

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7185 OF 2013

Nanded Waghala City Municipal Corporation
Through its Municipal Commissioner,
Office at in front of Guru Govindsinghji
Memorial Hospital, Nanded

– PETITIONER

VERSUS

1. Vilas s/o Bhimrao Deshmukh,
Age-33 years, Occu-Agriculture,
R/o Taroda (Bk.), Taluka and
Dist. Nanded,
2. Grampanchayat Taroda (Bk.) **(DELETED)**
Through its Sarpanch and Secretary,
Office at T.D.T. Market,
Nanak Nagar, Taroda (Bk.),
Nanded, Taluka and District Nanded,
Now dissolved as merged in Nanded
Waghala City Municipal Corporation,
3. Rajaram s/o Pralhad Aran,
Age-46 years, R/o Ankush Nagar,
Taroda (kh.) Taluka and District
Nanded

– RESPONDENTS

WITH
WRIT PETITION NO.7186 OF 2013

Nanded Waghala City Municipal Corporation
Through its Municipal Commissioner,
Office at in front of Guru Govindsinghji
Memorial Hospital, Nanded

– PETITIONER

VERSUS

1. Udhav Kishanrao Deshmukh,
Age-41 years, Occu-Agriculture,

R/o Taroda (Bk.), Taluka and
District : Nanded

2. Grampanchayat Taroda (Bk.) **(DELETED)**

Through its Sarpanch and Secretary,
Office at T.D.T. Market,
Nanak Nagar, Taroda (Bk.),
Nanded, Taluka and District Nanded,
Now dissolved as merged in Nanded
Waghala City Municipal Corporation,

3. Rajaram s/o Pralhad Aran,
Age-46 years, R/o Ankush Nagar,
Taroda (kh.) Taluka and District
Nanded

– RESPONDENTS

WITH
WRIT PETITION NO.7187 OF 2013

Nanded Waghala City Municipal Corporation
Through its Municipal Commissioner,
Office at in front of Guru Govindsinghji
Memorial Hospital, Nanded

– PETITIONER

VERSUS

1. Shivaji Namdeo Kalyankar,
Age-35 years, Occu-Employee,
R/o Taroda (Bk.), Taluka and
Dist. Nanded,

2. Grampanchayat Taroda (Bk.) **(DELETED)**

Through its Sarpanch and Secretary,
Office at T.D.T. Market,
Nanak Nagar, Taroda (Bk.),
Nanded, Taluka and District Nanded,
Now dissolved as merged in Nanded
Waghala City Municipal Corporation,

3. Rajaram s/o Pralhad Aran,
Age-46 years, R/o Ankush Nagar,
Taroda (kh.) Taluka and District
Nanded

– RESPONDENTS

WITH
WRIT PETITION NO.7188 OF 2013

Nanded Waghala City Municipal Corporation
Through its Municipal Commissioner,
Office at in front of Guru Govindsinghji
Memorial Hospital, Nanded

– PETITIONER

VERSUS

1. Dayanand Bhaurao Deshmukh,
Age-30 years, Occu-Labour,
R/o Taroda (Bk.), Taluka and
Dist. Nanded,
2. Grampanchayat Taroda (Bk.) **(DELETED)**
Through its Sarpanch and Secretary,
Office at T.D.T. Market,
Nanak Nagar, Taroda (Bk.),
Nanded, Taluka and District Nanded,
Now dissolved as merged in Nanded
Waghala City Municipal Corporation,
3. Rajaram s/o Pralhad Aran,
Age-46 years, R/o Ankush Nagar,
Taroda (kh.) Taluka and District
Nanded

– RESPONDENTS

WITH
WRIT PETITION NO.7189 OF 2013

Nanded Waghala City Municipal Corporation
Through its Municipal Commissioner,
Office at in front of Guru Govindsinghji
Memorial Hospital, Nanded

– PETITIONER

VERSUS

1. Rajendra Sakharam Gawali,
Age-28 years, Occu-Agriculture,
R/o Taroda (Bk.), Taluka and
Dist. Nanded,

2. Grampanchayat Taroda (Bk.) **(DELETED)**

Through its Sarpanch and Secretary,
Office at T.D.T. Market,
Nanak Nagar, Taroda (Bk.),
Nanded, Taluka and District Nanded,
Now dissolved as merged in Nanded
Waghala City Municipal Corporation,

3. Rajaram s/o Pralhad Aran,
Age-46 years, R/o Ankush Nagar,
Taroda (kh.) Taluka and District
Nanded

– RESPONDENTS

WITH
WRIT PETITION NO.7190 OF 2013

Nanded Waghala City Municipal Corporation
Through its Municipal Commissioner,
Office at in front of Guru Govindsinghji
Memorial Hospital, Nanded

– PETITIONER

VERSUS

1. Vilas s/o Bhimrao Deshmukh,
Age-33 years, Occu-Agriculture,
R/o Taroda (Bk.), Taluka and
Dist. Nanded,

2. Grampanchayat Taroda (Bk.) **(DELETED)**

Through its Sarpanch and Secretary,
Office at T.D.T. Market,
Nanak Nagar, Taroda (Bk.),
Nanded, Taluka and District Nanded,
Now dissolved as merged in Nanded
Waghala City Municipal Corporation,

3. Rajaram s/o Pralhad Aran,
Age-46 years, R/o Ankush Nagar,
Taroda (kh.) Taluka and District
Nanded

– RESPONDENTS

WITH
WRIT PETITION NO.7191 OF 2013

Nanded Waghala City Municipal Corporation
Through its Municipal Commissioner,
Office at in front of Guru Govindsinghji
Memorial Hospital, Nanded

– PETITIONER

VERSUS

1. Dilip Navnathrao Deshmukh,
Age-29 years, Occu-Agriculture,
R/o Taroda (Bk.), Taluka and
District Nanded
2. Grampanchayat Taroda (Bk.) **(DELETED)**
Through its Sarpanch and Secretary,
Office at T.D.T. Market,
Nanak Nagar, Taroda (Bk.),
Nanded, Taluka and District Nanded,
Now dissolved as merged in Nanded
Waghala City Municipal Corporation,
3. Rajaram s/o Pralhad Aran,
Age-46 years, R/o Ankush Nagar,
Taroda (kh.) Taluka and District
Nanded

– RESPONDENTS

Mr.M.D.Narwadkar h/f Mr.M.V.Deshpande, Advocate for the
petitioner.

Mr.S.H.Panchal h/f Mr.H.G.Panchal, Advocate for respondent No.1 in
WP Nos.7185/2013, 7188/2013, 7189/2013 and 7190/2013.)

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/02/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2. In all these petitions, the petitioner/Corporation is aggrieved by the judgment of the Labour Court dated 03/04/2012 by which Complaint (ULP) Nos.6/2008, 1/2008, 4/2008, 2/2008, 3/2008, 5/2008, 7/2008 have been partly allowed and the terminations of the identically placed respondents/employees have been quashed and set aside. The petitioner is also aggrieved by the judgment of the Industrial Court dated 05/07/2013 by which Revision (ULP) Nos.32/2012, 34/2012, 30/2012, 28/2012, 29/2012, 31/2012, 33/2012 have been dismissed.

3. I have considered the submissions of the learned Advocates for the respective sides and they have taken me through the petition paper books.

4. There is no dispute that these respondents were appointed under the signature of the Village Development Officer and the Sarpanch of the Village had issued their appointment orders by signing them, w.e.f. 01/04/2005. No record was brought before the Labour Court to indicate whether the then Gram Panchayat Taroda in District Nanded had complied with the prescribed procedure for

carrying out such recruitment. There is no evidence that permanent posts were available and vacant.

5. The contention of the respondents/employees is that by virtue of Section 61, the Gram Panchayat could appoint servants as may be necessary for the discharge of its duties under the Act and pay their salaries from the village fund. A Sarpanch was permitted to engage temporary servants only in cases of emergency. Considering this position, the very appointment of these respondents is under a cloud of doubt. Prima facie, the law laid down in Secretary, State of Karnataka & Ors. vs. Uma Devi (3) & Ors., 2006(4) SCC 44 and MSRTC and another Vs. Castribe Rajya Parivahan Karmachari Sanghatana (2009) 8 SCC 556 would be applicable to these cases.

6. It is apparent from the record that after joining employment on 01/04/2005 in the manner stated above, these respondents were disengaged from 28/11/2007 after working for about 18 months. The Labour Court has purely proceeded on the understanding that since Section 25-F of the I.D. Act has not been complied with, these respondents deserve to be reinstated in service. In the absence of any post, the Labour Court could not have passed such an order without considering whether any vacancy was available and without

scrutinizing as to whether appointment of these respondents/ employees amounted to back door entries.

7. After the termination of these respondents and during the pendency of their ULP complaints, the Gram Panchayat, Taroda was merged into the Nanded - Waghala Municipal Corporation, Nanded, which is the petitioner herein. The Corporation was subsequently arrayed as the respondent before the Labour Court in the ULP complaints. It appears that the Corporation has proceeded on the premise that the dispute as regards termination is in between the petitioner and the Gram Panchayat. I find that in the several cases before the Labour Court that the Corporation has not led any evidence. The Labour Court, without scrutinizing whether the services of these respondents in the manner in which they were appointed, could be absorbed in the service of the Corporation or not, has directed reinstatement only on the ground of non-compliance of Section 25-F.

8. The Industrial Court, for the same reasons, has concluded that since the Gram Panchayat did not comply with Section 25-F, the termination was bad and the respondents deserve reinstatement with the Corporation due to the subsequent events.

9. Considering the above, I deem it proper to remit these complaints to the Labour Court for enabling the Corporation to lead evidence and to enable the Labour Court to consider the legality of the appointments of these respondents and as to whether their appointments appear to be back door entries. Had the Corporation led evidence in these matters, they could have brought it on record that these respondents were not eligible for absorption as is contended in these petitions.

10. In the light of the above, these petitions are partly allowed. The impugned judgments of the Labour Court dated 03/04/2012 in all these ULP complaints are quashed and set aside and Complaint (ULP) Nos. 6/2008, 1/2008, 4/2008, 2/2008, 3/2008, 5/2008, 7/2008 are restored to the file of the Labour Court at Nanded. Consequentially, the judgments of the Industrial Court, impugned herein, are quashed and set aside and the revision petitions stand disposed of.

11. The litigating sides shall appear before the Labour Court, Nanded on 24/03/2017. Formal notices need not be issued. The Labour Court shall scrutinize as to whether the appointments of the

original complainants by the Gram Panchayat could be termed as being legal and proper and then proceed to consider whether any vacancies are available with the Corporation and as to whether these employees could be accommodated in the service of the Corporation. Needless to state, the litigating sides are at liberty to lead additional oral and documentary evidence and the Labour Court shall decide these complaints on their own merit, preferably within a period of 12 (twelve) months from the date of appearance.

12. Since one of the reasons for remanding the matters is that the Corporation has failed to lead evidence in some of the cases, the Corporation shall deposit an amount of Rs.10,000/- in each of the complaints before the Labour Court on the date of appearance and the said amount shall be withdrawn by the complainants in equal proportion. While deciding the complaints afresh, the Labour Court shall consider the view taken by the Division Bench of this Court (Aurangabad Bench) in its judgment dated 20/01/2016 in the matter of Santosh Vasantrao Bahire and others Vs. The State of Maharashtra and others, WP No.9211/2015. The litigating sides shall place a copy of the said judgment before the Labour Court for assistance.

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

(RAVINDRA V. GHUGE, J.)