

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

WRIT PETITION NO. 8925 OF 2015

Balu Tulshiram Tayade (Koli),
Age : 48 years, Occupation : Labour,
R/o Gahukhed, Post Raipur,
Tq.Raver, District Jalgaon.

...PETITIONER

-VERSUS-

- 1 The Chief Executive Officer,
Zilla Parishad, Jalgaon,
District Jalgaon.
- 2 The Deputy Divisional Engineer,
Zilla Parishad, Irrigation &
Water Supply Sub Division,
Raver, District Jalgaon.

...RESPONDENTS

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Advocate for Petitioner : Shri Sant Kishor C.
Advocate for Respondent 1 : Shri Sharma Vijay.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th February, 2017

Oral Judgment :

- 1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

- 2 The Petitioner is aggrieved by the judgment and order of the

Industrial Court dated 02.09.2010 by which Complaint (ULP) No.24/2009 has been dismissed.

3 I have heard the learned Advocates for the respective sides at length.

4 The Petitioner had approached the Industrial Court in 2009 seeking regularization in the Water Supply Division of Respondent No.1/ Zilla Parishad. It was averred that the Petitioner has worked for 20 years when he had preferred his complaint. He had led evidence before the Industrial Court through himself as well as through other witnesses and had produced certain documents which indicated that he was working under the Water Supply Scheme which was implemented by Respondent No.1/ Zilla Parishad.

5 After considering the oral and documentary evidence, the Industrial Court concluded that the Petitioner/ Complainant was engaged on daily wage since 02.06.1990 in the Water Supply Scheme. It was proved that he had worked for 19 years on the date he has preferred his complaint. The Industrial Court relied upon the judgment of the Honourable Supreme Court in the matter of *Secretary, State of Karnataka v/s Umadevi*, **2006 (4) SCC 1 : AIR 2006 SC 1806**. One portion of the

judgment was reproduced below paragraph 12 and it was concluded that since the Honourable Supreme Court does not legalize the services of such daily wagers, the Petitioner cannot be regularized.

6 Shri Sharma, learned Advocate for Respondent No.1/ Zilla Parishad, has specifically drawn my attention to the Written Statement filed before the Industrial Court wherein it is stated that the Government of Maharashtra has floated the Water Supply Scheme. The Revenue Commissioners of the respective Revenue Divisions are empowered to have the said scheme implemented through the respective Zilla Parishads. The Zilla Parishad does not have the powers to create posts at its level and does not have the powers to grant regularization.

7 These submissions of the learned Advocate cannot be contradicted for the reason that the appointments as like the appointment of the Petitioner herein were apparently without floating any advertisement and without following any recruitment process. It, however, cannot be ignored that the architect of this situation is the Respondent/ Zilla Parishad. There was no restraint upon the Zilla Parishad to follow a particular procedure even while recruiting the daily wagers/ temporaries or adhoc employees. On the one hand, the Zilla Parishad has not followed the procedure and on the other hand, when the Petitioner sought

regularization after working for 19 years as in 2009, apparently the Zilla Parishad intends to take advantage of its own wrong by contending that such daily wagers have no right to regularization because they were not appointed by following the due procedure of law.

8 It is equally undisputed that the Petitioner is in employment even today. In effect he has put in about 27 years as a daily wager. In this fact situation, paragraph 53 of the conclusions of the Honourable Supreme Court in Umadevi's case (supra) would be applicable and which read as under:-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V.Narayanappa (supra)* [AIR 1967 SC 1071], *R.N.Nanjundappa (supra)* [AIR 1972 SC 1767], and *B.N.Nagrajan (supra)* [AIR 1979 SC 1676], and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts

that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

9 There can be no debate that illegal appointments cannot be legalized. In the light of the observations of the Honourable Supreme Court in paragraph 53 reproduced above, irregular appointments can be easily distinguished from illegal appointments as such appointees, who are not otherwise ineligible for appointment, have been appointed in an irregular manner without following a particular procedure. A class-IV employee like the Petitioner, whose duty is to work on Water Supply Scheme, hardly requires any specific qualification. The Written Statement of the Zilla Parishad before the Industrial Court does not point out any specific qualification which is required for a Class-IV employee. Moreover, after engaging the Petitioner for 27 years, the issue would be as to whether, the Respondent/ Zilla Parishad should be estopped from taking a plea that as it is an irregular appointment, the Zilla Parishad would continue to engage the services of the Petitioner, but would oppose any prayer for regularization.

10 Paragraph 55 of the judgment of the Honourable Supreme Court in Umadevi (supra) reads as under:-

"55. *In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in*

service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. No. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them."

11 Keeping the fact situation as above in view, I find that this petition can be entertained to the extent of directing the Respondent/ Zilla Parishad to prepare a proposal not only of the Petitioner alone, but with regard to all such daily wagers, who are similarly situated and who are working for more than 10 years keeping in view the observations in paragraph 53 in the case of Umadevi (supra), so as to forward the said proposal to the appropriate authority for consideration for regularization.

12 In the light of the above, this Writ Petition is partly allowed. The impugned judgment of the Industrial Court dismissing the complaint

dated 02.09.2010 is quashed and set aside and Complaint (ULP) No.24/2009 is partly allowed with the following directions:-

- (a) The Respondent/ Zilla Parishad shall prepare a proposal of the Petitioner along with all other similarly situated daily wagers/ temporaries, who are working in the Water Supply Scheme and who have worked for more than 10 years, and forward the said proposal to the competent authority i.e. Principal Secretary, Rural Development Department, Maharashtra State, Mantralaya, Mumbai-32, within a period of EIGHT WEEKS from today.
- (b) Upon receipt of the said proposal, the concerned competent authority shall consider the quantum of work available, seniority of candidates and available vacant posts, while deciding the said proposal for regularization and shall issue necessary orders within a period of TWELVE WEEKS from the date of the receipt of the said proposal.
- (c) In the event, the posts are not vacant or not sufficient and in the event the quantum of work is available, the concerned competent authority may consider creation of posts strictly in accordance with it's Rules.
- (d) After the decision is taken by the competent authority, in the event the Petitioner or similarly situated employees have any

grievance, they would be at liberty to resort to available legal remedies for the redressal of their grievance.

- (e) Considering the directions of the Honourable Supreme Court in paragraph 55 reproduced above, it would be just and proper for the Respondent/ Zilla Parishad to take a decision within four weeks from today as regards restoring parity in wages to the daily wagers as like the Petitioner and ensure equal wages that are being paid to the regular employees in the same Department in which the Petitioner and similarly situated employees are working. Considering the observations of the Honourable Supreme Court, it is expected that the Respondent/ Zilla Parishad would pass appropriate orders in this regard within FOUR WEEKS from today.

13 Rule is made partly absolute accordingly.