporation. What has been directed by the learned Industrial Court is to prepare the seniority list of the temporary and Badali employees, including the complainants, within a period of three months from the date of the order and to give the benefits of permanency as per the seniority list and whenever vacant and sanctioned posts are created. It is further directed by the learned Industrial Court that the petitioner Corporation shall take necessary steps for sanction of the posts on which the complainants are working within a period of three months from the date of the order passed by the Industrial Court.

7. Similar issues as are raised in the present petition were raised before this Court in Writ Petition No.1028/2005 and the connected writ petitions. I, therefore, find it appropriate to adopt the same course and

pass similar order as has been passed on 10th of July, 2015 in the aforesaid writ petition. In view of the above, following order:

ORDER

1. Both the writ petitions are partly allowed by setting aside only the declaration of unfair labour practices as made in clause (2) of the operative part of the impugned judgment.
2. The time granted to the petitioner Corporation in clause (3) and (5) is extended by observing that the petitioner shall regularize the services of the respondents considering the overall seniority list and available sanctioned posts. In the event there are no sanctioned posts available on the date, the petitioner shall prepare proposal of the respondents, complete in all respects, by citing their actual dates on which they were inducted in the employment and submit the same to the appropriate Government for creation of posts. After such posts are created / sanctioned, the petitioner Corporation shall regularize the services of the respondents as per their

seniority list in phases.

With the above directions, the petitions are partly allowed.

Rule is made absolute in above terms with no order as to costs.

(P.R.BORA)
JUDGE

AGP/3210-3227-15wp

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