

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

WRIT PETITION NO. 3333 OF 1999
WITH
CIVIL APPLICATION NO.3375 OF 2014
IN
WRIT PETITION NO.3333 OF 1999

The Ahmednagar Nagar Palika,
Ahmednagar.
Through its Chief Officer
Shri Ramesh Mawasi,
Age : 48 years, Occupation : Service,
R/o Ahmednagar.

...PETITIONER

-VERSUS-

- 1 Uttam Dasaram Sathe.
- 2 Dattatraya Bapusaheb Kokate.
- 3 Dipak Baban Bhagwat.
- 4 Narayan Lobhaji Harbu.
- 5 Dhananjay Sakharam Kalamkar.
- 6 Nitin Vitthal Bucche.
- 7 Janabai Prabhakar Neval.
- 8 Rajashri Sanjiv Raut.
- 9 Chetan Ratanshing Thakur.
- 10 Uddhav Govind Mhase.
- 11 Balbhim Sakharam Pathare.
- 12 Suresh Kondiram Ithape.
- 13 Karimkhan Harunkhan.
- 14 Baban Govind Berad.
- 15 Subhash Babasaheb Jagtap.
- 16 Arjun Manaji Bade.
- 17 Ganesh Nana Khele.
- 18 Kanchan Ramesh Shinde.
- 19 Kiran Sudhakar Pardeshi.
- 20 Shaikh Rashid Amir.
- 21 Sunita Haribhau Somani.
- 22 Hiralal Shivaji Waghmare.
- 23 Gorakshanath Dattatraya Darawade.
- 24 Anil Rambhau Bhosale.

- 25 Suresh Haribhau Bhosale.
- 26 Shahar Palika Kamgar Union.
Laxman Bansi Mahajan.
- 27 Maruti Brahmanath Nistane.
Kacharusingh Babusing Pardeshi.
Dipak Bhikardas Aher.
- 28 Satish Madhukar Nisal.
- 29 Vishwanath Bhiju Phand.
- 30 Machindra Jagannath Wagh.
- 31 Narendra Sachinnad Kulkarni.
- 32 Pramila Vilas Fannure.
- 33 Rajendra Dashrath Sali.
- 34 Dr.Pradip Shankarrao Kalpund.
- 35 Nalini Vasantrao Akkadkar.
- 36 Ruksana Ahmed Shaikh.
- 37 Digambar Madhav Myana.
- 38 Raju Salochand Sounde.
- 39 Anil Madhav Wagh.
- 40 Shirish Maruti Thorat.
- 41 Shaharpalika Kamgar Union,
Shramik, Tilak Road,
Ahmednagar.
Through its General Secretary.

All R/o Ahmednagar.
Shramik, Tilak Road,
Ahmednagar.

...RESPONDENTS

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Advocate for Petitioner : Shri Shah Subodh P
Advocate for Respondents : Shri A.S.Shelke and Shri A.H.Kasliwal.

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CORAM: RAVINDRA V. GHUGE, J.
DATE :- 05th January, 2017

Oral Judgment :

1 On 31.03.2016, this Court had passed the following order:-

- "1. *Learned Advocates for the respective sides were heard at length.*
2. *This Court has consistently taken a view in*

service matters involving limbs of the Government/ State instrumentalities / Departments of the State, in relation to regularization in service, that if a particular Department has no right to create posts, the said Department cannot be held guilty of ULP for having not confirmed the daily wagers in service, who have completed 240 days in continuous employment. Similarly, this Court has consistently taken a view that as and when the posts are created or become available due to vacancy caused by any reason whatsoever, such eligible daily wagers are to be absorbed as regularized employees from the dates the posts were created/ fell vacant, strictly on the basis of their seniority.

3. For the sake of clarity, with the assistance of the learned Advocates for the respective sides the operative part of the order below paragraph No.20 in the impugned judgment has been numbered as Sr.Nos. 1 to 10.
4. Considering the above, this Court expressed a view that those employees whose names appeared in Annexure A in direction at Sr.No.4, would be regularized in employment on available vacant posts strictly by their seniority from the dates the said posts were fell vacant / created.
5. In so far as the direction at Sr.No.5 is concerned, the same will be set aside since there can be no direction to continue a daily wager despite having not completed 240 days in continuous employment. Such employees covered by Direction No.5 will be included in direction No.6 so as to mean that the petitioner/ Corporation shall henceforth be restrained from recruiting fresh hands as daily wagers/ casuals/ temporaries in the Class IV category until the daily wagers who are in the list of daily wagers maintained by the Corporation, are not given an opportunity of working. In short, if there is any work of a daily wager available, such employees who have earlier worked intermittently with the Corporation and are not covered by direction at Sr.No.4 shall be

maintained in a list considering their first date of joining as daily wagers and they would be given preference to perform any temporary or available work as per the said seniority.

6. *In so far as the direction at Sr.No.7 in the light of the observations of the Industrial Court in paragraph No.16 of the impugned judgment is concerned, learned Advocates seek short accommodation to consider the said issue and make their submissions on the next date.*
7. *Mr.Shah, learned Advocate for the petitioner/Corporation submits that an affidavit as directed by this Court has been filed on 10/03/2016 through the In-charge / Assistant Commissioner.*
8. *On instructions, he submits that the petitioner seeks some time to consider the view expressed by the Court as is recorded hereinabove and on the basis of further instructions, he wishes to render assistance to the Court.*
9. *Stand over to 16/04/2016 by consent of the parties for further consideration / passing orders.”*

2 I have considered the submissions of the learned Advocates for the Petitioner and the Respondents and with their assistance, I have considered the record available.

3 The contention of Shri Shah, learned Advocate for the Petitioner, is that most of the employees are not in service for about a decade. Though their names have been included in the operative part of the impugned judgment, they cannot be made permanent as they must have acquired alternate employment or may have settled in any other job, profession or employment.

4 Shri Shah further submits that the following persons have been regularized in employment during the pendency of this Writ Petition considering the fact that this Court had not granted interim relief to the Petitioner which is now the Ahmednagar Municipal Corporation :-

- (1) Dipak Baban Bhagwat,
- (2) Uddhav Govind Mhase,
- (3) Suresh Kondiram Ithape,
- (4) Gorakshanath Dattatraya Darawade.

 He submits that the above persons have been regularized subject to the result in this petition.

5 He submits that though the Industrial Court has concluded with regard to some employees that they are not in employment prior to the decision in the complaint, yet they have been held to be entitled for permanency. He submits that Nalini Vasantrao Akkadkar, Ruksana Ahmed Shaikh and Raju Salochand Sounde are noted to be out of employment from 30.10.1997, 31.05.1990 and 12.11.1993, respectively. Yet, they have been granted permanency. He further submits that Shirish Maruti Thorat was also not in employment after 14.10.1994.

6 Shri Shelke, learned Advocate for the Employees, points out from the affidavit filed by Mr. Shirish Thorat dated 13.10.2016 that about 18 orders of appointment have been issued to him and his last appointment order dated 10.04.2000 enabled him to work upto 30.04.2000 and thereafter, the Petitioner has not issued any appointment order.

7 Shri Shelke further submits that the Complainants have documentary evidence of having submitted several applications to the Petitioner / Corporation praying for allotment of duties. The impugned judgment has not been stayed by this Court. Criminal Complaints under Section 48(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 are pending before the Labour Court at Ahmednagar.

8 It is crystallized law with regard to regularization of employees in the Establishments of the State or State instrumentalities or Municipal Councils or Municipal Corporations that the Industrial Court cannot direct regularization either by applying Standing Order 4-C of the Industrial Employment Standing Orders Act, 1946 or by concluding that completion of 240 days in continuous employment would entitle such employees to regularization. The recent judgment delivered by the learned

Division Bench on a reference from the learned Single Judge in the matter of *Municipal Council, Tirora and another vs. Tulsidas Baliram Bindhade*, **2016(6) Mh.L.J. 867**, has settled this position. Consequentially, there cannot be a declaration of unfair labour practice against such establishments.

9 In similar circumstances in **Writ Petition No.3339/1999** (*Ahmednagar Municipal Council vs. Shakuntala Uttam Wadhawane and others, judgment dated 08.09.2016*) in identical situation concerning the same Petitioner Corporation, this Court had issued the following directions in paragraphs 5, 6 and 7 as under:-

- "5. Considering the peculiar facts as above and the crystallized law in relation to regularization of employees in the establishments of the State or State instrumentalities or Municipal Corporations / Councils, I deem it proper to direct the petitioner to forward a proper proposal of these 117 workers to the Director of Municipal Administration for consideration as to whether they can be regularized in employment. Their absence as contended by the Corporation and as denied by the respondents / workers, shall be the subject of scrutiny by the Municipal Administration before taking a decision on their proposal. These 117 workers may delegate authority to a selected few representatives, numbering three persons only, so as to represent their cause before the Municipal Administration. Learned Advocates for the respondents / workers are agreeable for such arrangement subject to keeping their right open for challenging the decision of the Municipal Administration if it is prejudicial to their interest.

6. *In the light of the above, this petition is partly allowed. The declaration of unfair labour practice under item 9 made by the Industrial Court against the Municipal Corporation is set aside, taking into account the fact that it does not have the authority to create posts.*
7. *The impugned common judgment of the Industrial Court dated 17.1.1998 stands modified as under:-*
 - “(A) The complaints are partly allowed.*
 - (B) There shall be no declaration of ULP under item 9 of Schedule IV against the petitioner.*
 - (C) The petitioner shall forward the proposals of those 117 complainants, mentioned in Annexure X-4 to the affidavit dated 10.3.2016 of Shri Ashok D. Sable, to the Directorate of Municipal Administration, within a period of four weeks from today.*
 - (D) The representatives of these 117 workers, which would comprise of only three members, with the liberty to include an Advocate amongst these three, shall appear on 18.11.2016, at 3.00 pm, before the Directorate of Municipal Administration, Mumbai.*
 - (E) The petitioner / Corporation is duty bound to transmit a copy of this order to the said authority, with an intimation that the hearing would commence on 18.11.2016.*
 - (F) The said authority shall consider the contention of these 117 complainants through their representatives, as well as the representative of the Municipal Corporation and shall, thereafter, take a decision as to whether these 117 complainants could be regularized in employment. Decision upon being taken shall be conveyed to the representatives of both the sides within three weeks.*
 - (G) In the event any of these 117 complainants are aggrieved by the decision of the said authority, they shall be at liberty to seek redressal of their grievance as may be permitted in law.”*

10 In the light of the above, this Writ Petition is allowed to the extent of Nalini Vasantrao Akkadkar, who is not in employment from

19.11.1987 though she was appointed for five months in 1997, Ruksana Ahmed Shaikh, who is not in employment from 31.05.1990 though she was engaged for one month in 1998 and Raju Salochand Sounde, who is not in employment from 12.11.1993. These three persons shall not be entitled to stake a claim for consideration for regularization.

11 Insofar as those candidates mentioned above, who have already been regularized in service, there shall be no further orders by this Court as they have settled in permanent service of the Petitioner.

12 Excluding the above mentioned three Complainants as well as those Complainants, who have already been regularized in service, I deem it proper to direct the Petitioner to forward the proposals of these remaining employees to the Principal Secretary, Urban Development Department, Maharashtra State, Mantralaya, Mumbai-400032 for consideration as to whether, they can be regularized in employment. Their absence, if any as is contended by the Petitioner/ Municipal Corporation and as is denied by the Employees, shall be subject to the scrutiny by the Principal Secretary of the said Department before taking a decision on their proposals. These concerned employees may delegate authority to selected few representatives, numbering three persons only, so as to represent their cause before the Principal Secretary. Learned Advocate for

the Respondents / Workers is agreeable for such arrangement subject to keeping their right open for challenging the decision of the Principal Secretary if it is prejudicial to their interest.

13 It is pointed out from Annexure-C page 27 filed by the Petitioner Corporation that the following six persons were working on vacant posts:-

- (1) Uddhav Govind Mhase.
- (2) Balbhim Pathare.
- (3) Suresh Kondiba Ithape.
- (4) Gorakshanath Darwade.
- (5) Satish Madhukar Misal.
- (6) Dr.Pradip Kalpund.

As such, their regularization and benefits incidental thereto, would be extended to them by the Petitioner from the date the vacant posts were available and against which these persons were appointed or were working. Needless to state, these benefits would be available only from the date the permanent posts have fallen vacant so as to accommodate these persons on the said posts. The direction of the Industrial Court with regard to these six persons, therefore, stands modified accordingly.

14 In the light of the above, this Writ Petition is partly allowed. The declaration of unfair labour practice under item 9 made by the Industrial Court against the Petitioner/ Municipal Corporation is set aside, taking into account the fact that it does not have the authority to create posts.

15 The impugned common judgment of the Industrial Court dated 18.02.1998 stands modified as under:-

- “(A) The complaints are partly allowed.
- (B) There shall be no declaration of ULP under item 9 of Schedule IV of the MRTU & PULP Act, 1971 against the Petitioner.
- (C) The Petitioner shall forward the proposals of the concerned employees to the Principal Secretary, Urban Development Department, Maharashtra State, Mantralaya, Mumbai-400032, within a period of FOUR WEEKS from today.
- (D) The representatives of these concerned employees, which would comprise of only three members, with the liberty to include an Advocate amongst these three, shall appear on 06.03.2017 at 03:00 pm, before the Principal Secretary, Urban Development Department, Maharashtra State, Mantralaya, Mumbai-400032.

- (E) The Petitioner / Municipal Corporation is duty bound to transmit a copy of this order to the said authority, with an intimation that the hearing would commence on 06.03.2017.
- (F) The said authority shall consider the contention of these employees through their representatives, as well as the representative of the Municipal Corporation and shall, thereafter, take a decision as to whether these employees could be regularized in employment. Decision upon being taken shall be conveyed to the representatives of both the sides within three weeks.
- (G) In the event any of these employees are aggrieved by the decision of the said authority, they shall be at liberty to seek redressal of their grievance as may be permitted in law.
- (H) The above directions shall not be applicable to those employees mentioned in paragraph Nos.10, 11 and 13 as above.

16 Rule made partly absolute accordingly.

17 The pending Civil Application does not survive and stands disposed of.