

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.7812 OF 2015**Shri Dynaneshwar Namdeo Koli Vs. The State of Maharashtra
and others.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.M.M.Bhokarikar, advocate for the petitioner.
 Mrs.M.A.Deshpande, Additional Government Pleader for the State.
 Mr.V.D.Gunale, advocate for Respondent No.4.

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

Date : 18.01.2017.

PER COURT :

1. Heard.
2. Mr.Bhokarikar, learned counsel submits that the petitioner was appointed in the year 1985 on daily wages. His services were orally terminated. The petitioner moved the Labour Court. Under order dated 14.3.2002, the Labour Court partly allowed the Reference. The order of oral termination dated 23.8.1990 was set aside and the Respondent was directed to reinstate the present petitioner on the post last held by him with continuity of service. The learned counsel submits that pursuant to the said order, the petitioner was reinstated on daily wages. The learned counsel

submits that the petitioner is working since 1985 on daily wages. At the relevant time, the petitioner was appointed on daily wages as the sanctioned post was not available. Now the posts are available, as such the petitioner be regularised in service. According to the learned counsel, the said recourse is permissible. To substantiate his contention learned counsel relies on the judgment of the Apex Court in the case of **“State of Jharkhand and others Vs. Kamal Prasad and others”** reported in **AIR 2014 SC (Supp) 390** and the judgment of the Division Bench of this Court in the case of **“Union of India and another Vs. Karan Anant Purao”** reported in **2013 (6) ABR 465** and another judgment of the Division Bench of this Court in the case of **“Yuvraj Sukalnath Kohpare and others Vs. Regional Director of Municipal Administration and another”** reported in **2014 (2) Bom.C.R. 779**.

3. The learned counsel further submits that time and again the Municipal Corporation has passed Resolution to regularise the services of employees like the petitioner. The said Resolution is forwarded to the Government, however, no decision has been taken by the Government on the said Resolution. The learned counsel submits that the petitioner belongs to OBC category. Now the said post is available, as such petitioner deserves to be regularised. The Respondent can even take decision to regularise the employees like the petitioner as a one time measure. The learned counsel further

submits that at the time when the petitioner was appointed, the Respondent was Municipal Council and the powers vest with the Municipal Council to appoint the employees. As such it can not be said that the appointment of the petitioner was illegal or irregular. The Respondents be directed to regularise the services of the petitioner since the initial date of his appointment along with all the benefits.

4. Mr.Gunale, learned counsel for the Municipal Corporation submits that the petitioner was not appointed through any selection process. The appointment of the petitioner was on daily wages, as the posts were not available. The petitioner was never appointed on sanctioned post, as such the services of the petitioner can not be regularised. The learned counsel relies on the judgment of the Apex Court in the case of “State of Haryana and another Vs. Tilak Raj and others” reported in (2003) 6 SCC 123. The learned counsel submits that the Resolution which was passed by the Municipal Corporation for regularising the services of the employees like the petitioner was sent to the Government, was not subsequently proceeded further as the Commissioner had written to the Government for rescinding the same.

5. We have considered the submissions. It is not disputed that since beginning the petitioner is working on daily wages. There is nothing on record before this Court to come to the conclusion that

the appointment of petitioner was by due adherence to the selection procedure. There does not appear to be any issuance of advertisement nor constitution of Selection Committee nor there is any record of the availability of the sanctioned posts. In absence of all this factual matrix, it is not possible to give any directions as claimed by the petitioner.

5. If any services are to be regularised as one time measure, it is for the Corporation and the State Government to take decision upon the same. This Court would have formed a conclusive opinion if the facts about issuance of advertisement, adherence to the selection process and availability of sanctioned posts would have been before the Court.

6. In light of the above, this Court can not come to the aid of the petitioner. It is for the Corporation to take necessary decision upon the same. If any Resolutions are passed with regard to the regularisation of the services of the petitioner or employees similarly situated as the petitioner and the same is sent to the Government, the Government may take decision over the same.

7. The Writ Petition is disposed of. No costs.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.18.01.2017.
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