

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6941 OF 2007

1. Zilla Parishad, Jalna,
Through the Chief Executive Officer,
 2. The Live Stock Development Officer,
Veterinary Hospital Grade I,
Mantha, Dist.Jalna
- PETITIONERS

VERSUS

Baban Marotrao Bokade,
Age-53 years, Occu-Service,
R/o Mantha, Tq.Mantha,
Dist.Jalna

-- RESPONDENT

WITH
WRIT PETITION NO.6951 OF 2007
WITH CIVIL APPLICATION NO.5120 OF 2009

Zilla Parishad, Jalna,
Through the Chief Executive Officer

-- PETITIONER

VERSUS

Deepak Narayanrao Wakle,
Age-33 years, Occu-Service,
R/o Mantha, Tq.Mantha,
Dist.Jalna

-- RESPONDENT

Mr.A.S.Deshpande, Advocate for the petitioners.
Smt.A.N.Ansari and Smt.C.E.Gaikwad, Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 05/10/2017

ORAL JUDGMENT :

1. In both these matters, the petitioner/ Zilla Parishad has challenged the judgment and order of the Industrial Court dated 19/10/2007 in Complaint (ULP) No.43/2006 and 15/10/2007 in Complaint (ULP) No.130/2002, respectively .

2. I have considered the strenuous submissions of the learned Advocates for the respective sides. Mr.Deshpande, learned Advocate for the Zilla Parishad has drawn my attention to the 13 grounds formulated in the petition. I have also considered the judgments cited by Mr.Deshpande, which have been specifically mentioned in Ground Nos.10, 11 and 12 of the petition.

3. This Court has already taken a view in similar set of facts in the matter of Municipal Council, Tuljapur Vs. Baban Hussain Dhale in WP No.1843/2015 and connected matters decided on 26/02/2015 and Mukhyadhikari, Nagar Parishad, Tuljapur Vs.Vishal Vijay Amrutrao and others, [2015(5) Mh.L.J.75] that in service matters pertaining to State instrumentalities, unless permanent vacant posts are available, the Industrial Court cannot declare unfair labour practices against the employer and cannot grant regularization in service merely on the basis of having completed 240 days in continuous employment in one calendar year preceding the date of

reference as is provided for u/s 25-B of the Industrial Disputes Act, 1947 and on the basis of Standing Orders 4-C of the Industrial Employment (Standing Orders) Act, 1946.

4. In view of a difference of opinion amongst two learned Single judges of this Court at Nagpur, the matter was referred to the learned Division Bench in the case of Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade [2016(6) Mh.L.J.867]. It was concluded that the deemed permanency concept under Standing Order 4-C read with the obligation to issue an order of regularization under Standing Order 4-D merely because an employee has completed 240 days, would not be applicable to State instrumentalities where the creation of posts is the obligation of the State Government.

5. It is, therefore, trite that regularization cannot be granted in the absence of permanent vacant posts. In such set of circumstances, it becomes necessary for the employer to forward a proposal of identically placed daily wagers or temporaries for consideration on the basis of their seniority and for grant of regularization depending on the availability of permanent vacant posts.

6. Since the above view has been consistently taken by this Court, I deem it appropriate to issue such directions in both these matters.

7. Mrs. Ansari, learned Advocate for the respondent in the first petition namely Baban Marotrao Bokade submits that he has already attained the age of superannuation. In his case, the appropriate Authority will have to consider his notional regularization as like the other respondent Dipak Narayanrao Wakle from the date a permanent post has fallen vacant, on which these respondents can be absorbed. Baban Marotrao will therefore be entitled to regularization notionally with all monetary benefits. Dipak Narayanrao will be entitled for regularization as is normally done. It goes without saying that this decision would be arrived at by the appropriate authorities on the basis of available permanent posts and the deemed date for regularization would be the date on which the post has fallen vacant.

8. As such, with the above directions, both these petitions are partly allowed. The declaration of ULP against the respondents shall stand quashed and set aside. The direction to regularize the services of the Respondents from a particular date shall stand modified. The petitioners shall forward the proposals of these two

respondents alongwith similarly placed daily wagers / temporaries, who may have or may not have approached a Court, within a period of 8 (eight) weeks to the Principal Secretary, Department of Rural Development and Water Conservation. The details as like their dates of employment, nature of work done and their duration of service would be mentioned in the proposal to enable the appropriate authority to take a decision as regards their regularization within a period of 4 (four) months after receiving the proposal.

9. Needless to state, Dipak Narayanrao, who is in employment today, shall not be terminated merely on the ground that he is a daily wager or temporary, save and except in the event of any disciplinary proceedings.

10. Both these petitions are partly allowed and Rule is made partly absolute in the above terms.

11. Pending civil application does not survive and stands disposed of.

(Ravindra V.Ghuge, J.)