

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

WRIT PETITION NO.3409 OF 2003

Municipal Council Chalisgaon,
Tq.Chalisgaon, District Jalgaon.
Through its Chief Officer.

...PETITIONER

-VERSUS-

- 1 Vilas Dattatray Nerpagar,
R/o Deshmukh Wada, Gandhi Chowk,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 2 Deepak Vijaysingh Rajput,
R/o Pratap Chowk, Patil Wada,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 3 Arun Madhukar Deshmukh,
R/o Deshmukh Wada, Gandhi Chowk,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 4 Jitendra Pratapsingh Rajput,
R/o Maharan Pratap Coop. Hsg. Society,
Kargaon Road,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 5 Ashok Shankar Patil,
R/o Navagaon Chaudhari Wada,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 6 Satish Babanrao Dabhade,
R/o Deshpande Lane,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.

- 7 Pramod Shivajirao Deshmukh,
R/o Deshmukh Lane,
Near Anildada Deshmukh House,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 8 Pravin Harpalsingh Tomar,
R/o Near Khandesh Oil Mill,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 9 Sandeep Pandit Khairnar,
R/o Dattawadi,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 10 Krishnarao Panditrao Ahirrao,
R/o Nagar Palika,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 11 Sau.Mira Valmik More,
R/o Opp.Dost Talkies,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 12 Bapu Babulal Jadhav,
R/o Ambedkar Chowk,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 13 Narayan Babulal Koli,
R/o Kili Lane, Near Chajed Oil Mill,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 14 Digambar Govinda Deshmukh,
R/o Subhash Chowk, Station Road,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 15 Kishor Ananda Patil,

R/o Patil Wada,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.

- 16 Babasaheb Kanderao Deshmukh,
R/o Deshmukh Lane,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 17 Pankaj Balasaheb Shinde,
R/o Congress Wadi, Ghat Road,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 18 Mahesh Devidas Bondarde,
R/o Narayan Wadi,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 19 Sunil Rambhau Pakhale,
R/o Gandhi Chowk,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 20 Sanjay Bhikanrao Deshmukh,
R/o Deshmukh Lane, Near House,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 21 Raghunath Mohan Pawar,
R/o Thakali, Post.Ozar,
Tq.Chalisgaon,
District Jalgaon.
- 22 Shaikh Salimshaikh Nazir,
R/o Ranjangaon,
Tq.Chalisgaon,
District Jalgaon.
- 23 Ashok Gulabrao Deshmukh,
R/o Deshmukh Lane,
Near Patil Wada,
Chalisgaon, Tq.Chalisgaon,

District Jalgaon.

24 Sunil Pupchand Chaudhari,
R/o Teli Galli,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.

25 Bapu Dhondu Chaudhari,
R/o Shastri Nagar,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.

All Respondent Nos.1 to 25
Occupation : Service, Aged Major.

...RESPONDENTS

**WITH
WRIT PETITION NO.4088 OF 2003**

Municipal Council, Chalisgaon,
Taluka Chalisgaon, District Jalgaon.
Through its Chief Officer.

...PETITIONER

-VERSUS-

Kishor Bhausahab Deshmukh,
Age : Major, Occupation : Service,
R/o Pratap Chowk, Deshmukh Chwal,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.

...RESPONDENT

**WITH
WRIT PETITION NO.3673 OF 2004**

The Chief Officer,
Municipal Council, Chalisgaon,
Taluka Chalisgaon, District Jalgaon.

...PETITIONER

-VERSUS-

1 Shaikh Ismail Shaikh Ahmad,
Age : Major, Occupation : Service,
R/o Ghat Road Zopadpatti,
Chalishaon, Tq.Chalishaon,
District Jalgaon.

2 The State of Maharashtra.
Through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.
(Added as per Court's order
dated 09.05.2018).

...RESPONDENTS

**WITH
WRIT PETITION NO.8601 OF 2005**

The Chief Officer,
Municipal Council, Chalishaon,
Taluka Chalishaon, District Jalgaon.

...PETITIONER

-VERSUS-

Deepak s/o Dinkarrao Deshmukh,
Age : 32 years, Occupation : Service,
R/o Narayan Wadi, Chalishaon,
District Jalgaon.

...RESPONDENT

**WITH
WRIT PETITION NO.8602 OF 2005**

The Chief Officer,
Nagar Palika, Chalishaon,
Taluka Chalishaon, District Jalgaon.

...PETITIONER

-VERSUS-

Shantaram Narayan Choudhari,

Age : Major, Occupation : Service,
R/o Patoda, Taluka : Chalisgaon,
District Jalgaon.

...RESPONDENT

**WITH
WRIT PETITION NO.11963 OF 2014**

Chief Officer,
Municipal Council, Chalisgaon,
Tq.Chalisgaon, District Jalgaon.

...PETITIONER

-VERSUS-

- 1 Shivaji Dashrath Gurav,
Age : 48 years, Occupation : Service,
R/o Patna Devi Road,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 2 Ajay Madhavrao Deshmukh,
Age : 38 years, Occupation : Service,
R/o Ram Electrical, Nagad Road,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 3 Somnath Baburao Kumavat,
Age : 54 years, Occupation : Service,
R/o Ramwadi,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 4 Manohar Balkrushna Shahapurkar,
Age : 56 years, Occupation : Service,
R/o Hirapur Road,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.
- 5 Jayram Ananda Koli,
Age : 48 years, Occupation : Service,
R/o Ghat Road, Prabhat Galli,
Chalisgaon, Tq.Chalisgaon,

District Jalgaon.

- 6 Smt.Kalabai Ashok Pawar,
Age : 48 years, Occupation : Service,
R/o Netaji Chowk, Behind Maroti Mandir,
Chalisgaon, Tq.Chalisgaon,
District Jalgaon.

...RESPONDENTS

...
Shri Mobin Shaikh, Advocate h/f Shri Vikram R. Dhorde, Advocate for the
Petitioner/ Municipal Council.

Shri Vijay Y. Patil, Advocate for the Respondents/ Workmen.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 11th May, 2018

Oral Judgment :

1 Writ Petition No.3673/2004 is on the Board for final hearing in this special drive for taking up old final hearing matters. The learned Advocates have fairly stated that other petitions being identically placed, viz. Writ Petition Nos.3409/2003, 4088/2003, 8601/2005, 8602/2005 and 11963/2014, can also be called for and taken up for hearing. Consequentially, the said petitions have been called for and I have heard the learned Advocates for the respective sides at length.

2 All the petitions are admitted except Writ Petition No.11963/2014. Thus, Rule in Writ Petition No.11963/2014 and Rule is made returnable forthwith by the consent of the parties.

3 There is no dispute that in all these matters, the Municipal Council, Chalisgaon is aggrieved by the different directions issued by the Industrial Court, Jalgaon vide the impugned judgments by which, Standing Orders 4-C and 4-D of the Industrial Employment (Standing Orders) Act, 1946 have been made applicable to the Respondents and they have been granted deemed permanency from the date of the filing of these complaints or upon completion of 240 days in continuous service.

4 The learned counsel for the Respondents/ Workmen, on the one hand, has strenuously defended the impugned judgments and on the other hand, has tendered the Government Resolution dated 16.05.2005 along with the list of sanctioned posts. The Government Resolution dated 16.05.2005 is marked as "X-1". The communication dated 17.10.2015 by the Assistant Commissioner, Backward Cell, Divisional Commissionerate, Nashik Division, Nashik (13 pages) is marked as "X-2". The communication dated 21.07.2015 from the Chief Officer, Municipal Council, Chalisgaon to the Principal Secretary, Directorate of Municipal Administration, along with the list of proposals and the responses of the said Department dated 11.01.2016 and 08/09.12.2016, are collectively marked as "X-3".

5 The issue in these petitions is whether, the Industrial Court could grant permanency to the daily rated employees of the Municipal Council by virtue of completing 240 days in continuous employment in the

light of Standing Orders 4-C and 4-D of the Industrial Employment (Standing Orders) Act, 1946. This issue is no longer res-integra in the light of the judgments of this Court in the matters of Mukhyadhikari, Nagar Parishad, Tuljapur vs. Vishal Vijay Amrutrao, 2015(5) Mh.L.J. 75. (S.J.), Municipal Council, Tuljapur v/s Baban Hussain Dhule, judgment 26.02.2015 in Writ Petition No.1843/2015. (S.J.) and Municipal Council, Tirora and another vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J. 867. (D.B.). It is now settled that such daily rated employees working in the State Instrumentalities like the present workmen, would be entitled for regularization strictly on the basis of the posts available, their inter-se seniority and the sanction granted by the competent Department of the State Government.

6 It is, therefore, settled that the Municipal Council does not have the authority to create posts. Available work is allocated to the daily rated workers. It is the State Government through it's Urban Development Department that can create posts subject to rules and such newly created posts or available vacant permanent posts could be filled in by regularizing the daily rated workers strictly as per their seniority. In some Establishments, the Kalelkar Settlement/ Bhole Commission's Recommendations/ Shastri Award/ Lad Commission's Recommendations/ Vashila Paddhat, are also made applicable. In this backdrop, the Industrial

Court cannot declare a ULP against the Municipal Council when it has no authority to create posts or fill in the posts.

7 The learned Advocate for the Municipal Council submits that these workmen are being considered for regularization and some of them have already been granted permanency, which is evident from the documents at X-3.

8 Considering the above, these Writ Petitions are partly allowed. The declaration of Unfair Labour Practice made by the Industrial Court in the impugned judgments is quashed and set aside. The directions of the Industrial Court granting permanency upon completion of 240 days or from the date of the filing of the complaints or from the date of the impugned judgments, are set aside and are replaced by the following directions :-

- (a) These Respondents/workmen along with similarly situated daily rated workmen would be considered by the Urban Development Department, State of Maharashtra, Mumbai for grant of regularization strictly in accordance with the Rules applicable, availability of permanent vacant posts and their seniority.
- (b) Wherever the posts are already vacant, these daily rated workmen would be absorbed as per their seniority and the deemed date of regularization would be the date on which

the post became vacant.

- (c) Needless to state, their present assignments would be taken into account while calculating the arrears to be paid to them, if any, by the Government.
- (d) If any daily rated workers are left out or their proposals have not been sent, the Petitioner Municipal Council would prepare their proposals and transmit it to the Directorate of Municipal Administration, Maharashtra State, Worli, Mumbai, within a period of TWELVE WEEKS from today and after receipt of such proposals, the Directorate of Municipal Administration shall forward the same, within a period of FOUR WEEKS from their receipt, to the Principal Secretary, Urban Development Department, Maharashtra State, Mantralaya, Mumbai, which would consider the said proposals subject to the above contingencies, within a period of SIX MONTHS from today.
- (e) Needless to state, if the posts are not available, such daily rated workmen would be continued in service depending on the availability of work and would be considered for regularization as and when vacancies arise or new posts are created. This protection would not apply to workers against whom disciplinary proceedings can be initiated.

9 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)