

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

WRIT PETITION NO. 709 OF 2004

The Chief Officer,
Deolali Pravara Nagar Palika,
Deolali Pravara, Tq.Rahuri,
District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 Smt.Gayabai w/o Ramesh Lage,
Age : Major, Occupation : Nil,
R/o Deolali Pravara, Tq.Rahuri,
District Ahmednagar.
- 2 Dropadabai w/o Sitaram Sarode,
Age : Major, Occupation : Nil,
R/o Deolali Pravara, Tq.Rahuri,
District Ahmednagar.

...RESPONDENTS

...
Advocate for the Petitioner : Shri L.V.Sangit.

Advocate for the Respondents : Shri R.K.Temkar.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd March, 2018

Oral Judgment :

1 The Petitioner/ Municipal Council has challenged the judgment of the Industrial Court dated 18.10.2003 by which, Complaint (ULP) No.1/1992 filed by the Respondents has been allowed and a

declaration of ULP under items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 has been made. The benefits of permanency, either on the post of "Aaya" or "Sweeper", whichever is available, have been granted by the Industrial Court.

2 This petition was admitted on 11.06.2004 and by order dated 29.07.2004, interim relief in terms of prayer clause (B) was granted by this Court.

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

4 The issue involved in this petition is as to whether, the Industrial Court can grant permanency by applying the principle of completion of 240 days in continuous employment akin to Standing Orders 4-C and 4-D of the Industrial Employment (Standing Orders) Act, 1946.

5 The said issue is no longer res-integra in the light of the judgments delivered by this Court in the following matters :-

- (a) Municipal Council, Tirora and another vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J. 867. (D.B.)
- (b) Mukhyadhikari, Nagar Parishad, Tuljapur vs. Vishal Vijay Amrutrao, 2015(5) Mh.L.J. 75. (S.J.)
- (c) Municipal Council, Tuljapur v/s Baban Hussain Dhule,

judgment 26.02.2015 in Writ Petition No.1843/2015. (S.J.)

6 It is, thus, crystallized that when it comes to the State Instrumentalities which do not have the powers to create posts or issue orders of regularization, no ULP can be declared against such instrumentalities by the Industrial Court. Consequentially, the declaration of ULP in clauses (2) and (3) of the operative part of the impugned judgment is unsustainable and stands quashed and set aside.

7 The direction of the Industrial Court in clause (4) of the operative part of the order indicates that the Industrial Court has directed the Petitioner to grant permanency to the Respondents either on the post of "Aaya" or "Sweeper", whichever is available. Such an order is unknown to service jurisprudence. If an employee is entitled to permanency on a particular post, the Industrial Court cannot create an option for such regularization.

8 Moreover, considering the law laid down in the above referred cases, the Standing Orders 4-C and 4-D are not applicable to the State Instrumentalities and the Industrial Court cannot grant regularization under the deeming provision enunciated in Standing Order 4-C. It is well settled that in such matters, the proposals of such candidates have to be forwarded to the appropriate authority of the State Government so as to enable the State Government to scrutinize the

proposals and depending on the seniority of such candidates in relation to all similarly situated employees and depending upon the availability of permanent posts, the orders of regularization can be passed.

9 Considering the above, this Writ Petition is partly allowed. The directions of the Industrial Court in clauses (2) and (3) of the operative paragraph are quashed and set aside. However, the directions in clauses (4) and (5) are modified as under :-

- (a) The Petitioner would prepare the proposal of these Respondents along with all similarly situated employees and forward the same within a period of TWELVE WEEKS FROM TODAY to the Director of Municipal Administration, Maharashtra State, Mumbai.
- (b) The Director of Municipal Administration, Maharashtra State, Mumbai, after scrutiny of such proposals, shall forward the same to the Principal Secretary, Urban Development Department, Maharashtra State, Mantralaya, Mumbai-32 expeditiously and in any case within FOUR WEEKS from the date of receipt of the proposals.
- (c) The Principal Secretary, Urban Development Department, would consider the proposals within SIX MONTHS and after considering the length of service of such employees, the area in which they have worked and their seniority in comparison

with similarly situated employees, would grant regularization depending upon the availability of permanent vacant posts.

- (d) If permanent vacant posts are not available and these Respondents are still continued on daily wages, the Petitioner would continue them as such until the posts are created so as to consider their claims against the newly created posts.
- (e) Subject to the above directions, these Respondents would not be terminated from service merely on the ground that they are working as daily wagers. This protection would not be applicable if these Respondents are not in employment today and to cases of disciplinary action.

10 Rule is made partly absolute in the above terms.