

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

WRIT PETITION NO. 1372 OF 2004

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

Ramesh s/o Bhura Thikkyav.
Died. Through his L.Rs. :-
1-A) Smt.Phula wd/o Ramesh Thikkyav,
Age : Major, Occupation : Household,
R/o Bhusawal, District Jalgaon.

...RESPONDENT

WITH
WRIT PETITION NO.5821 OF 2003

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

Pandhari Pitambar Patil,
Age : Major, Occupation : Service,
R/o At Post Chikhali Bk.,
Tq.Yawal, District Jalgaon.

...RESPONDENT

WITH
WRIT PETITION NO.5824 OF 2003

Bhusawal Municipal Council.

Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

Suresh Vitthal Patil,
Age : 40 years, Occupation : Service,
R/o At.Post Kandari,
Taluka Bhusawal, District Jalgaon.

...RESPONDENT

WITH
WRIT PETITION NO.1660 OF 2004

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

- 1 Sunanda Vasant Shinde,
Age : Major, Occupation : Service,
R/o Gendalal Mill, Jalgaon,
District Jalgaon.
- 2 The Secretary, Public Health Department,
Mantralaya, Mumbai.
- 3 The Director, Municipal Administration
Department, Mantralaya, Mumbai.

...RESPONDENTS

WITH
WRIT PETITION NO.2192 OF 2004

Bhusawal Municipal Council.
Through it's Chief Officer,

Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

1 Charan Myarasa Kharare,
Age : Major, Occupation : Service,
R/o Valmiknagar, Room No.72,
Near Ramdeo Baba Temple, Bhusawal,
District Jalgaon.

2 The Secretary, Public Health Department,
Mantralaya, Mumbai.

3 The Director, Municipal Administration
Department, Mantralaya, Mumbai.

...RESPONDENTS

WITH
WRIT PETITION NO.2193 OF 2004

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

1 Bhaskar Raghunath Patil,
Age : 32 years, Occupation : Service,
R/o Bhusawal, Taluka Bhusawal,
District Jalgaon.

2 The Secretary, Public Health Department,
Mantralaya, Mumbai.

3 The Director, Municipal Administration
Department, Mantralaya, Mumbai.

...RESPONDENTS

WITH
WRIT PETITION NO.2194 OF 2004

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

- 1 Devidas Lukadu Mali.
Died through L.Rs. :-
- 1-A) Sushila wd/o Devidas Mali,
Age : Major, Occupation : Household,
R/o Bhusawal,
District Jalgaon.
- 2 The Secretary, Public Health Department,
Mantralaya, Mumbai.
- 3 The Director, Municipal Administration
Department, Mantralaya, Mumbai.

...RESPONDENTS

WITH
WRIT PETITION NO.2198 OF 2004

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

- 1 Uttam Kisan Bhalerao,
Age : 42 years, Occupation : Service,
R/o Behind Pandurang Theatre, Raghul Nagar,
Bhusawal, District Jalgaon.

2 The Secretary, Public Health Department,
Mantralaya, Mumbai.

3 The Director, Municipal Administration
Department, Mantralaya, Mumbai.

...RESPONDENTS

WITH
WRIT PETITION NO.2942 OF 2004

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

1 Arun Pratap Tak.
Died. Through his L.Rs.:-

1-A) Rekha wd/o Arun Tak,
Age : Major, Occupation : Household,
R/o Bhusawal, District Jalgaon.

2 The Secretary, Public Health Department,
Mantralaya, Mumbai.

3 The Director, Municipal Administration
Department, Mantralaya, Mumbai.

...RESPONDENTS

WITH
WRIT PETITION NO.2943 OF 2004

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

Sopan Namdeo Mali,
Age : Major, Occupation : Service,
R/o Seniccha Wadi, Jamner Road,
Bhusawal, District Jalgaon.

...RESPONDENT

WITH
WRIT PETITION NO.2944 OF 2004

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

Manabai Sudhakar Sarode,
Age : 35 years, Occupation : Service,
R/o Behind Pandurang Theatre,
Rahul Nagar, Bhusawal, District Jalgaon.

...RESPONDENT

WITH
WRIT PETITION NO.2992 OF 2004

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

Hariram Dagadu Batane,
Age : Major, Occupation : Service,
R/o Opp.Police Chowki, Jamner Road,
Bhusawal, District Jalgaon.

...RESPONDENT

WITH

WRIT PETITION NO.2995 OF 2004

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

Raghunath Bhika Bhamre,
Age : 50 years, Occupation : Service,
R/o Jamner Road,
Bhusawal, District Jalgaon.

...RESPONDENT

WITH
WRIT PETITION NO.2996 OF 2004

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

- 1 Suresh Pundlik Lokhande,
Age : Major years, Occupation : Service,
R/o Near Municipal High School,
Bhusawal, District Jalgaon.
- 2 The Secretary, Public Health Department,
Mantralaya, Mumbai.
- 3 The Director, Municipal Administration
Department, Mantralaya, Mumbai.

...RESPONDENTS

WITH
WRIT PETITION NO.2997 OF 2004

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

- 1 Prakash Jumman Kaccha,
Age : 40 years, Occupation : Service,
R/o Opp.Police Chowki No.3,
Bhusawal, District Jalgaon.
- 2 The Secretary, Public Health Department,
Mantralaya, Mumbai.
- 3 The Director, Municipal Administration
Department, Mantralaya, Mumbai.

...RESPONDENTS

WITH
WRIT PETITION NO.3028 OF 2004

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

- 1 Shaikh Latif Shaikh Vayade,
Age : Major years, Occupation : Service,
R/o Valmik Nagar,
Bhusawal, District Jalgaon.
- 2 The Secretary, Public Health Department,
Mantralaya, Mumbai.
- 3 The Director, Municipal Administration
Department, Mantralaya, Mumbai.

...RESPONDENTS

WITH
WRIT PETITION NO.3054 OF 2004

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

- 1 Atmaram Ramdas Dusane,
Age : 50 years, Occupation : Service,
R/o Bhusawal, District Jalgaon.
- 2 The Secretary, Public Health Department,
Mantralaya, Mumbai.
- 3 The Director, Municipal Administration
Department, Mantralaya, Mumbai.

...RESPONDENTS

WITH
WRIT PETITION NO.3307 OF 2004
(Not on Board. Mentioned.)

Bhusawal Municipal Council.
Through it's Chief Officer,
Bhusawal, Taluka Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

Raju Chagan Tak,
Age : 43 years, Occupation : Service,
R/o Jamner Road, Valmik Nagar,
Bhusawal, District Jalgaon.

...RESPONDENT

...

Advocate for the Petitioner/ Municipal Council : Shri Sandep Gorde Patil.

AGP for the State of Maharashtra : Shri K.S.Patil.

Advocate for the Respondents/ Employees : Shri Gulab B. Rajale.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 06th September, 2018

Oral Judgment :

1 In all these 18 matters, the Petitioner/ Bhusawal Municipal Council is aggrieved by the common judgment and order dated 27.11.2002 in ULP Complaints filed by the Respondents in each of these petitions, by which, those complaints have been partly allowed and while declaring unfair labour practices against the Petitioner/ Municipal Council, permanency is granted to the Respondents/ original Complainants/ Workers on the ground that they have completed 240 days in continuous service with the Petitioner/ Municipal Council.

2 The operative part of the impugned judgment dated 27.11.2002 reads as under :-

- "1) Complaint (ULP) Nos.33 to 51 of 2000 are hereby partly allowed.
- 2) It is hereby declared that the respondent has committed unfair labour practices under items 6 and 9 of Schedule IV of MRTU and PULP Act, 1971 and directed to desist from continuing the same.
- 3) The respondent is further directed to grant permanency to the complainants since the respective dates they had completed 240 days of service in the

employment, so also to grant the benefits of all the service conditions, which have been and are being granted to other permanent employees of the respondent-council.

- 4) *Two months time is granted to the respondent for compliance of the order.*
- 5) *In the circumstances no order as to costs."*

3 Since the Petitioner/ Municipal Council is litigating against these identically placed Respondents, all these matters have been taken up together for hearing.

4 By the order dated 19.07.2004 and similar orders, these Writ Petitions were admitted. However, Rule on interim relief was issued. By order dated 04.09.2017 and similar orders, Rule on interim relief was discharged and interim relief was refused to the Petitioner/ Municipal Council.

5 It is jointly submitted by the learned Advocates for the respective sides that all these workmen are still working with the Municipal Council though they have always been deployed in the Malaria Department, which is under the Health Department of the State Government.

6 I have considered the submissions of the learned Advocates for the respective sides. I have gone through the grounds formulated by the Petitioner/ Municipal Council in each of these petitions.

7 Considering the issue before me and in view of the law laid

down by this Court in the matters of *Mukhyadhikari, Nagar Parishad, Tuljapur vs. Vishal Vijay Amrutrao, 2015 (5) Mh.L.J. 75, Municipal Council, Chalisgaon vs. Vijay Dattatray Nerpagar and others, Writ Petition No.3409/2003* along with group of writ petitions decided on 11.05.2018 and in the light of the judgment delivered by the learned Division Bench of this Court at Nagpur in *Municipal Council, Tirora and another vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J. 867*, I am not required to advert to the entire submissions of the learned Advocates. Suffice it to say that the Industrial Employment (Standing Orders) Act, 1946 and the model standing orders framed thereunder are not applicable to the State/ State Instrumentalities unless specifically adopted and made applicable. Consequentially, the concept of "deemed permanency" under Standing Orders 4C and 4D would not apply to the cases of these respondents/ workmen. Needless to state, in view of the law laid down in the above referred cases, the impugned judgment of the Industrial Court granting permanency to the concerned employees only on the ground of completion of 240 days in continuous employment, is unsustainable.

8 The Petitioner/ Municipal Council has pointed out that the Health Department of the State Government appointed the Field Officer in the Malaria Department and implemented the programme named as "Rashtriya Hivtap Pratirodh Karyakram" (National Anti Malaria Programme) introduced by the Central Government with an aim and

object of eradicating malaria. Funds were sanctioned to such programme and since the nature of the work under the said programme is of perennial character, all these Respondents were continued and are still in employment.

9 It is informed that three of the Respondents/ Complainants, namely, Arun Pratap Tak in Writ Petition No.2942/2004, Ramesh s/o Bhura Thikkyav in Writ Petition No.1372/2004 and Devidas Lukadu Mali in Writ Petition No.2194/2004, have passed away and four of the Respondents/ Complainants, namely, Uttam Kisan Bhalerao in Writ Petition No.2198/2004, Raghunath Bhika Bhamre in Writ Petition No.2995/2004, Suresh Pundlik Lokhande in Writ Petition No.2996/2004 and Prakash Jumman Kaccha in Writ Petition No.2997/2004, have attained the age of superannuation.

10 The learned Advocate for the Respondents/ Complainants, therefore, submits that since the nature of the work is perennial and all these workers are required in every Municipal Council in the State, their proposals could be forwarded to the appropriate Department for being considered for regularization depending on availability of permanent vacant posts, in view of the law laid down in *Mukhyadhipati, Nagar Parishad, Tuljapur (supra)* and *Municipal Council, Chalisgaon (supra)*.

11 The learned Advocate for the Petitioner/ Municipal Council submits that since the said programme is being implemented under the

aegis of the Government, these employees would continue to work under the said programme and it is for the competent Department of the State Government implementing the programme, to consider the cases of these Respondents for regularization. The Municipal Council will have no say in the matter as it neither has the jurisdiction to create posts, nor is it vested with the power of granting regularization.

12 In view of the above, these Writ Petitions are partly allowed. The declaration of ULP made by the Industrial Court against the Petitioner/ Municipal Council in clause (2) of the operative part of the impugned judgment, is quashed and set aside. Consequentially, clause (4) of the operative part also stands set aside.

13 The directions of the Industrial Court in clause (3) of the operative part of the impugned judgment, stand modified in the following terms :-

- (a) The Petitioner/ Municipal Council shall prepare individual proposals of these Respondents/ Workmen including those, who have passed away and who have retired, along with all similarly situated daily rated employees working in the Malaria Department. Such proposals shall be prepared and forwarded to the Public Health Department of the State Maharashtra through the Director of Health Services, Maharashtra State, Mumbai, within a period of TWELVE

WEEKS from today.

- (b) The concerned Department of the State Government shall consider the said proposals, within a period of SIXTEEN WEEKS from the date of their receipt, for assessing as regards the grant of regularization to these workers in view of the available sanctioned vacant posts.
- (c) In the event of any shortfall in the vacancies, the claims of these workers, would be considered strictly by their seniority in a staggered manner as and when the posts become available.
- (d) The learned Advocate for the Respondents/ workmen points out from the record that on 25.03.2011, the Joint Director of Health Services (Malaria, Filariasis and Water Borne Diseases), Pune-6 has informed all the Municipal Councils and Municipal Corporations including the present Petitioner/ Municipal Council, the available vacancies under the Malaria Department. As there were 32 sanctioned posts, out of which three were vacant, that the competent authority would consider the cases of the employees mentioned in the proposals based on their seniority.
- (e) Insofar as the deceased workmen are concerned, in the event, they can be granted notional regularization as per their

seniority, if the posts are said to be available prior to the dates of their demise, the concerned Department of the State Government would sanction the monetary benefits owing to such regularization to the widows of such deceased workmen or surviving legal heirs, if the widow has also passed away, within the same period as is mentioned above.

- (f) Insofar as the cases of the retired employees are concerned, the same would also be considered on the same lines as above and if they are entitled to regularization prior to their dates of retirement, all monetary benefits would also be paid to them within the same period as mentioned above.
- (g) Needless to state, until these workers are regularized in employment in view of the above, their services shall not be dispensed with only on the ground that they are daily wagers, save and except in matters of disciplinary proceedings.

14 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)

Kalyan
Prakash
Sangvikar

Digitally
signed by
Kalyan
Prakash
Sangvikar
Date:
2018.09.10
14:21:27
+0530