

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

WRIT PETITION NO. 5431 OF 1998

The Dhule Municipal Council.
Through the Chief Officer,
Dhule Municipal Council, Dhule.

...PETITIONER

-VERSUS-

Ramesh Jivan Mali,
Adult,
R/o 75, Warkar Nagar,
Nateshwar Colony, Dhule.

...RESPONDENT

WITH
WRIT PETITION NO.26 OF 2006

Ramesh s/o Jeevan Mali,
Age : 32 years,
Occupation : At present Nil,
R/o Neharu Nagar, Galli No.10,
Deopur, At. Post. Tq. Dhule.

...PETITIONER

-VERSUS-

- 1 The Chief Officer,
Municipal Council, Dhule.
- 2 The State of Maharashtra.
Urban Development Department,
Mantralaya, Mumbai.

...RESPONDENTS

...

Shri S.P.Shah a/w Shri M.M.Jadhav, Advocate for the Municipal Council.

Shri B.R.Warma, Advocate for the Workman.
Shri S.R.Yadav Lonikar, AGP, for the Respondent/ State.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th March, 2018

Oral Judgment :

1 In the first Writ Petition No.5431/1998 filed by the Dhule Municipal Council (now the Dhule Municipal Corporation), the judgment and order of the Industrial Court dated 09.04.1997 allowing the Complaint (ULP) No.622/1996 granting permanency to the Respondent/ Workman, has been challenged.

2 In the second Writ Petition No.26/2006, the Workman has challenged the judgment and order dated 11.08.1999 passed by the Labour Court by which, his Complaint (ULP) No.44/1991 has been dismissed and the order of the Industrial Court dated 20.06.2000 by which, his Revision (ULP) No.790/1999 has been dismissed.

3 Since both these petitions are interconnected and originate on account of the proceedings initiated by the same Workman, the same have been tagged together by this Court earlier. For the sake of brevity, the Management/ Municipal Council would be referred as "the Municipal Council" and the Employee would be referred as "the Workman" in this judgment.

4 I have considered the strenuous submissions of the learned
Advocates for the respective sides.

5 There is no dispute as regards the following sequence of
events :-

- (a) The Workman was appointed as a Clerk on 04.04.1990 under the orders of the then President of the Municipal Council.
- (b) Since his appointment was found to be illegal, he was terminated on 06.02.1991 by the Municipal Council after paying him retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947.
- (c) The Workman preferred Complaint (ULP) No.44/1991 before the Labour Court. The application for interim relief was rejected vide order dated 16.02.1991.
- (d) A review was filed, which was allowed by the Labour Court on 08.04.1991 and the Workman was reinstated.
- (e) The Municipal Council preferred Revision (ULP) No.64/1991, which was allowed by the Industrial Court by judgment dated 24.02.1994 and the interim relief granted by the Labour Court was set aside.
- (f) The Workman was, however, continued by the Municipal Council without a break.
- (g) The Workman then filed Complaint (ULP) No.622/1996

seeking permanency and regularization in service on 26.06.1996.

- (h) On 09.04.1997, Complaint (ULP) No.622/1996 was allowed and the Workman was granted permanency w.e.f. 01.01.1997 with all benefits available to permanent employees on the post of Clerk.
- (i) The Municipal Council, therefore, challenged the said judgment in the Writ Petition No.5431/1998.
- (j) In the meanwhile, by the judgment dated 11.08.1999, the Labour Court dismissed Complaint (ULP) No.44/1991 filed by the Workman for challenging his termination dated 06.02.1991.
- (k) The Workman preferred Revision (ULP) No.790/1999, which was dismissed by the Industrial Court by judgment dated 20.06.2000.
- (l) The Workman has worked for about 10 months in 1990-1991 and after his reinstatement pursuant to the grant of interim relief on 08.04.1991, he continued in employment till he was terminated on 23.08.1999.
- (m) He has, therefore, worked for about nine years and is out of employment for the past about 19 years. He being 51 years of age as on date, he has about seven years to go for attaining

the age of superannuation.

6 I have gone through the record with the assistance of the learned Advocates for the respective sides. The law is settled insofar as the issue of reckoning number of days worked in continuous service. The Workman, who is in employment by virtue of the interim orders of any court, cannot reckon the said period for which he is in employment under the interim orders of the Court for the sake of grant of permanency. It is quite obvious from the judgment of the Industrial Court challenged by the Municipal Council that the Workman was granted regularization since he worked for about 307 days in 1991-1992, about 299 days in 1992-1993, 302 days in 1993-1994, 309 days in 1994-1995, 305 days in 1995-1996 and 73 days from April, 1996 till June, 1996.

7 The learned Advocate for the Workman has strenuously contended that after the interim relief was vacated by the Industrial Court by allowing Revision (ULP) No.64/1991 filed by the Municipal Council on 24.02.1994, the Workman was continued in employment and he has worked for 309 days in 1994-1995 and 305 days in 1995-1996 inspite of there being no interim relief in his favour. The Workman preferred his complaint for seeking permanency before the Industrial Court only on the basis of having worked continuously for 614 days in two consecutive years from 1994 till 1996. Even if this portion of his service is considered as his

only foundation for claiming permanency, he would be entitled for grant of permanency under Standing Orders 4-C r/w 4-D of the Industrial Employment (Standing Orders) Act, 1946.

8 The learned Advocate for the Municipal Council strenuously submits that Complaint (ULP) No.44/1991 filed by the Workman is a stand alone complaint and the Labour Court has rightly considered the complaint from the date of reference.

9 I do not find that the said contention can be said to be misplaced because Section 25-B of the Industrial Disputes Act, 1947 defines continuous employment and Section 25-F, which mandates compliance of the law of retrenchment, accords significance to the date of reference. The date of reference in the case of termination would not be the date of filing of the complaint, but would be the date on which the employee is terminated and he has to prove completion of 240 days under Section 25-B in the twelve calendar months preceding the date of reference. The Municipal Council has specifically taken a stand that as the appointment of the Workman on the Class III post of a Clerk was de-hors the rules and under the orders of the then President, the Municipal Council terminated his services promptly upon realizing the mistake by complying with Section 25-F.

10 Considering the above, I do not find that the judgment of the Labour Court dated 11.08.1999 dismissing Complaint (ULP) No.44/1991

filed by the Workman challenging his termination on 06.02.1991 could be said to be erroneous or perverse. Hence, the judgment of the Industrial Court dated 20.06.2000 dismissing Revision (ULP) No.790/1999, which is challenged by the Workman in Writ Petition No.26/2006 cannot be faulted. This Writ Petition No.26/2006 being devoid of merit is, therefore, dismissed. Rule is discharged.

11 Insofar as Writ Petition No.5431/1998 filed by the Municipal Council is concerned, it cannot be overlooked that the Workman had filed his Complaint (ULP) No.662/1996 based on the continued employment for two years 1994-1995 and 1995-1996 wherein, he worked for a period of 614 days as is recorded by the Industrial Court. There is no dispute on this count. However, as to whether, Standing Orders 4-C and 4-D could be made applicable to the State Instrumentalities, is concerned, this issue has been dealt with by the learned Division Bench at Nagpur which was constituted on an issue being referred to it due to difference of opinion amongst two learned Single Judges. The learned Division Bench, therefore, in the said case referred, has delivered the judgment in the matter of Municipal Council, Tirora and another vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J. 867 and concluded that Standing Orders 4-C and 4-D do not apply to the State Instrumentalities like Municipal Councils, Municipal Corporations, Zilla Parishads and alike.

12 In a somewhat similar set of facts in the matters of

Mukhyadhikari, Nagar Parishad, Tuljapur vs. Vishal Vijay Amrutrao, 2015(5) Mh.L.J. 75 and *Municipal Council, Tuljapur v/s Baban Hussain Dhule, judgment 26.02.2015 in Writ Petition No.1843/2015*, this Court has concluded that the Industrial Court cannot declare an ULP against the State Instrumentalities if it is established that the posts are not vacant and the workers seeking permanency have not proved supercession in the matters of regularization. It was, therefore, concluded that in such cases, the Municipal Council can be directed to submit a proposal to the appropriate authority for considering whether, the claim of the workers could be considered for grant of regularization.

13 Since the termination of the Workman dated 06.02.1991 cannot be faulted, his continuance in employment after the interim relief was vacated by the Industrial Court in 1994, can only be reckoned in the light of the law laid down by this Court in the judgments cited above.

14 It is brought before this Court by the Workman by a document dated 02.06.1999, which is at pages 59 and 60 in the petition filed by the Workman, that 156 daily wagers working as Peons or Clerks or Class-III or Class IV workers, were posted in various Departments by the said transfer order. The Workman herein is at Sr.No.147. Since his complaint challenging his termination was dismissed on 11.08.1999, he was terminated on 23.08.1999 and subsequently, other employees have been gradually absorbed in employment as and when the posts became

available.

15 Shri Warma, therefore, submits on instructions from the Workman present in the Court that if his case is forwarded for considering him for regularization expeditiously as he has about 07 years left for retirement, ends of justice would be met.

16 In the light of the above, Writ Petition No.5431/1998 is partly allowed. The judgment of the Industrial Court dated 09.04.1997 is quashed and set aside. The Complaint (ULP) is disposed off. The Municipal Council is directed to prepare the proposal of the Workman on the basis of his service put in from 25.02.1994 till 23.08.1999 when he was in employment without there being any protective order of any court, for considering his case for regularization. The Municipal Council would also prepare the proposals of all similar daily wage employees as it should not happen that the proposal of this Workman alone is forwarded only because he has approached the Court and the proposals of other employees are not forwarded as they are not before the Court.

17 In short, the Municipal Council would prepare a composite proposal of all such daily wagers within a period of SIX WEEKS FROM TODAY and forward it to the Director of Municipal Administration, Maharashtra State. The said Director shall scrutinize the said proposals and forward them to the Principal Secretary, Urban Development Department, Maharashtra State, Mantralaya, Mumbai-32 for considering

the said proposals. The Principal Secretary, Urban Development Department would then take a decision on the said proposals case-wise within a period of FOUR MONTHS thereafter and communicate his decision to the Municipal Council, which in turn would convey the decision to each of those daily wagers whose proposals have been forwarded.

18 Rule is made partly absolute in the above terms in Writ Petition No.5431/1998.

kps

(RAVINDRA V. GHUGE, J.)