

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

WRIT PETITION NO. 2405 OF 2010
WITH
CIVIL APPLICATION NO.3783 OF 2011
IN
WRIT PETITION NO.2405 OF 2010
WITH
CIVIL APPLICATION NO.6147 OF 2012
IN
WRIT PETITION NO.2405 OF 2010

- 1 Kishor Bhagwan Dhangar,
Age : 35 years, Occupation : Service,
R/o C/o Bhagwan Dashrath Shirole
(Dhangar), Dhangarwada,
Paldhi, Tq.Dharangaon, District Jalgaon.
- 2 Adhikar s/o Vishwanath Patil,
Age : 36 years, Occupation : Service,
R/o Morphad Galli, Madkya Maroti
Chowk, Parola, Tq.Parola,
District Jalgaon.
- 3 Sanjay s/o Gulab Patil,
Age : 30 years, Occupation : Service,
R/o Shivade Galli, Parola,
Tq.Parola, District Jalgaon.

...PETITIONERS

-VERSUS-

The Chief Officer,
Municipal Council,
Parola, Tq.Parola,
District Jalgaon.

...RESPONDENT

...

Advocate for the Petitioners : Shri Mobin Shaikh h/f Shri Dhorde V.R..

Advocate for the Respondent : Shri Pradip R. Patil a/w Ms.Kalyani

Deshmukh.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th March, 2018

Oral Judgment :

1 I have heard the learned Advocates for the Petitioners and on behalf of the Respondent/ Municipal Council, Parola.

2 The Petitioners are aggrieved by the judgment and order dated 04.02.2010 delivered by the Industrial Court, Jalgaon, by which, Complaint (ULP) No.24/2006 filed by these Petitioners seeking permanency and benefits incidental and consequential thereto, has been dismissed.

3 This Court has admitted this petition on 16.06.2010.

4 The gamut of the submissions of the Petitioners is that as they were appointed on daily wages as Drivers on the Garbage Collecting Trucks pursuant to the advertisement published on 20.11.2002 in the newspaper, they have been continued as Drivers ever since. Though the engagements are shown to be for 11 months, they have been continued in employment and even today, they are in employment.

5 It is also pointed out that the Municipal Council, Parola has passed the resolution on 30.08.2010 to refer the proposal of these Petitioners for absorption by following the due procedure. This resolution

is placed on record along with Civil Application No.6147/2012.

6 Shri Patil, learned Advocate for the Respondent/ Municipal Council, though has strenuously opposed this petition, submits that the law is well settled with regard to the State Instrumentalities that permanency cannot be granted by the courts from particular dates. Unless the posts are vacant and a concerned candidate is eligible for absorption on the basis of his seniority, no orders granting absorption can be passed.

7 I do not find that the submissions of Shri Patil are misplaced. He is right in submitting that in the State Instrumentalities, there cannot be a direction of granting permanency from a particular date merely in the light of the deeming provision under Standing Orders 4-C and 4-D of the Industrial Employment (Standing Orders) Act, 1946.

8 The issue of grant of permanency to daily wagers or casuals or temporaries in the State Instrumentalities like Municipal Councils or Zilla Parishads or Municipal Corporations, is no longer res-integra. This Court, 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**, has taken a view that in such matters, the proposals of such daily wagers have to be forwarded with complete details to the Competent Department. Solitary proposals of candidates merely on the ground of having approached the Court, are not to be forwarded in

isolation. The proposals of all identically placed daily wagers have to be forwarded and depending on the availability of posts or creation of posts, such regularization is to be granted based on seniority of such daily wagers.

9 Since a difference of opinion occurred in between two learned Single Judges at Nagpur while dealing with Writ Petition No.3436/2001 and Writ Petition No.1209/2002, the issue was referred to the Larger Bench. The learned Division Bench at Nagpur, in Municipal Council, Tirora and another vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J. 867, has finally laid down the law that the deeming provision of regularization under Standing Order 4-C on the basis of completion of 240 days in continuous employment in view of Section 25-B of the Industrial Disputes Act, 1947, is not applicable.

10 This Court has consistently taken the view that in such matters of regularization in the State Instrumentalities, the Competent Department is empowered to create posts after obtaining financial sanctions. It is only thereafter, that identically placed employees can be considered for regularization as per their seniority. Deemed dates are then granted on the basis of the dates on which the posts fell vacant or the dates on which such posts are newly created.

11 In the instant case, the Industrial Court followed the law laid down by the Honourable Supreme Court in the matter of *Secretary, State*

of *Karnataka v/s Umadevi*, **2006 (4) SCC 1 : AIR 2006 SC 1806** and concluded that such appointments de-hors the Rules cannot be legitimized.

12 One cannot forget the observations of the Honourable Supreme Court in *Umadevi (supra)* in paragraph 53 wherein, it has been concluded that in the matters of irregular appointments where daily wagers are working for ten years or more, the scheme for regularization can be devised. The Honourable Supreme Court has distinguished between irregular appointment and illegal appointment. Similar issue was also considered by the Honourable Supreme Court in the matter of *MSRTC v/s Casteribe Rajya Parivahan Karmchari Sanghatana*, **(2009) 8 SCC 556**.

13 Considering the above position of law and keeping in view that these Petitioners are in employment, it would be appropriate to direct the Respondent/ Municipal Council, Parola to submit the proposals of these Petitioners along with all other similarly situated employees for consideration to the competent authority which is the Director of Municipal Administration, Maharashtra State, Mumbai or the Principal Secretary, Urban Development Department, Maharashtra State, Mumbai, as the case may be, and the said proposals would then be considered depending on availability of posts, creation of posts and seniority of such daily wagers.

14 In the light of the above, this Writ Petition is partly allowed. Though I am not causing any interference in the judgment of the Industrial Court dated 04.02.2010 by which, it has declined to grant permanency, the Respondent/ Municipal Council is directed to prepare the proposals of the Petitioners and all other similarly situated daily wage workmen within a period of THREE MONTHS FROM TODAY. Specific details of their employments, area of work and wages paid to them should also be mentioned in the said proposals. Such proposals shall be forwarded by the Respondent/ Municipal Council to the Director of Municipal Administration, Maharashtra State, Mumbai or the Principal Secretary, Urban Development Department, Maharashtra State, Mumbai, as the case may be, who would consider the same as per the seniority of daily wagers and availability of posts and accordingly, grant regularization, within a period of SIX MONTHS FROM THE DATE OF RECEIPT OF SUCH PROPOSALS. It is made clear that the mandate of law is to consider such candidates for regularization depending on the availability of posts and creation of posts.

15 Hence, the Respondent/ Municipal Council would strictly follow the seniority and duration of employment of such daily wagers. Merely because they are daily wagers or their proposals are pending, would not be a ground for the Respondent/ Municipal Council to terminate the services of these daily wagers. This protection would

exclude cases of disciplinary action.

16 Rule is made partly absolute in the above terms.

17 Considering the above, Civil Application No.6147/2012 stands disposed of.

18 Insofar as the Civil Application No.3783/2011 is concerned, these Petitioners claim that they have not been paid their daily wages from 01.08.2005 till 31.12.2010.

19 This issue was not subjected to adjudication by the Industrial Court. Consequentially, the Petitioners would be at liberty to move a representation to the Respondent/ Municipal Council within SIX WEEKS FROM TODAY setting out the details of their unpaid wages. The Respondent/ Municipal Council would thoroughly investigate into such claims and conclude whether, such wages are outstanding, WITHIN A PERIOD OF SIX WEEKS THEREAFTER. Whatever would be the outstanding wages, the Respondent/ Municipal Council would then make the payment to these daily wagers forthwith. This Civil Application is, accordingly, disposed of.