

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2929 OF 2012
(Usha Venkatrao Jadhav Vs. The State of Maharashtra and another)
WITH
CIVIL APPLICATION NO.5856 OF 2015

Mr.B.V.Thombre, Advocate for the petitioner.
Mrs.D.S.Jape Ausingkar, AGP for respondent/State.
Mr.R.V.Naiknavare, Advocate for respondent No.2.

CORAM : RAVINDRA V. GHUGE, J.)

DATE : 15/12/2017

PER COURT :

1. Since all the learned Advocates and the learned AGP are ready with the writ petition, the civil application is disposed of and all the learned Advocates are heard on the writ petition.

2. I have considered the strenuous submissions of the learned Advocates and the learned AGP.

3. The issue raised in this petition involves a short question as to whether the petitioner could have sought permanency with the respondent/Municipal Council, Osmanabad by filing a complaint (ULP) No.138/2011 seeking regularization on the basis of the Industrial Employment (Standing Orders) Act, 1946 by virtue of

Standing Order 4-C and 4-D, which is a deeming provision for permanency after completion of 248 days in continuous employment in the light of Section 25-D of the I.D. Act. This issue is no longer *res-integra* considering the Law laid down by this Court in the following cases :-

- [1] Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade [2016(6) Mh.L.J.867]
- [2] Mukhyadhikari, Nagar Parishad, Tuljapur Vs.Vishal Vijay Amrutrao and others, [2015(5) Mh.L.J.75]
- [3] Municipal Council, Tuljapur Vs. Baban Hussain Dhale in WP No.1843/2015 and connected matters decided on 26/02/2015.

4. In the above matters, this Court has held that Standing Orders 4-C and 4-D would not be applicable to State Instrumentalities and the limbs of the Government since, unlike private sector industries, the posts have to be sanctioned by the competent authority of the State Government and unless the posts are sanctioned, there cannot be a direction for regularization.

5. In the Municipal Council, Tirora case (supra), the issue was referred to the learned Division Bench in the light of the conflict between 2 views of the learned Single Judges of this Court at the Nagpur Bench.

6. In so far as the claim for minimum wages is concerned, it was not pointed out to the Industrial Court whether the Minimum Wages Act, 1948 is applicable to the Municipal Councils. Unless an employment is notified to be a scheduled employment under the Minimum Wages Act, there cannot be a direction to pay minimum wages prescribed under the Act alongwith the dearness allowance which is revised normally every 6 months.

7. In the light of the above, this petition is disposed of by directing respondent No.2 / Municipal Council to prepare a proposal of the petitioner as well as similarly situated temporary employees for regularization in service. The proposal must indicate the details of employment of the petitioner as well as all other similar employees, keeping in view that the petitioner has been working as a Clerk-Cum-Typist from 20/06/1994 and has put in about 23 years in employment today.

8. Such proposals shall be forwarded alongwith similarly situated employees within a period of 8 weeks from today to the appropriate Government, which is Director, Municipal Administration, who shall decide the said proposal after taking into account the availability of the posts, within 6 months thereafter.

9. Needless to state, as and when the posts are created or if the post is vacant, the petitioner would be considered for regularization on the basis of her seniority and the deemed date of regularization would be the date when the post felt vacant or was created. Even thereafter, if any grievance of the petitioner survives, she shall be at liberty to seek redressal of her grievance by resorting to a remedy as is permissible in Law.

(RAVINDRA V. GHUGE, J.)