

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

**WRIT PETITION NO. 3924 OF 2001**

The Chief Officer,  
Faijpur Nagarpalika,  
At Post Faijpur, Tal. Yawal,  
District- Jalgaon.

**...Petitioner**

Versus

Kautik s/o Chintaman Kirange  
R/o : Nagar, Satpanthi Mandir  
Tal. Yawal, District- Jalgaon.

**...Respondent**

...

Advocate for the Petitioner : Shri A. G. Talhar with  
Smt. Seema Pawar.

Advocate for the Respondent : Shri G. V. Wani.

...

**CORAM : RAVINDRA V. GHUGE, J.**

**DATED : 13<sup>th</sup> JULY, 2018.**

...

***ORAL JUDGMENT :***

1. Rule. Rule made returnable forthwith and by the consent of the learned Advocates for the respective sides, this petition was taken up for final hearing.

2. The petitioner- Municipal Council is aggrieved by the judgment dated 23/07/2001 delivered by the Industrial Court,

Jalgaon in Revision Application (ULP) No. 668/1999 (old No. 430/98), by which, the revision petition filed by the respondent- employee was allowed and the Industrial Court granted him reinstatement with continuity and full back wages. The judgment of the Labour Court dated 19/11/1997 dismissing this complaint (ULP) No. 5/1992 was quashed and set aside.

3. After considering the strenuous submissions of the learned Advocates and the prayer of the respondent that this petition be dismissed with costs, I have gone through the petition paper book with their assistance.

4. There is no dispute that the workman had alleged in his complaint before the Labour Court that he was appointed as a Naka Karkun on 01/05/1990 and he was orally terminated from service on 31/05/1991.

5. The learned Advocate for the Municipal Council submits that all temporary appointment orders issued to the employee were placed on record below Exhibit U-17 till U-23. All these

appointment orders indicate that the employee was engaged on temporary basis for periods of 30 days in between 01/05/1990 till 31/08/1990 and then for further periods of 30 days from 01/02/1991 till 31/05/1991. There was no advertisement published for undertaking any selection process. He was working as a Naka Karkun in the Octroi Department.

6. The learned Advocate for the employee has strenuously contended that notwithstanding the temporary appointment orders for periods of 30 days, the employee was in continuous service in between 01/05/1990 till 31/08/1990 and from 01/02/1991 till 31/05/1991. Several documents and attendance cum wage-register were sought by the employee since the same are in the custody of the employer. These documents were not filed. The seniority list was suppressed and hence an adverse inference has been rightly drawn by the industrial Court. Reliance is placed on the appointment orders by the Industrial Court to come to the conclusion that he has proved continuous employment with the Municipal Council. It is, therefore, submitted that the Industrial Court has rightly set aside the judgment of the Labour Court and has granted relief

to which the employee was entitled to.

7. I find from the record that this Court has stayed the impugned judgment of the Industrial Court on 01/10/2001 subject to the condition that 25 % of the total back wages shall be deposited in this Court and also tender a bank guarantee for the remaining amount. The Municipal Council has complied with both these directions.

8. It is noteworthy that the Industrial Court has concluded that the employee was not in continuous employment from 01/09/1990 till 31/08/1991 and from 01/02/1991 till 31/05/1991. There are instances of a break of two days or three days in between these appointments excluding the break from 01/09/1990 till 31/01/1991. These conclusions have not been challenged by the employee in this Court. To this extent, the said conclusions, therefore, stand accepted.

9. It requires no debate that the law on retrenchment and reinstatement on the ground of completion of 240 days in continuous employment, has undergone a drastic change in

this last decade. In public employment and in employment of state instrumentalities, even if an employee completes 240 days in continuous employment, there cannot be an order of reinstatement unless it is established that the post is sanctioned and vacant. In the case of temporary employment, there cannot be an order directing the employer to reinstate an employee as a temporary/daily-wager.

10. Notwithstanding the above, the computation of 240 days is to be calculated under Section 25-B of the Industrial Disputes Act, which defines continuous service. 240 days had to be calculated from the date of reference which is the last date of employment. Keeping in view that there was a break in service from 01/09/1990 to 31/01/1991, it cannot be said that the respondent employee has completed 240 days in the continuous service of the employer in 12 calendar months preceding the date of termination.

11. There is no dispute that the respondent- employee is out of employment from 01/06/1991. He worked intermittently, for a period of one year with the petitioner and is out

employment for the last 27 years. Whether the reinstatement with continuity and back-wages can be granted to an employee in such circumstances has been considered by the Honourable Apex Court in the following four cases :-

(a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal, [2013 LLR 1009];*

(b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, [(2013) 5 SCC 136];*

(c) *BSNL Vs. Man Singh, (2012) 1 SCC 558; and*

(d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, [(2009) 15 SCC 327].*

12. The Honourable Apex Court has held that where an employee has put in a short spell in temporary employment, followed by a long span of unemployment, compensation of about Rs. 40,000/- to 50,000/- can be granted for each year of service.

13. Considering all the factors as noted above, I find that the

judgment of the Labour Court dated 19/11/1997 dismissing the complaint filed by the respondent employee was in accordance with law and sustainable. For these reasons, the impugned judgment of the Industrial Court dated 23/07/2001 is rendered unsustainable.

14. It, however, cannot be ignored that the respondent employee has not been reinstated since this Court has granted interim relief to the Municipal Council on deposit of Rs. 25 % of the back wages. An amount of Rs. 80,550/- has been deposited in this Court on 04/12/2001. The said amount must have accumulated interest. It is under these peculiar circumstances that though the respondent employee would be entitled for compensation in lieu of reinstatement in service and back wages for having work intermittently in one year of service of temporary service, I am inclined to allow him to withdraw the said amount of Rs. 80,550/- alongwith accrued interest thereon.

15. In view of the above, this petition is partly allowed. The impugned judgment of the Industrial Court dated 23/07/2001

is quashed and set aside. Revision (ULP) No. 668/99 stands rejected and the judgment of the Labour Court dated 19/11/1997 stands sustained.

16. The respondent is permitted to withdraw the amount as noted above from this Court by tendering an application duly identified by his Advocate alongwith a recent photograph and a copy of the address proof in the nature of the Adhar Card or the Election Commission Voter's ID.

17. The petitioner is released from the bank guarantee submitted for the remainder 75 % of the back wages.

18. The Nazir Section shall accordingly follow the procedure in view of this direction.

19. Rule is made absolute.

**(RAVINDRA V. GHUGE, J.)**

shp/-