

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

WRIT PETITION NO. 11402 OF 2018

HARISH RAMDAS PANTHARE
VERSUS
THE COMMISSIONER MUNICIPAL CORPORATION DHULE

...

Advocate for the Petitioner : Ms.Gaikwad Sarita V.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th October, 2018

Per Court:

1 The Petitioner seeks to challenge the judgment of the Labour Court dated 29.12.2000 by which, his Complaint (ULP) No.272/1997 has been dismissed. He also seeks to challenge the judgment of the Industrial Court dated 30.11.2004 by which, his Revision (ULP) No.23/2001 has been dismissed.

2 This petition is filed on 19.09.2018, after about 14 years.

3 The contention of the Petitioner is that he is a daily wager. He was retrenched from services. The work that he was performing is available all round the year. Vacancies are available. The Municipal Corporation needs workers and hence, the Petitioner should be granted work and should be granted permanency after his reinstatement in service. Reliance is placed on the judgments of the learned Single Judge of

this Court dated 18.10.2007 in the matter of ***Gopal Narayan Jade vs. Municipal Corporation, Dhule, Writ Petition No.446/2006*** and in the matter of ***Chaganlal Girdhari Kundkar v/s Parmatma Ek Sewak Nagrik Sahakari Bank Ltd., Nagpur and others, 2009 (6) Mh.L.J. 463.***

4 The Petitioner further contended that Model Standing Order 4-C of the Industrial Employment (Standing Orders) Act, 1946 would mandate deemed permanency in favour of the Petitioner and therefore, the Respondent will have to issue an order of regularization under Standing Order 4-D of the Model Standing Orders. It is stated that the Petitioner continued on the basis of the interim relief granted by the Labour Court and was eventually terminated after the complaint was dismissed by the Labour Court in 2000.

5 The learned Single Judge of this Court has dealt with this issue in the matter 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*** and the learned Division Bench at Nagpur has dealt with an identical issue in the case of ***Municipal Council, Tirora and another vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J. 867.*** It is concluded that the Model Standing Orders and especially Standing Order 4-C would not be applicable to the State Government and State

Instrumentalities as the concept of deemed permanency can be applied only in case of private managements and private sector undertakings in which, the issue of creation of posts is not at the doorstep of the Government. In the cases of State Government or State Instrumentalities, the issue of creation of posts has to be dealt with by the Government and financial sanction has to be obtained and thereafter, the procedure for recruitment has to be followed in public employment.

6 Insofar as the claim of the Petitioner is concerned, even otherwise, he was a daily wager from 1995 and is said to have been orally terminated on 31.07.1997. The Labour Court has concluded that his disengagement as daily wager, when he was intermittently allotted the work, would not amount to retrenchment. His complaint was, therefore, dismissed. For similar reasons, the Industrial Court has dismissed the revision petition of the Petitioner on 30.11.2004..

7 This petition need not be entertained in view of the long delay of 14 years and the Petitioner being out of employment as a daily wager for the last 21 years. Even otherwise, the Petitioner was intermittently working as a daily wager in between 1995-1997. Completion of 240 days in continuous service was not proved. Even if it was proved, in public employment, it would not create any right in favour of the Petitioner to seek reinstatement in service. Having worked intermittently in between two years and having been out of employment

for the last 21 years and since this petition is filed after a delay of 14 years, I do not find that the writ jurisdiction of this Court needs to be invoked.

8 This Writ Petition, being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)