

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1132 OF 1998

Municipal Council, Osmanabad
Through its Chief Officer. ..Petitioner

Versus

1. State of Maharashtra

2. Shri Madhav Limbaji Randive
Age 34 years, Occ. Service
R/o Bhosale High School,
Shivai Nagar, Survey No.14,
Plot No.73, Osmanabad. ..Respondents

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AGP for Respondent 1 : Shri Bhagat N.T.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 16, 2017
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ORAL JUDGMENT:-

1. None appears for the petitioner and the respondent No.2. I have heard the learned AGP for respondent No.1.

2. Respondent No.2 / complainant had approached the Industrial Court in Complaint (ULP) No.489 of 1990 seeking permanency on the post of Wireman. By the impugned judgment, dated 19.8.1997, the Industrial Court allowed the Complaint, declared that the petitioner is guilty of unfair labour practice and granted permanency with all benefits on the post of wireman on 1.1.1990.

3. This issue of granting permanency from a particular date against a State Instrumentality without ascertaining whether a permanent vacant post is available or not and whether the complainant, by his seniority, would be entitled to the said post, has been settled by this Court in the matters of Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade [2016 (6) Mh.L.J.867], Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others, [2015(5) Mh.L.J.75] and Municipal Council, Tuljapur Vs. Baban Hussain Dhale in WP No.1843/2015.

4. It is consistently held by this Court that Standing Order 4-C would not be applicable to State instrumentalities, where such establishments do not have the power to create posts and cannot issue orders of regularization / permanency. Proposals of such claimants along with similarly situated / equally placed and comparable employees have to be forwarded to the Directorate of Municipal Administration for consideration. The said authority would, then, consider the individual claims of such claimants strictly in accordance with the terms and conditions of employment and their seniority and the availability of permanent posts.

5. In the light of the above, the direction to grant permanency from 1.1.1990, without ascertaining the seniority of the petitioner

and availability of permanent vacant posts, by the Industrial Court is unsustainable.

6. The learned AGP does not have information as to whether the respondent No.2 is in employment. He, however, points out that by order dated 11.9.1998, this petition was admitted and the impugned judgment was stayed.

7. Considering the law discussed above, this petition is partly allowed. Complaint (ULP) No.489 of 1990 is partly allowed. The declaration of ULP under items 9 and 10 of Schedule IV is quashed and set aside. The direction to confer permanency from 1.1.1990 is modified and is replaced by the following directions:-

(A) The petitioner / Municipal Council shall forward a proposal of all such daily wage workers, who are working as Wireman, including respondent No.2 herein, to the Directorate of Municipal Administration, represented by respondent No.1 / State within a period eight weeks from today. Details of all such workmen, working as "Wireman" i.e. their dates of joining, nature of duties and tenure of employment would be set out in the proposal.

(B) The competent authority i.e. the Directorate of Municipal Administration / Secretary, Urban Development Department would consider the said proposal and would decide the same within a period of 16 weeks from the date

of receipt.

(C) Needless to state, claims of all Wiremen, including respondent No.2 / Madhav shall be considered purely on the basis of their seniority and the tenure of employment.

8. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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