

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5419 OF 2004

The Chief Officer,
Municipal Council, Shrigonda,
District : Ahmednagar

-- PETITIONER

VERSUS

1. Ahmednagar Zilla Nagar Palika
Kamgar Union,
"Shramik", Tilak Road,
Ahmednagar - through its
Secretary,

2. The State of Maharashtra,
Through Director of Municipal
Administration,
Mantralaya, Mumbai

-- RESPONDENTS

Mr.V.P.Latange, Advocate for the petitioner.
Mr.A.S.Shelke, Advocate for respondent No.1.
Mr.S.P.Tiwari, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 14/02/2017

ORAL JUDGMENT :

1. Leave to add Directorate of Municipal Administration/
Secretary, Department of Urban Development, State of Maharashtra
as respondent No.2. Addition be carried out forthwith. Learned AGP
causes an appearance on behalf of the added respondent.

2. This petition was earlier dismissed by order dated 11/10/2004 by this Court. By order dated 28/08/2006, passed by the Hon'ble Supreme Court in Special Leave Petition, the judgment of this Court dated 11/10/2004 has been set aside and the petition was remitted for a rehearing.

3. This Court, by order dated 26/03/2007, admitted this petition. Upon noting that the Hon'ble Apex Court had expected this Court to dispose of this matter, I have called upon the learned Advocates to address the Court finally on this petition.

4. I have heard the learned Advocates for the respective sides at length. Considering the order that I intend to pass, I am not required to advert to their entire submissions. It is undisputed that 9 workers represented by the Union before the Industrial Court in Complaint (ULP) no.91/1998 are presently in employment and have put in more than 2 decades of service.

5. The issue raised in this petition is as to whether the Industrial Court can direct the Municipal Council to grant permanency and regularization to the employees / original complainants from a particular date. This issue is no longer *res-integra*. This Court, in

the matter of Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others, [2015(5) Mh.L.J.75], Municipal Council, Tuljapur Vs. Baban Hussain Dhale in WP No.1843/2015 and connected matters decided on 26/02/2015 and Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade [2016(6) Mh.L.J.867] has concluded that Establishments which are limbs of the State or are State Instrumentalities, cannot be directed to create posts or grant permanency on posts which are not available or which are not vacant. A proposal is required to be sent to Respondent No.2 State of Maharashtra by the Municipal Council for considering creation of posts and for regularizing all such workmen who, by their seniority, would be entitled to such regularization.

6. It is also trite law that a declaration of unfair labour practices cannot be made against such State Instrumentalities which do not have the power to create posts.

7. It is brought to my notice that the Director of Municipal Administration, by order dated 13/10/1995 with regard to the petitioner/Municipal Corporation, has indicated the available posts and has further directed that the Municipal Council shall keep those many posts vacant as is the number of the daily wage workers

working with the Municipal Council. I am also informed that by communication dated 31/12/2009, the petitioner/Municipal Council has submitted few proposals to the Directorate of Municipal Administration.

8. Considering the above and the law laid down in the above referred cases, this petition is partly allowed with the following directions :-

[a] The declaration of ULP under Item 6 and 9 of Schedule IV made by the Industrial Court, shall stand quashed and set aside.

[b] The petitioner shall prepare a composite proposal of all such employees inclusive of the 9 persons mentioned in clause 3 of the impugned order and submit the said proposal to the Directorate of Municipal Administration/Secretary, Department of Urban Development, State of Maharashtra within a period of 8 (eight) weeks from today.

[c] The abovesaid proposal shall include all such workmen who are on daily wages and are similarly situated as like the 9 persons mentioned in clause 3 of the operative part of the order alongwith their exact dates of joining, their area of work and their seniority.

[d] The competent authority i.e. the Directorate/Secretary, Department of Urban Development, shall decide the said proposals within 12 (twelve) weeks from its receipt and shall accordingly direct the absorption of workers strictly by their

seniority on available vacant posts by granting deemed dates of regularization with consequential benefits from the date the posts have fallen vacant.

[e] In the event of there being a shortfall in the permanent posts, the competent authority shall consider the possibility of creation of such posts and shall accordingly absorb the daily wagers set out in the proposal by their seniority.

[f] Since these 9 persons involved in this case are in employment, the petitioner shall not dispense with their services merely on the ground that they are daily wagers, until their proposals are decided. They would be continued on the same conditions on which they are working as on date. This protection shall not be applicable to cases of disciplinary action.

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

(RAVINDRA V. GHUGE, J.)