

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10334 OF 2016
(The Executive Engineer and others Vs. Isak Beg Sher Mohammad)

Mr.S.S.Dande, Advocate for the petitioners.
Mr.V.P.Golewar, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 23/06/2017

PER COURT :

1. By order dated 23/01/2017, I had arrived at a prima facie conclusion that the impugned judgment of the Industrial Court dated 02/05/2016 was unsustainable. The relevant observations in the order dated 23/01/2017 are as under :-

“(a) Despite the petitioner being a State instrumentality and there being no evidence as regards a permanent vacant post of a Sweeper in the Class IV category, the Industrial Court has granted the following relief to the respondent:-

“(D) The respondents are directed to accord status and privileges to complainant of Sweeper Part time Class IV permanent employee in proportionate to two working hours every day, from the date of filing of this complaint i.e. 19.9.2009.”

(b) The Industrial Court has relied upon Standing Order 4C of the Model Standing Orders for granting him the above reproduced relief.”

2. I have heard the learned Advocates for the respective sides. The law has now been settled by the judgment delivered in the matter of Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade [2016(6) Mh.L.J.867] and consequentially Standing Order 4-C and 4-D of the Industrial Employment Standing Orders Act, would not be applicable to State instrumentalities. Consequentially, the direction of the Industrial Court at clause B, C, D and E are rendered unsustainable.

3. This Court, by its judgment in the matter of Mukhyadhhikari, Nagar Parishad, Tuljapur Vs.Vishal Vijay Amrutrao and others, [2015(5) Mh.L.J.75] and in the matter of Municipal Council, Tuljapur Vs. Baban Hussain Dhale in WP No.1843/2015 and connected matters decided on 26/02/2015, has held that in so far as State instrumentalities are concerned, unless a permanent vacant post is available, the claim of a temporary workman cannot be considered for regularization. The rule of seniority would also be applicable. In such circumstances, the Establishment can be directed to submit a proposal of a litigant alongwith similarly situated temporaries, daily wagers for regularization and based on the availability of the posts and the nature of work for which they are allotted, the proposal could be accepted.

4. In the light of the above, this petition is partly allowed. The impugned judgment of the Industrial Court dated 02/05/2016 stands modified and the operative part of the order from prayer clauses A to E stand replaced by the following directions :-

[a] The petitioner/Establishment shall prepare a proposal of the respondent alongwith the proposal of similarly situated temporaries or daily wagers within a period of 6 (six) months from today.

[b] The proposal shall contain the dates of joining, nature of duties and the departments in which such employees are working.

[c] The proposal shall be submitted to The Chief Executive Officer, MIDC, Mumbai.

[d] The competent authority, after receiving the said proposal, would consider the claims of such employees whose names are set out in the said proposal depending upon their seniority, nature of work done, availability of the posts in the respective departments and accordingly the proposal could be accepted. Needless to state, if posts are not available, the claims of such daily wagers would be considered as and when the posts become available or are newly created.

[e] The date of regularization would be the date on which the

concerned posts have fallen vacant and which are allotted to the daily wagers like the respondent.

[f] The service of the respondent employee shall not be dispensed with only for the reason that he is a temporary or that his proposal is pending.

5. The above protection granted to the respondent would not be applicable in case of disciplinary action.

(Ravindra V.Ghuge, J.)