

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

LETTERS PATENT APPEAL NO. 307 OF 2007

IN

WRIT PETITION NO. 7841 OF 2005

Shirur Nagar Parishad
Taluka : Shirur
District : Pune.

... Appellant
(Original Petitioner)

Vs

1.R.B. Gaikwad
335, Lote Aali,
Ghodnadi, Tal:Shirur,
Dist:Pune.
2.The State of Maharashtra
through Government Pleader,
High Court, Appellate side,
Bombay.

... Respondents
(Original Respondents)

....

Mrs. Meena Doshi for the Appellant.
None for the Respondents.

....
**CORAM : V.M. KANADE &
MRS. SWAPNA S. JOSHI, JJ.**
DATE : 16th SEPTEMBER, 2016

JUDGMENT: (PER MRS. SWAPNA S. JOSHI, J.)

1] The Appellant has challenged the judgment and order dated 2nd July, 2007 in Writ Petition No. 7841 of 2005, by preferring the present Letters Patent Appeal.

2] Brief facts of the case are that, the President of Shirur Nagar

Parishad appointed the Respondent no.1 on the post of Assistant Wireman w.e.f. 18th June, 1990, on daily wages. He was in continuous service till the date of termination i.e. 14th September, 1991. The Government of Maharashtra had issued a Government Resolution dated 24th June, 1986, prohibiting engagement of workmen on daily basis. However, in urgent need the Petitioner engaged, daily wages earners. Therefore, about 73 daily wage earners were appointed. These appointments were not against sanctioned post. The services of all 73 daily wages earners were terminated. The Respondent No. 1 raised the dispute against the termination order before the Government Labour Officer and thereafter before the Conciliation Officer. On 9th June, 1993 dispute was referred to Labour Court, Pune, which was partly allowed. It was directed to reinstate the Respondent No. 1 in service. The prayer for back wages and continuity of the service was rejected. The Respondent No. 1 filed Writ Petition No. 7841 of 2005 against the said order, which was dismissed. Being aggrieved by the order passed by the learned Single Judge, the Petitioner has filed the present appeal.

3] Heard the learned counsel for Appellant. The Respondents and their counsels remained absent. The learned counsel for the Appellant contended that as per the Maharashtra Municipalities Act, 1965, the Appellant cannot appoint any person on permanent basis, as it has no authority and jurisdiction for the same. The appointment of the Respondent No. 1 was purely of temporary nature. He was appointed as a helper of the street light operator. In pursuance to the appointment order his services were brought to an

end by order dated 14th September, 1991 which was challenged in the Court in December, 1997.

4] The learned counsel submitted that the Appellant has not committed any breach of the statutory provisions as this case does not fall under the definition of retrenchment. According to the learned counsel, as per the observations of the Hon'ble Apex Court, temporary employees cannot claim any permanency, when there is no authority to fill up any permanent post. She further submitted that the appointment of the Respondent No. 1 was made purely as a stop gap arrangement and appropriate sanction was not received for his appointment. As the work of helper was not required since September, 1991, the services of the Respondent No. 1 came to an end.

5] In support of her contention, the learned counsel for the Appellant placed reliance upon the judgment reported in ***Mahatma Phule Agricultural University & Ors. Vs. Nasik Zilla Sheth Kamgar Union & Ors.***¹ In that case, the complaint was against the university. It was held that in-action on the part of State Government to create a post would not mean that an unfair labour practice had been committed by the universities and status of permanency cannot be granted as such. In the instant case, there is no order to make the Respondents permanent. It was only directed to provide the temporary work to him. Hence, the aforesaid case law is not applicable to the facts of the present case.

¹ [2001 (90) FLR 761] (SC)

6] The learned counsel for the appellant further place reliance upon the judgment in case of ***State of UP Vs. Neeraj Awasthi & Ors.***² In that case before the Hon'ble Apex Court, the jurisdiction of the High Court to issue a direction for framing a scheme for regularization of employees of the UP agricultural produce market board was challenged. It was held by the Hon'ble Apex Court that illegal appointment cannot be regularized and an attempt to induct an employee without following the procedure would be a back door appointment. In this regard, it is to be noted that the learned Single Judge has upheld the order of the Labour Court to the effect that the Respondent No. 1 should be assigned work on temporary basis as an helper and there was no order to make the Respondent workmen permanent or to regularize him on the post or to pay his back wages or his continuity in the service. Thus, the ratio in the above said judgment is not applicable to the facts of the present case.

7] The learned Single Judge has considered the order passed by the Labour Court that the order of appointment of the Respondent no.1 was issued by the President of Appellant Nagar Parishad and the termination order was issued by the Chief Officer and that no provision was pointed out by the Appellant herein to show that the Chief Officer was empowered to terminate the service of the Respondent no.1 herein. The learned Single Judge has considered the contention of learned counsel for the Appellant that since the Respondent no.1 has not proved that he had worked for 240 days, he could not be regularized. The learned judge came to the

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conclusion that there is no infirmity in the award passed by the Labour Court as such. The learned Single Judge has opined that the appellant was not made permanent in services, but simply it was directed to assign temporary work to him as an helper.

8] We have carefully gone through the order passed by the learned Single Judge, along with the record.

9] We are of the view that the order of the learned Single Judge cannot be interfered with. The learned Single Judge has passed a reasoned order and has given cogent reasons for rejecting the contentions of the Appellant. We concur with the findings given by the learned Single Judge and we do not find any infirmity in the said findings.

10] In the result, the appeal is dismissed. There shall be no order as to costs.

(MRS. SWAPNA S. JOSHI, J.)

(V.M. KANADE, J.)