

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

WRIT PETITION NO. 2584 OF 2009

1. Shri Ganpat Dagadu yeole,
Age : 56 years, Occu. Service,
R/o Shivaji Nagar, Yawal,
Tal. Yawal, Dist. Jalgaon
2. Shri Balwant Eknath Deshmukh,
Age : 54 years, Occu. Service,
R/o Deshmukh Wada, Yawal,
Tal. Yawal, Dist. Jalgaon
3. Shri Ashok Laxman Bari,
Age : 50 years, occu. Service,
R/o Bari Wada, Yawal,
Tal. Yawal, Dist. Jalgaon
4. Shri Yuvraj Mohan Phalak,
Age : 55 years, occu. Service,
R/o Mahajan Galli, Yawal,
Tal. Yawal, Dist. Jalgaon
5. Shri Ashok Trambak Chavan,
Age : 47 years, Occu. Service,
R/o Shivaji Nagar, Yawal,
Tal. Yawal, Dist. Jalgaon
6. Shri Shivanand Kaashinath Kanade,
Age : 44 years, Occu. Service,
R/o Mahajan Wadi, Yawal,
Dist. Jalgaon

PETITIONERS

VERSUS

1. The Chief Officer,
Yawal Municipal Council,
Yawal, Tal. Yawal,
District Jalgaon
2. The Divisional Commissioner
and Regional Director,
Nagar Parishad, Nashik Division,
Nashik, Dist. Nashik

3. The State of Maharashtra

RESPONDENTS

AND

WRIT PETITION NO. 4202 OF 2008

Shivanand Kaashinath Kanade,
Age : 44 years, Occu. Service,
R/o Mahajan Wadi, Yawal,
Dist. Jalgaon

PETITIONERS

VERSUS

1. The Chief Officer,
Yawal Municipal Council,
Yawal, Tal. Yawal,
District Jalgaon
2. The Divisional Commissioner
and Regional Director,
Nagar Parishad, Nashik Division,
Nashik, Dist. Nashik

3. The State of Maharashtra

RESPONDENTS

AND

WRIT PETITION NO. 4285 OF 2008

Balwant Eknath Deshmukh,
Age : 54 years, Occu. Service,
R/o Deshmukh Wada, Yawal,
Tal. Yawal, Dist. Jalgaon

PETITIONER

VERSUS

1. The Chief Officer,
Yawal Municipal Council,
Yawal, Tal. Yawal,
District Jalgaon
2. The Divisional Commissioner
and Regional Director,
Nagar Parishad, Nashik Division,
Nashik, Dist. Nashik

3. The State of Maharashtra

RESPONDENTS

Mr. V.T. Chaudhari, Advocate for the petitioners
in all writ petitions

Mr. L.V. Sangit, Advocate for respondent No. 1
in all writ petitions

Mr. S.N. Morampalle, A.G.P. for respondent No. 2
and 3/State in all writ petitions

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

DATE : 8th NOVEMBER, 2017

COMMON JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

Heard the learned counsel for the parties and
the learned A.G.P.

2. Petitioners No.1 to 6 in Writ Petition No. 2584
of 2009 have challenged the order dated 17th July, 2008,
passed by respondent No.1 - the Chief Officer,
Municipal Council, Yawal, whereby their services have
been ordered to be regularised with effect from 6th May,
2000 instead of 16th October, 1986. They have further
challenged the order dated 21st June, 2017 issued by
respondent No.2 - the Divisional Commissioner and
Regional Director, Nagar Parishad, Nashik, on the basis
of which respondent No.1 passed the order dated 17th
July, 2008.

3. Petitioners No.2 and 6 in Writ Petition No. 2584 of 2009 have filed Writ Petition Nos. 4202 of 2008 and 4285 of 2008 respectively, challenging the orders dated 17th March, 2008 passed by respondent No.1 and the order dated 20th June, 2007 passed by respondent No.2, whereby they have been demoted from the post of Jakat Clerk (Class-III) to the post of Pump Chalak (Class-IV).

4. Since the facts of the above referred writ petitions are interconnected and the parties thereto are common, they are being decided by this common judgment.

5. The learned counsel for the petitioners submits that all the petitioners were appointed as Pump Attendants by Yawal Municipal Council on daily wages. Though they completed 240 days of continuous service, their services were not regularised. Therefore, they filed complaints before the Industrial Court at Nashik, alleging unfair labour practices against respondent No.1. The Industrial Court, Nashik, vide common judgment and order dated 8th November, 1988, allowed the complaints, declared that respondents No.1 and 2 indulged in unfair labour practices and directed them to provide all the benefits, privileges and status to the

complainants/ petitioners, including wages at par with the permanent employees of their category. Respondents No.1 and 2 were further directed to pay arrears of wages to the petitioners with effect from 16th October, 1986. Accordingly, the President of the Municipal Council issued orders on 13th June, 1989 in favour of the petitioners, stating therein that appeal was not to be preferred against the common judgment and order passed by the Industrial Court and granting the petitioners regular pay scale with effect from 16th October, 1986, subject to the approval of respondent No.2.

6. The learned counsel submits that as per the orders passed by the President of the Municipal Council, the services of the petitioners were regularised with effect from 16th October, 1986. They received the arrears of salary as well as further regular salary as per the prescribed pay scale with increments. Petitioner Nos.2 and 6 were promoted to the post of Clerk in due course as per the resolution dated 9th December, 1997 passed by the Standing Committee of the Municipal Council. Accordingly, they started working on their promotional post with effect from 10th December, 1997. However, respondent No.2, relying on the order

dated 20th April, 2001 passed by the Director, Directorate of Municipal Council Administration, illegally and arbitrarily passed the impugned order dated 21st June, 2007, regularising the services of the petitioners with effect from 6th May, 2000. On the basis of that order, respondent No.1 illegally passed the impugned order dated 17th July, 2008 and directed to regularise the services of the petitioners with effect from 6th May, 2000 on execution of their undertakings. He submits that the petitioners did not execute any undertaking as ordered by respondent No.1. According to him, when the Industrial Court had directed to regularise services of the petitioners with effect from 16th October, 1986 and when the said judgment and order of the Industrial Court was not challenged by the Municipal Council, it was not open for respondent Nos. 1 and 2 to ignore the judgment and order of the Industrial Court and change the date of regularisation of services of the petitioners from 16th October, 1986 to 6th May, 2000. He further submits that respondent No.2 wrongly and illegally demoted petitioner Nos.2 and 6 from the post of Clerk to the posts of Pump Operator as per the impugned order dated 20th June, 2007, which was given effect to by respondent No.1 as per the impugned order

dated 17th March, 2008, treating them to be in the regular service with effect from 6th May, 2000. He, therefore, prays that the impugned orders may be set aside and the petitioners may be ordered to be treated in regular services with effect from 16th October, 1986. He further submits that the demotion order passed against petitioner Nos. 2 and 6 may be set aside and they may be restored to their original position with consequential benefits.

7. On the other hand, the learned counsel for respondent Nos. 1 and 2, based on the replies filed on their behalf, submits that there were a number of employees appointed irregularly and illegally on daily wages basis in 156 Municipal Councils in the State of Maharashtra. As per the decision taken in the meeting of the Maharashtra Municipal Councils and Municipal Corporations Kamgar Sangharsh Committee with the Hon'ble the Chief Minister on 25th March, 2000, it was decided to regularise the services of daily wagers with effect from 6th May, 2000, who were appointed prior to 10th March, 1993. The petitioners also were working on daily wages prior to 1993. Therefore, they were extended the benefit of the said decision. They were not appointed

regularly. Their appointments were made as per the orders of the Industrial Court, but subject to approval being given by respondent No.2. He submits that respondent No.2 did not approve the services of the petitioners with effect from 16th October, 1986 in view of the order dated 20th April, 2001. Since respondent No.2 did not approve their services with effect from 16th October, 1986, respondent No.1 rightly passed the order dated 17th July, 2008, regularising the services of the petitioners with effect from 6th May, 2000. Since the services of petitioner Nos.2 and 6 were not regularised prior to 6th May, 2000, they were not entitled to get promotion to the post of Clerk. Therefore, respondent Nos.1 and 2 rightly passed the orders demoting them from the post of Clerk to the post of Pump Operator. He submits that the petitioners are not entitled to claim regularisation of their services with effect from 16th October, 1986 and supports the impugned orders.

8. Indisputably, the petitioners had filed complaints (ULP) Nos.454 of 1986 to 459 of 1986 in the Industrial Court at Nashik. The said complaints were allowed by the Industrial court on 18th November, 1988

after hearing respondent No.1 as well as the President of Municipal Council, Yawal. The Industrial Court passed the following order:-

"It is hereby declared that Respondent No.1 and 2 are indulging into unfair labour practices under Item 6 of Schedule IV of the M.R.T.U. And P.U.L.P. Act, 1971 in continuing the complaints of Complaint (ULP) No. 454/1986, 455, 456, 457, 458 and 459/1986 as temporaries on daily wages for years.

They are therefore directed to stop and desist from the said unfair labour practice with immediate effect and to provide to all the complainants the benefits privileges and status including wages on par with the permanent servants of their category. They shall be paid arrears of wages from the date of complaint i.e. 16.10.1986. The arrears of wages shall be drawn and paid to each of the complainant within a period of two months of this order."

9. There is no dispute that the order of the Industrial Court was not challenged consciously by the Municipal Council by filing any proceedings and as such, the said judgment and order attained finality. The appointment orders of the petitioners issued by the President of the Municipal Council on 13th June, 1989 clearly show that the judgment and order of the Industrial Court was not to be challenged by filing any appeal. The services of the petitioners were confirmed/regularised with effect from 16th October, 1986;

however, subject to the approval of respondent No.2. When the Municipal Council decided not to challenge the order passed by the Industrial Court, there was no alternative before it but to obey that order. The Industrial Court had not passed any conditional order for regularising the services of the petitioners subject to approval by respondent No.2. Respondent No.2 was not supposed to pass any order nullifying the order of the Industrial Court regularising the services of the petitioners with effect from 16th October, 1986.

10. The order dated 20th April, 2001 of the Director, Directorate of Municipal Council Administration was a general order regularising services of the employees of the Municipal Councils/Corporations working on daily wages since before 10th March, 1993. The said order would not govern the cases of the petitioners since they had approached the Industrial Court seeking the relief of regularisation of their services and accordingly, their services were directed to be regularised by the Industrial Court with effect from 16th October, 1986. The cases of the petitioners, therefore, were liable to be considered in the light of the order passed by the Industrial Court

much prior to passing of the order by the Director on 20th April, 2001. Respondents No.1 and 2 wrongly treated the petitioners on par with the other employees of the Municipal Councils/Corporations who had not approached the Industrial Court and who had not got any protection from the Court regularising their services with effect from 16th October, 1986. It is, thus, clear that respondent Nos.1 and 2 wrongly ignored the judgment and order of the Industrial Court and wrongly changed the date of regularisation of services of the petitioners from 16th October, 1986 to 6th May, 2000. The impugned orders passed by respondents No.1 and 2, thus, are illegal and unsustainable.

11. By postponing the date of regularisation of services of the petitioners from 16th October, 1986 to 6th May, 2000 as per the impugned orders passed by respondent Nos.1 and 2, petitioner Nos.2 and 6 have been held to be ineligible for continuing to hold the promotional post of Clerk to which they were promoted with effect from 10th December, 1997. Since the orders passed by respondent Nos.1 and 2, postponing the date of regularisation of services of the petitioners are illegal and unsustainable, the consequential orders

passed by them demoting petitioner Nos.2 and 6 from the post of Clerk to the post of Pump Operator, also would be illegal and unsustainable.

12. In view of the above mentioned facts and circumstances of the cases, we quash and set aside the above referred impugned orders passed by respondent Nos.1 and 2. The date of regularisation of services of the petitioners would be 16th October, 1986 only, as has been ordered by the Industrial Court. Since the orders demoting petitioner Nos.2 and 6 from the post of Clerk to the post of Pump Operator are quashed and set aside, they should be restored to the same position/ status which they were occupying prior to passing of the said demotion orders by respondent Nos.1 and 2 with concomitant benefits.

13. The writ petitions are allowed in the above terms.

14. The Rule is made absolute accordingly.

15. No costs.

[SANGITRAO S. PATIL]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE