

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

WRIT PETITION NO. 13271 OF 2017

Smt. Mayabai Upshyam Nikam,
Age 45 years, Occ. Labour,
R/o Wadekar Chawl,
Railway Station Road,
Dhule, Tal. And District Dhule.

**...Petitioner
(Orig. Complainant)**

VERSUS

The Commissioner,
Dhule Municipal Corporation,
Tal. and District Dhule.

**... Respondent
(Orig. Respondent)**

...

Advocate for the Petitioner : Shri M. S. Kavadi h/f.

Shri S. S. Thombre

Advocate for the Respondent : Shri N. N. Desale

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 03rd DECEMBER, 2018.

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner – original complainant is aggrieved by the judgment and order dated 12/08/2015 delivered by the Industrial Court, Dhule, by which a group of ULP complaints was disposed off by a common judgment. As such, the

petitioner's case bearing ULP No. 29/2012 has been dismissed.

3. I have considered the strenuous submissions of the learned Advocates for the respective sides. Shri Desale prays that this petition, being devoid of merit, be dismissed with heavy costs.

4. Though the learned Advocates canvassed extensive submissions, I am not required to advert to their entire submissions keeping in view that the issue involved in this matter relates to a short controversy.

5. The petitioner contends that she used to be engaged by the respondent corporation as a Badli worker, though she had averred that she was working as a casual sweeper. She used to sweep the roads and the streets in the municipal area of the respondent corporation. She was deprived of the salary that was being paid to all the other permanent workers, who were performing the same work. The principle of "equal wages for equal work" was violated by the respondent. She has completed 240 days in continuous employment. She is

working from 1995. She is about 46 years of age today.

6. Shri Desale, submits that the concept of completion of 240 days in continuous employment would not apply to the respondent corporation since it is not a private industry and is not covered by *The Industrial Employment (Standing Orders) Act, 1946 and the Model Standing Orders* framed therein. He relies upon the judgment of this Court in the matters of **(1) Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others, [2015(5) Mh.L.J.75], (2) Municipal Council, Tuljapur Vs. Baban Hussain Dhale in WP No.1843/2015 and connected matters decided on 26/02/2015** and the judgment delivered by the learned Division Bench of this Court at Nagpur in the matter of **Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade [2016(6) Mh.L.J.867]**.

7. He further adds that the petitioner could not prove that she had worked continuously for 240 days in the 12 calendar months preceding the date of reference so as to satisfy the

definition of Section 25B of the Industrial Disputes Act, 1947.

8. I have perused the impugned judgment. It requires no debate that a badli worker is one, who is temporarily engaged only during the temporary absence of a permanent worker. The employer has to maintain a seniority list of badli workers. Depending upon the absence of the permanent workers, a badli worker is engaged in such vacancy for the temporary period of absence. Consequentially, even if a badli worker work continuously, no right would be created until he establishes that his engagement as a badli worker is a camouflage and that he was working continuously on a permanent vacant post.

9. The Industrial Court has observed in the judgment that the Corporation was pursuing the State Government for sanctioning more posts considering its ever growing area and availability of work. The Industrial Court, therefore, concluded that unless the permanent vacant posts are available and the petitioner is held eligible, no directions could be issued to the corporation. I find that these observations are in tune

with the law laid down by this Court in the *Mukhyadhikari Nagar Parishad, Tuljapur, Municipal Council, Tuljapur and Municipal Council, Tirora* (supra), though these judgments could not have been cited as the impugned judgment is dated 12/08/2014.

10. The learned Advocate for the petitioner submits that the petitioner contends that even today she is engaged as a badli worker and some directions may be issued to the respondent atleast to consider her case depending on her seniority as a badli worker. The learned Advocate Shri Desale opposes the said request.

11. I, however, find that since the petitioner contends that she has been working as a badli worker from 1995, which is a period of about 23 years, an innocuous direction to the corporation that it would consider the claim of the petitioner if the claim of badli workers are considered as per their seniority for regularization strictly in accordance with the rules and the procedure applicable to the corporation. If the petitioner is found eligible under the specific rules of the corporation, she

could as well be considered.

12. In view of the above, this petition is disposed off. It is observed that if posts are created with reference to such 'Sweepers' and 'Safai Kamgar' and if the claims of badli workers could be considered as per the rules applicable, the claim of this petitioner may be considered by keeping in view the seniority list of the badli workers.

13. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

shp/-