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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.568 OF 2018**

Ranjit Gurnath Chattrre & Ors.

.. Petitioners

Vs.

Bhiwandi Nizampura City Municipal Corporation
& Anr.

.. Respondents

**WITH
WRIT PETITION NO.767 OF 2018
WITH
WRIT PETITION NO.768 OF 2018
WITH
WRIT PETITION NO.1057 OF 2018
WITH
WRIT PETITION(ST) NO.1375 OF 2018
WITH
WRIT PETITION (ST)NO.1610 OF 2018
WITH
WRIT PETITION(ST)NO.1701 OF 2018
WITH
WRIT PETITION NO.1435 OF 2018**

Mr. R. S. Pai a/w Anand Pai i/b. Nikita Hinger for the petitioner in WP/568/2018.

Mr. Yogendra Pendse for the petitioner in WP/767/18, WP/768/18, WP(ST)/1610/18 & WP/1701/18.

Mr. R. D. Suryawanshi for the petitioner in W(ST)/1375/18.

Mr. Avinash Jalisatgi i/b. Amol B. Desai for the petitioner in WP/1057/18.

Mr. Kiran Waikar for the petitioner in WP/1435/18.

Ms. Manisha Jagtap i/b. J. Shekhar & Co. for respondent no.1 in all matters.

CORAM : A. K. MENON, J.

RESERVED ON : 14TH FEBRUARY, 2018.

PRONOUNCED ON : 3RD MAY, 2018.

JUDGMENT:-

1. In this group of petitions, the challenge is common. The petitioners in each of these petitions are different groups of workers engaged by the Bhiwandi Nizampura City Municipal Corporation. All these matters are taken up for hearing together because the petitioner's counsel agreed that their cases could be covered by facts in Writ petition no.568 of 2018. Mr. Pai, the learned counsel for the petitioners had mentioned these group of matters on 15th January, 2018 in view of the proposed action of the Corporation to revert the petitioners to their respective parent posts. After notice to the respondents, interim protection came to be granted whereby the Corporation was directed not to act upon the impugned order directing the petitioners to be reverted to their original posts, it was felt that the petition should be heard finally. Accordingly, I issue **Rule**. Rule returnable forthwith. Respondents waive service. By consent of all counsel, the matters were taken up for final disposal at the stage of admission.
2. Before dealing with the facts, it would be appropriate to generally

describe the parties. Writ petition no.568 of 2018 is the lead petition which was argued at length by Mr. Pai and opposed by Ms. Jagtap. Writ petition no.767 of 2018 and 768 of 2018 are filed by 7 and 10 petitioners respectively. Writ petition no.1057 of 2018 is filed by an individual petitioner. Writ petition no.1435 of 2018 is filed by the two petitioners. Writ petition(St)no.1375 of 2018, 1610 of 2018 and 1701 of 2018 the petitioners in these petitions are all employees of the first respondent Corporation. They were initially appointed in the post of Safai Kamgar but were deputed to the post of clerks etc. during the period 1993 to 2014.

In Writ Petition(St) no.1701 of 2018:-

3. The 8 petitioners were working in the post of clerk between 5 and 10 years. They seek relief based on 2005 Resolution. The impugned judgment is based on Complaint (ULP)no.43 of 2017 passed on 12th January, 2018. An affidavit filed by Mr. Anil Vasant Pradhan taking up the contentions similar to Writ Petition no.568 of 2018.

Writ Petition no.767 of 2018:-

4. In this petition, 7 petitioners were working as Safai Kamgar claimed to be appointed as clerks between 10 to 15 years. They assail the order passed in Complaint (ULP)No.45 of 2017 relying upon the same 2005

Resolution. The impugned order is dated 12th January, 2018 declined to continue ad-interim order. An affidavit in reply has been filed by Mr. Anil Vasant Pradhan taking up similar contentions as in Writ Petition no.568 of 2018.

Writ Petition no.768 of 2018.-

5. In this petition, 10 petitioners were appointed as Safai Kamgar and deputed to be multi-purpose worker in the Malaria Department since 6 to 7 years. They assail the order passed in Complaint (ULP)No.25 of 2017 relying upon the same 2005 Resolution. An affidavit in reply has been filed by Mr. Anil Vasant Pradhan taking up similar contentions as in Writ Petition no.568 of 2018.

Writ Petition no.1057 of 2018.-

6. The petitioner claims to be appointed originally as Safai Kamgar and then clerk for 10 years. He assail the order passed in Complaint (ULP)No.134 of 2017 relying upon the same 2005 Resolution. An affidavit in reply has been filed by Mr. Anil Vasant Pradhan taking up similar contentions in Writ Petition no.568 of 2018.

Writ Petition no.1435 of 2018.-

7. In this petition, the petitioners viz. Ajay Gopal Parmar and Bhimrao S.

Patekar had filed separate complaints bearing Complaint (ULP)Nos.202 and 203 of 2017. They are aggrieved by the impugned order dated 7th October, 2017 rejecting interim relief application Exhibit U-2 thereby declining to restrain the Corporation from sending the petitioners back to the original cadre. There is no affidavit in reply.

Writ Petition(St) no.1610 of 2018.-

8. There are 4 petitioners claiming to be working as Safai Kamgar between 5 and 10 years. They assailed the order passed in Complaint (ULP)No.84 of 2017 dated 12th January, 2018 relying upon the same 2005 Resolution. An affidavit in reply has been filed by Mr. Anil Vasant Pradhan taking up similar contentions in Writ Petition no.568 of 2018.

Writ Petition (St)no.1375 of 2018.-

9. There are 46 petitioners who are appointed as Safai Kamgar and who have been working as Clerks/Peons. The Impugned order is dated 12th January, 2018. They have filed the complaint (ULP)No.40 of 2017 vacating interim relief. Rejoinder has been filed refuting the statement in the reply.

A bird's eye view of the principal submissions across all these petitions is reproduced in the table below:-

Sr. No.	Principal Submissions	Writ Petition No. 568 of 2018	Writ Petition No. 1375 of 2018	Writ Petition No. 1435 of 2018	Writ Petition No. 1057 of 2018	Writ Petition (St) No. 1701 of 2018	Writ Petition No. 1610 of 2018	Writ Petition No. 767 of 2018	Writ Petition No. 768 of 2018
*	Posts in which Safai kamgar were working	Clerk	Clerk	Clerk	Clerk	Clerk/Peon	Clerk/Peon/Fireman/Madatni	Peons	Multiple Purpose Worker
1	They were appointed in the permanent posts of safai kamgar but have been working as clerks/ peons/ watchmen/ fireman/ Madatni MPW.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2.	There exist <i>some</i> vacancies in the aforementioned permanent posts. (The number of vacant posts, if mentioned in the petition is given in brackets)	Yes (127)	Yes (127)	Yes (127)	Yes (127)	Yes (65)	Yes (127-clerk, 3-peon, but complainants claim 72-peons)	Yes	Yes
3.	Some complainants have waived their rights to compassionate employment for their legal heirs in order to continue working in Class III posts.	Yes	Yes	Yes	Not known	Yes	Yes	Yes	Yes
4.	Complainants possess requisite qualifications for the aforementioned Class III posts.	Yes	Yes	Yes	Yes	Yes	Not clearly mentioned.	Not mentioned	Yes
5.	Training has been imparted to the workers for the current post held by them.		-	-	-	-	Yes	-	Yes
6.	The General Body of the Corporation by Res. No. 156 dated 29/1/2005 decided to continue safai kamgar in whatever posts they were performing. It also resolved to promote Class IV employees to Class III on the basis of seniority and that the Corporation should commence procedure for getting sanction from the Government for remaining employees.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
7.	The provisions of the Industrial Employment (Standing Orders) Act, 1946 are applicable to the BNMC. All complainants have completed 240 days (and more) of work in the posts specified in point no. 1.	Yes	?	Yes	Yes	Yes	Yes	Yes	Yes
8.	There is no difference in the nature of work performed by the permanent employees in the said higher post and the complainants.		Yes	Not mentioned	Yes	Yes	Not mentioned	Yes	Yes
9.	The complainants have undergone training as election officers and have been posted at different election booths.		Yes	Not mentioned	Yes	Not mentioned	Not mentioned	Yes	Not mentioned
10.	There is a long- standing practice of promoting safai kamgar to the posts of clerks/ peons/ watchmen/ MPW etc., which forms a part of their service conditions.	Yes	Yes			Yes	Yes	Yes	Yes

10. The gravamen of the disputes in this group of petitions is the decision of the respondent Municipal Corporation to revert them to their original posts by the impugned orders impugned in these petitions. For the sake of convenience, the facts in Writ petition no.568 of 2018 are being adverted to. The petitioners were apparently continued in the post of clerks although not under any formal orders and in the course of their employment, on or about 5th September, 2014, the respondent no.2 i.e. the Commissioner of the first respondent Corporation issued a notice calling upon all Safai Kamgar employed by the Corporation who were working on higher posts (other than as Safai Kamgar) to continue in these higher posts but subject to their exercising an option. The option entailed the employees choosing to continue in the post of Safai Kamgar and retaining to their legal representatives a chance to claim preference in employment. Alternatively they were expected to forgo this option and continue to be employed in higher posts. Mr. Pai submitted that the circular was issued on 6th September, 2014 asking Safai Kamgar to exercise the option by 12th September, 2014.

11. It is the petitioners case that out of 238 Safai Kamgar employed with the Corporation, 163 exercised the option of continuing in the higher posts thereby giving up the privilege of a family members seeking employment with the Corporation after the duration of service of the employee

concerned. Out of these 163, 64 are stated to be members of the petitioner no.6 union. Petitioner nos.1 to 5 and the said 59 employees exercised their option by letter dated 12th September, 2014 and conveyed to the Corporation that they were willing to give up the option of employment being offered to enable other members to seek employment with the Corporation. Mr. Pai submitted that the provisions of the Industrial Employment (Standing Orders) Act, 1946 which is applicable to the first respondent Corporation was required to classify the petitioners on the basis of nature of work. However, no formal orders were issued to the petitioners by the Corporation. He submitted that the petitioners were being illegally employed as clerks while paying them the wages of Safai Kamgar. Mr. Pai submitted that 120 Safai Kamgar were regularized to the post of clerks as of 12th May, 2011. He relied upon the contents of letter dated 12th May, 2011 at Exhibit F addressed to one Chandrakant G. Patil.

12. Mr. Pai submitted that in the meanwhile, the State Government had issued a resolution regarding filling up of vacancies arising in the establishments under the State including that of the Corporation. He submitted that vide Government Resolution dated 14th January, 2016, the Government of Maharashtra resolved to fill up 50% vacancies. Mr. Pai submitted that many of the employees were educated and had cleared

SSC and HSC examinations and were entitled to be regularized in the current post as clerks. He submitted that the Government Resolution directed State authorities to fill up 50% vacancies as against the 25% earlier in Grade C consisting of clerks, peons, watchmen, etc. from amongst the employees working in Grade D as Safai Kamgar and that from 12th September, 2014 till 14th January, 2016 the petitioners continuing to perform work of clerks just as the permanent clerks performed. Yet, respondent no.1 continued paying the wages of Safai . Some of the petitioners are believed to have approached the union and they addressed a letter dated 28th December, 2016 to the respondent Corporation to formally regularize them in the post of clerks in view of the facts and circumstances narrated above. There were 171 vacancies in the post of clerk with respondent no.1. Yet, no appointments had been made. Mr. Pai submitted that the Corporation did not respond to the request made by the petitioners. While the Corporation did not dispute the facts set out in the said letter, it proceeded to issue a notice dated 31st January, 2017 directing all Safai Kamgar including the petitioners to report for cleaning/sweeping work in the health department of the Corporation. In view of the fact that the petitioners did not receive any reply, they filed a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices

Act, 1971 (MRTU Act) and, inter alia, complained of unfair labour practices under items 5 and 9 of Schedule IV of the MRTU Act while seeking regularization. An interim application also came to be filed seeking an injunction restraining the Corporation from reverting the petitioners to the post of Safai Kamgar.

13. It is pertinent to mention here that the petitioners all along were appointed as and their appointments continued to be as Safai Kamgar. It is not as if they were given separate posts by transfer from Grade D to Grade C. The Corporation merely deputed them to work clerks, peons, etc. which they tasks willingly performed without demur or protest. The interim application was heard and disposed of directing the parties to maintain status quo till the date of hearing, inter alia, holding that the petitioners had a prima facie case. Notice came to be issued to the respondents as to why the interim relief prayed for ought not be granted. The respondent meanwhile filed its written statement refuting the allegations but admitting that the petitioners were working as clerks, yet, it was contended that the petitioners had continued to work as clerks illegally in order to escape this strenuous work of Safai Kamgar. It is alleged that the Industrial Court proceeded to hear the application but without considering documents on record, passed an order dated 7th October, 2017 rejecting the interim application.

14. The petitioners, therefore, filed a Writ Petition in this Court bearing Writ Petition(L) no.31613 of 2017 which came to be disposed of by an order dated 15th November, 2017. This Court not being satisfied with the order dated 7th October, 2017 remanded the matter for fresh hearing. Thereupon the interim applications of the petitioners were heard afresh and rejected, vacating the interim protection granted till then. It is this order dated 12th January, 2018 that is subject matter of this petition. Mr. Pai submitted that the impugned order is perverse because it failed to consider that the Corporation was acting in violation of the a General Body Resolution dated 29th January, 2005 besides being in breach of the order of this Court in Writ Petition (L)No.31613 of 2017. The findings of the impugned order are allegedly erroneous as the respondent no.2 seeks to override the Resolution dated 29th January, 2005 and hence impermissible in law. Adverting to the observations in the impugned order to the effect that the petitioners do not have any right to hold the post of clerks as their appointment was not by way of promotion or by following due process of law, Mr. Pai submitted that the impugned orders are against the spirit of the letters dated 5th September, 2014, 6th September, 2014 and the Government Resolution of the State dated 14th January, 2016 and the letter dated 12th May, 2011 issued by the Corporation. Mr. Pai submitted that there have been earlier

rounds of litigation including in Writ Petition no.4015 of 2004 in which an order dated 23rd June, 2004 had been passed but these were not relevant since by letter dated 5th September, 2014 and 6th September, 2014 the Corporation had called upon the petitioner to exercise option stated above. Mr. Pai submitted that the ratio in the case of State of Karnataka v/s. Umadevi 2006 II CLR 261 (SC) was not applicable to the facts of the case and that the impugned order erroneously placed reliance on the ratio in Umadevi.

15. Amongst the various grounds in the petition, Mr. Pai submitted that apart from failing to comply with order dated 15th November, 2017 passed by this Court while remanding the matter, the findings of the impugned order are perverse and unsustainable. The fact that the petitioners having worked in Grade III is admitted and undisputed and interim relief should have been granted. He assailed the observations in the impugned order to the effect that Corporation was still streamlining its administration. He submitted that denying work presently undertaken by them on the directions of the Corporation would be breach of the Resolution dated 29th January, 2005 (2005 Resolution). It is submitted that the findings of the Industrial Court that no injunction is to be granted to restrain reversion of Class IV employees to Class III cadre and

that the reversion will not cause monetary loss or otherwise, was unsustainable. Furthermore, the Industrial Court observed that the induction of Safai Kamgar in the cadre of clerks in Class III was without following due process of law since it was the respondent Corporation which invited these petitioners and others to work in the cadre of clerks. He submitted that the petitioners and others were working as clerks between 5-25 years and it was unfair to revert them from their positions in this manner. He therefore submitted that the impugned order requires to be quashed and set aside and the respondents may be directed to continue the petitioners in their capacity as clerks. In the course of his submission, Mr. Pai relied upon Exhibit A to the petition which discloses that 64 employees were believed to be members of the petitioner no.6-union who were deputed to class III parts. He pointed out that some of them are graduates and to now revert them to the post of Safai Kamgar would be unfair and therefore submitted that the petition be allowed.

16. Mr. Pai relied upon the following judgments:-

- (1) Fatmabai Binte Nakhuda Mohammed Ameen Rogay Religious and Charitable Trust and Ors. v/s. S. M. Agaand and Anr. 2006 II CLR 315;
- (2) Municipal Corporation of Greater Mumbai & Ors. v/s. Smt. Malen C. Perira and Ors. Writ Petition no.2373 of 2008 dated 27th June, 2008;

(3) Pune Municipal Corporation, Pune and others v/s. Ashok Sakharam Jadhav & others 2002 (2) Bom.C.R. 47;

(4) Maharashtra State Road Transport Corporation & Anr. v/s. Casteribe Rajya P. Karmchari Sanghatana 2009 III CLR 262; and

(5) Oil and Natural Gas Corporation Limited v/s. Petroleum Coal Labour Union and others (2015) 2 SCC (L& S) 290.

17. On behalf of respondent, Ms. Jagtap refuted the contentions of the petitioner and submitted that the petitioners and others were all at material times permanent employees of the Corporation as Safai Kamgar. Ms. Jagtap submitted that the contention that the General Body of respondent no.1 Corporation vide the 2005 Resolution to permit the petitioners to continue as in the present posts cannot be of assistance because it is without the authority of law and the General Body could not have passed a such resolution without approval of the competent authority. She denied that the respondent had engaged in any unfair labour practice. Ms. Jagtap submitted that mere continuance of the petitioners in the post of clerks etc. will not entitle them to resist their being reverted to the posts of Safai Kamgar which was their original post. She relied upon the contents of the written statement filed in Complaint (ULP) No.31 of 2017 in which allegations of unfair labour practice have been denied. She submitted that Corporation did not

indulge in any unfair labour practices under items 5, 6 or 9. She further submitted that the complaint was vague and baseless since the petitioners had not been appointed as temporarily but were appointed as Safai Kamgar in permanent posts. It is only due to administrative exigencies that they were asked to perform duties of clerks and therefore there is no question of any favoritism or partiality or any attempt to deprive the petitioners of their status as permanent employees.

18. Ms. Jagtap submitted that the petitioners' claim was not under any award or settlement or any other agreement and there is no such violation of any agreed terms. She submitted that the Corporation had decided to streamline their administration and directed the petitioners to join their original posts. It was contended that the letters of 5th September, 2014 calling upon the employees to exercise the option had no sanction of law and are not binding. It does not constitute any agreement between the parties and in any case it is against public policy. It is further contended that the circular dated 6th September, 2014 does not constitute any binding obligation. Furthermore, merely because they had been working in certain posts did not mean that they could claim permanent employment at such posts. The petitioners being engaged as Safai Kamgar in permanent posts and on the rolls of the Corporation cannot be heard to contend otherwise. She contended that some of the

posts if vacant were filled after following due process specially those which are vacant due to retirement of employees. While admitting the fact that the General Body appears to have passed the 2005 Resolution. She submitted that it had been forwarded to the State Government for sanction but the State had not granted sanction and hence, the petitioners cannot insist upon its implementation.

19. It was denied that the petitioners had been granted the work of clerks from the very inception. Ms. Jagtap submitted that by seeking permanency in the current deputation in this fashion is only an attempt to gain a back door entry into the post of clerks etc. in Class III. It is admitted that the Corporation may have directed some of the employees to work as clerks, but no formal orders had been passed that the Corporation has required to follow the standard practice under the Roster / Bindunamawali as also caste wise reservations for each caste. The posts, even if available for public, are advertised and at this stage the concerned workmen will have an opportunity to apply including by claiming age relaxation if otherwise permissible in law. It is further submitted by Ms. Jagtap that the orders asking them to revert of their original posts did not contemplate any demotion or reduction in rank and therefore there is no question of any inconvenience being caused to them.

20. Ms. Jagtap relied upon the following judgments:-

- (1) Surya Dev Rai v/s. Ram Chander Rai and others (2003) 6 SCC 675;
- (2) Secretary, State of Karnataka and others v/s. Umadevi (3) and others (2006) 4 SCC 1;
- (3) P.U. Joshi and others v/s. Accountant General, Ahmedabad and others (2003) 2 SCC 632 and
- (4) Managing Director, APSRTC and another v/s. B. Bangaramma (2001) 10 SCC 514.

21. I have heard all the learned counsel at length. I have perused the impugned order dated 12th January, 2018. The impugned order records that the complaint was filed by 5 employees for themselves and 59 others and it records an admission that they were employed in a permanent posts. It records the contention of the petitioners that on completion of 240 days in the post of clerk, the Model Standing Order 4(c) would come into effect and the appointment of the petitioners was liable to be regularized. The Industrial Court found that the respondents had contended that the petitioners could not claim any lien over the posts or claim regularization or permanency. The Court framed points for determination and found that the petitioners failed to make out a case for grant of relief. The impugned order records that the documents filed indicated that the petitioners were indeed working for a considerable

long period of time as clerks and the documents coupled with the contentions and the pleadings of the Corporation indicated that the petitioners were asked to work in those posts without following due process of law. It was observed that promotion and preparation of seniority list of Class IV cadre was required to be undertaken and only those who qualified could expect promotion. Furthermore, whether or not an employee is eligible to promotion or get benefit of the Government Resolution dated 29th January, 2005 would have to be established at the final hearing on the basis of oral and documentary evidence. Apropos the 2005 Resolution, the Court found that the petitioners could not claim benefit of the Resolution these posts are regular cadre posts in the Corporation and Safai Kamgar is not the feeder cadre for the post of clerks.

22. The impugned order relies upon the ratio of Umadevi(supra). It was not disputed that the petitioners could not claim regularization to the said posts as of right and the Corporation was required to follow due process of law. The impugned order also relies upon the ratio in Municipal Council Tirora v/s. Tulsidas Baliram 2016 (6) Mh. LJ. 867. The Court held that the Model Standing Order no.4-C was intended to ensure that an employer does not exploit a badli or casual worker and to deprive the status of the posts due to him. In the course of consideration, it was

noticed by the Court that a similar case that came up for consideration before the Tribunal being Complaint (ULP)no.116 of 2008 had been decided finally by the Industrial Court on 8th July, 2008 and in that cases the claims of Safai Workers seeking post of clerks, peon, drivers etc. were rejected on merits. Those aggrieved approached this Court in Writ petition no.4105 of 2004 (Shramik Sena v/s. Bhiwandi Nizampur City Corporation) which was decided on 23rd June, 2004 in which the Court dismissed the writ petition upholding the decision of the Industrial Court. It was further pointed out in these matters being Complaint (ULP)Nos.352/1997, 449/1998, 16/2002, 20/2002 and 28/2002 were also filed by the union against the same Corporation challenging the order of the Corporation to join their original posts.

23.The Industrial Court found that from perusal of the list of workers annexed to Complaint (ULP)No.116 of 2008 five of the workers are members of the respondent no.6 union. Furthermore, the names of employees listed in Annexure A to the complaint at serial nos.1 to 4, 6, 7, 9 to 15, 19, 21 to 23 and 56 records as party to Complaint (ULP)no.116 of 2008 and some of these employees were already party to the earlier Complaints (ULP)No.352/1997, 449/1998, 16/2002 and 28/2002 but had not disclosed the fact of their involvement in Complaint

(ULP)No.116/08 and that a common judgment had been passed in the said Complaints which had already been challenged before the High Court albeit unsuccessfully.

24. The impugned order therefore holds that the issues raised by the employees in the present complaint were referred to in the previous orders of this Court. The impugned order holds that the complainants/petitioners suppressed material facts in respect of the earlier decisions of the Industrial Court dated 13th February, 2004 (in the earlier complaints). It considers the various judicial pronouncements referred to by the petitioners and comes to a finding that the decisions in the case of MSRTC v/s. Casteribe Rajya P. Karamchari Sanghatana 2009(8) SCC 556, State of Karnataka v/s. L.M. Kesari 2010 (9) SCC 247, Nihalsingh v/s. State of Punjab 2013 DGLS (SC) 623, Amarkant Rai v/s. State of Bihar 2015(8) SCC 265 and ONGC v/s. Petroleum Coal Labour Union 2015 II CLR 772 (SC), referred to by the complainants/petitioners were all on the issue of regularization of temporary workmen and that the facts at hand were quite different. It holds that the balance of convenience was in favour of the Corporation and no irreparable loss will be caused to the employees if they were made to work at their permanent posts. In conclusion, the impugned order holds that the complainant failed to establish a prima facie case of unfair labour

practice and rejects the complaint.

25. In an affidavit in reply filed on behalf of the Corporation, it is contended that the respondent Corporation has 460 sanctioned posts of which 25% are reserved for promotion as per seniority and roster from Grade IV to Grade III. That presently there were 18 sanctioned vacancies for the posts of clerks under Grade III whereas there are more than 2000 employees working with the Corporation in Grade IV. It was contended that while streamlining the administration and taking steps to give promotion to the eligible persons as per the seniority and the roster, due process of law is being adopted and it is necessary for the petitioners to work at their original posts and that the 2005 Resolution was neither approved by the Commissioner-respondent no.2 or by the State Government and therefore it is not valid. Promotion cannot be sought on the basis of Resolution 2005 and it is not in dispute that the post of Safai Kamgar is not a feeder cadre for the post of a clerk. Furthermore, in view of the pronouncements of the Apex Court (supra), no regularization is permissible on an adhoc basis. Identical claims were made by the other petitioners on earlier occasions in 2004 and 2014 and this Court has passed appropriate orders including those in the same subject matter. It was contended that the 2005 Resolution is being

misinterpreted by the petitioners that the impugned order correctly deals with the same. It is reiterated that in view of the judgment in the case of Umadevi (supra) the petitioners could not claim any relief to be retained in the post as clerks.

26. In an affidavit in rejoinder filed by the petitioner no.2, the Corporation's case of streamlining the administration has been denied. The availability of 18 sanctioned posts of clerks has also been denied. It reiterates validity of the 2005 Resolution and it is contended that by virtue of the 2005 Resolution the posts of Safai Kamgar are converted to a posts of clerks. A decision of the single judge in S.M. Agha (supra) was relied upon by Mr. Pai in support of his contention but the judgment in Agha does not help the petitioners case in any way. In MCGM v/s. Smt. Pereira (supra) reliance was placed on the observations of the Court that the power to make appointments of temporary and permanent posts for all other Municipal Officers in a rank equivalent or higher than Executive Engineer vests in the Corporation and if the Municipal Corporation in that case was considering the appointment of a Matron which ranked below the pay scale of Executive Engineer and it was for the Municipal Corporation to frame or modify the regulations pertaining to the conditions of service. It was further observed that the Court rejected the contention that the Standing Committee is vested with the power to

frame regulations in consonance with any resolution that may be passed by the Municipal Corporation for prescribing conditions of service of Municipal Officers and servants. Reliance was placed on the powers vested in the Standing Committee in this behalf but I also find that the regulation framed by the Standing Committee is required to be confirmed by the Municipal Corporation itself and certain regulations such as the one in that case were required to be confirmed by the State Government before it became valid since they also have repercussions on retirement or terminal benefits. In the instant case I do not see how these judgments benefit the petitioners inasmuch as it is not their case that the Standing Committee is the ultimate authority in the matter of appointment of or deputation of staff. The employees in question were appointed in permanent posts in Class IV. They were deputed to serve as clerk. Such deputation in my view did not change the nature of their appointment. They continued to be permanent workers in Class IV. They were permanent employees of Class IV and were temporarily deputed to attend duties in Class III cadre. The terms of their appointment continues to bind them and since the Standing Committee's decisions or the Resolution 2005 cannot be said to be the final word on the issue, it is not possible to accept the contention of the petitioners. The Standing Committee's Resolution is not binding upon the

Corporation in the absence of the approval of the Municipal Corporation and/or the State Government. When viewed in the perspective of the statements on oath in the affidavit in reply, as to the number of sanctioned posts available and considering the fact that there are 2000 employees are working in Class IV in various department to suggest that the Corporation has no power to revert the employees to their Class IV duties, cannot be accepted.

27. Reliance was also placed on the decision of a Single Judge of this Court in Pune Municipal Corporation (supra) in which a settlement was arrived at under which permanency was given to them after completion of 5 years of service. A submission was advanced that the Industrial Employment (Standing Orders) Act was not applicable to the establishment of the petitioners in the absence of a notification under Section 13(b) of the Act and that the Supreme Court had held in U.P. State Electricity Board and another v/s. Hari Shanker Jain and others that the Industrial Employment (Standing Orders) Act being a special law would not apply till the notification under section 13(b). The Supreme Court held that the provisions of the Standing Orders Act must prevail over the Electricity (Supply) Act. In conclusion it was held that the petitioners had committed unfair labour practices under item 6, and that the workmen were entitled to the benefits of permanency.

28. In *Casteribe* (supra) reliance was sought to be placed on the observation of the Supreme Court that the MRTU Act was not under consideration in *Umadevi* (supra) and that the status of permanency cannot be granted by the Court where no posts exist and further that executive functions and powers with regard to the creation of posts the Courts cannot arrogate to themselves such powers. The Court also observed that the provisions of MRTU Act have not been overridden by the decision in *Umadevi*. I do not see how these judgments come to the assistance of the petitioners inasmuch as there is no vested right to claim permanency in a class which is different from the class in which they were appointed. Undoubtedly the petitioners hold permanent posts in class IV. Their terms and conditions of service are as applicable to the said class and merely because the employees were deputed to handle posts of clerks, peons, drivers etc. does not vest in them the right to continue in the said job. No doubt the continuance of these petitioners in the category of clerks, peons especially in cases where they have acted in such capacity for a long period of time, their reversion to the original nature of duties will undoubtedly be met with resistance. However, the issue to be considered is whether merely because they were sent to carry out posts which were perceived as better in terms of job environment does not mean that they cannot be reverted to their original posts. The petitioners

however, cannot be denied the opportunity to seek posts in a higher cadre in accordance with law. Courts cannot be expected to create posts where none exists and in the present case the affidavit on behalf of Corporation setting out the factual aspects must be noted. An extract from paragraph 4 of affidavit in reply of respondent Corporation dated 25th January, 2018 is reproduced below for ease of reference:-

“I say that presently in the respondent corporation, there are 460 sanctioned posts of clerk. Out of the 460 sanctioned posts, 25% of the posts are reserved for the promotion as per the seniority and roster from the Grade IV to Grade III. I further state that presently there are 18 sanctioned vacancies for the post of clerks i.e. Grade III with the respondent corporation. Presently, there are more than 2000 employees working with the respondent corporation in the Class Grade IV in various departments.”

29. This aspect has not been controverted by the petitioners and all that the petitioners have stated in their rejoinder is to deny that at present there are 18 vacant sanctioned posts in the post of clerks i.e. Grade III. The fact that there are 460 posts sanctioned and 25% are reserved for seniority and as per the roster from Grade IV to Grade III has not been denied. Furthermore, the fact that there are 2000 employees in Grade IV is also not denied. In ONGC (supra), Mr. Pai had sought to place reliance on paragraph from Hari Nandan Prasad v/s. Food Corporation of India 2014 (7) SCC 190 which in turn quoted from U.P. Power

Corporation Ltd. v/s. Bijli Mazdoor Sangh 2007 (5) SCC 755 to the effect that the effect of the Industrial adjudicators' powers were not directly in issue in Umadevi (supra). Though the industrial adjudicator can vary the terms of the contract of the employment, it could not do, something violative of Article 14. If the case is one which is covered by the concept of regularization, the same cannot be viewed differently. The underlying principle in Umadevi's case is to the effect that regularization of a person who had not been appointed after undergoing the proper selection process is impermissible as it was violative of Article 14 of the Constitution of India and it is on this principle that Industrial Tribunal has relied.

30. The power of the Industrial Tribunal and Labour Courts to decide unfair labour practice and under Section 30 of the MRTU Act is very wide and this aspect has not fallen for consideration in Umadevi's case. Furthermore, in Casteribe the direction of the Industrial Court to accord permanency to the employees against the posts which were available were held clearly permissible and within the powers, statutorily conferred upon the Industrial and Labour Courts by which the industrial adjudicator could take affirmative action against the erring employees and that these powers were not affected by decision in Umadevi (supra).

Mr. Pai had submitted that discretion to regularize from time to time is with the Corporation and in view of the 2005 Resolution once the Standing Committee had taken a decision, the same was binding upon the Corporation. I am unable to accept this contention as an absolute proposition. Apropos the Resolution passed on 29th January, 2005 and has rightly contended on behalf of the union, no steps were taken to have the same approved. Nothing has been shown to me to establish that the 2005 Resolution was binding on the Corporation and had the approval of the State. True the Resolution did indicate the intention to continue the workmen in the post of clerks, peons, drivers etc., the action of the Corporation in issuing order dated 30th January, 2017, which form subject matter of the challenge deals in sufficient particulars with the fact that the Corporation desires to allot appropriate duties. Absent sanction by the Corporation or the State by following due process, the 2005 Resolution remains ineffective and cannot be enforced. No actionable rights can flow from the 2005 Resolution the in the facts at hand.

31. It is stated in the said order dated 30th January, 2017 that the Corporation has divided its wards into 1270 groups according to the population and that various posts were assigned to designated groups. The order clearly provides that the Safai Kamgar were working under

supervision of Health Supervisor and other officials. The entire responsibility of ensuring cleanliness will be solely on the concerned Safai Kamgar. In the event any of such Safai Kamgar goes on leave, casual employees will be appointed with appropriate facilities by such Health Supervisor or Departmental Head to ensure that the cleaning work is continued uninterrupted. It is this essential feature which brought about the decision and in respect of lands belonging to the Corporation, independent workmen will also be nominated for spraying of anti-bacterial compounds etc. This decision is taken in the public interest. It cannot be said to be violative of the petitioner rights. No doubt inconvenience is likely to be caused. The mental make up of the petitioners may be disturbed but the question is whether the continuance of the workers in Class III posts would entitle them to award going back to their original scope of work. No doubt, the long period of time during which they were engaged in Class III activities may have instilled a sense of confidence and expectation that they could continue in the posts. It also may be true that many of these persons may have acquired better educational qualifications than they held at the time of their initial appointment. However, this by itself in my considered view would not enable them to the reliefs in the petition.

32. Perusal of the Resolution 2005 specifies that those employees of a

Corporation who were deputed for Safai Kamgar, road workers, road kamgar who were deputed as clerks, peons and watchmen were to be retained in those posts whereas in second paragraph of the Resolution itself contemplates that sanction of the State would be sought to make these employees permanent and the General Body resolved seek such an approval from the State. The Corporation has since denied that any such sanction was subsequently obtained from the State. It is seen that the basis of the claim of the petitioner is the General Body of Resolution dated 29th January, 2005 bearing no.156 of 2005 by which it had been resolved that safai and road kamgar appointed as such in class IV positions and were assigned duties in class III employees includes clerks, peons and watchmen due to administrative exigencies, must be retained in these posts. It is material to note that no time limit was fixed by this Resolution and it is obvious that whenever there was a vacancy in class III these persons can be considered or promoted to class IV as per seniority. According to the Resolution the Corporation was trying to get new posts sanctioned. In this respect, an intimation letter is seen to have been sent on 12th May, 2004 to the State Government whereby the corporation sought to convey the following:-

At Bhiwandi Nizampur Mahanagarpalika Administration – 4207 posts achieving the corporation status, 7 posts became absolute and therefore

there were total 4200 sanctioned posts. In the letter it was contended that some more posts for handling administrative work were required and the category wise requirement was as follows:-

- (I) Class I - 13 persons required
- (II) Class II - 43 persons required
- (III) Class III - 347 persons required
- (IV) Class IV - 767 persons required

Thus, a total of 1170 persons were required.

33. The General Body Resolution had passed an earlier resolution also no.156 dated 21st February, 2004 recorded that 1170 persons were required and therefore the total desirable strength would be 5370 posts comprising 4200 + 1170. It is recorded that in category III they had 1020 sanctioned posts and the corporation requires 344 more posts. Out of 1020 posts, 413 were clerks and out of 344, 50 were required as clerks. Thus, 463 posts were required to be sanctioned. A proposal was also made on 27th September, 2013 for sanctioning 1050 posts. 120 posts came to be sanctioned out of 1170 approved by Resolution leaving a balance of 1050. The record indicates there are 22 peons, 500 safai kamgar and 648 others category including 50 clerks. The Resolution dated 21st February, 2004 also sought approval of 5 posts of supervisors

in the electricity department. In this respect a notice dated 5th September, 2014 is seen to be issued addressed to safai kamgar granting them option to continue on the post and enjoyed an option for employment of legal representatives alternatively to give up the privilege and to continue to work in the extent assignment. The reasons given are that many of them continued and therefore were placed on the post of clerks and peons. Vide circular dated 6th September, 2014 this offer was published as a consequence 238 safai kamgar gave up the option whereunder legal representatives could be given employment.

34. On the other hand, and as rightly pointed by Ms. Jagtap on behalf of the Corporation, the respondent Corporation had vide letter dated 12th May, 2004 informed the State that "the respondent Corporation had 4207 sanctioned posts of various categories and sought approval for various posts as above. Reliance was placed on the decision of the Supreme Court in *Surya Dev Rai v/s. Ram Chander Rai and others* (2003) 6 SCC 675 as to the jurisdiction of this Court to entertain a writ petition on the subject matter. Ms. Jagtap contended that High Court in exercise of supervisory jurisdiction may not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences. But I find that the facts reveal a case where the Court dealing with the question as to impact of the amendment made to

Section 115 of Code of Civil Procedure and the question before the Supreme Court was whether an aggrieved person is completely deprived of the remedy of judicial review if he had lost at the hands of the original Court and the Appellate Court, as a result suffered gross failure of justice. The Court held that the revisional jurisdiction under section 115 of the CPC could not be taken away. The constitutional jurisdiction of the Court to issue a writ to a civil court nor is the power of superintendence conferred or whittled down. This was convincingly opposed by Mr. Pai. On facts, this decision is of no assistance to Ms. Jagtap.

35. Reliance was also placed in paragraph 45 of Umadevi (supra) in support of the respondents case. However, I find that there is no question of granting any permanency to the petitioners in the Class III posts since they are already permanent employees in Class IV who will have the benefit of seeking better perspective by following due process as established and has been followed for long number of years. In the case of ***P. U Joshi and others v/s. Accountant General, Ahmedabad and others (2003) 2 SCC 632***, the Supreme Court considered the power of the State to amalgamate departments or bifurcate departments and constitute different categories of posts or cadres by undertaking further classification and reconstitute from time to time by abolishing

the existing posts and creating new posts. There is no right in any employee of the State to claim that rules governing conditions of services must remain the same forever. The Court ruled that except for ensuring and safeguarding rights and benefits already earned, the permanent servant has no right to challenge the authority of the State to amend, alter or bring into force new rules relating to an existing service. The respondent can derive substantial support from this ruling. On the other hand the situation contemplated in these petitions could have been avoided had the Corporation been conscious of the expectations of employees by continuing them in rendering services of a person of suitable nature.

36. In support Writ Petition no.1057 of 2018, Mr. Jalisatgi in adopted the submissions of Mr. Pai and relied upon the decision of the Supreme court in Chief Conservator Forests and another v/s. Jagannath Maruti Kondhare 1996 (72) FLR 840 (SC), and pointed out that the Supreme Court had found that the object of the MRTU & PULP Act, inter alia, is prevention of certain unfair labour practices and the same would be frustrated if the burden placed on the workmen is such that he cannot reasonably discharged it. Observing in that case that the Court was satisfied that the 25 workmen who went to the Industrial Court had been kept as casuals for long years with the primary object of depriving

them the status of permanent employees inasmuch as giving of this status would have required the employer to pay them at a rate higher than the one fixed under the Minimum Wages Act. The Court found that the contention of the petitioners could not be sustained and hence the Court held that persons could be in casual jobs for years would be entitled to claim permanency.

37. Mr. Jalisatgi therefore contended that the petitions disclosed a long period of time during which the petitioners had continued to work for the Corporation. He relied upon the compilation of documents which was before the Industrial Court in support of his contentions in particular the decision of the Corporation dated 30th January, 2017 reverting the employees. He also relied upon the SSC examination mark sheets of one of those persons and the fact that he was working in the position of a clerk for many years, after having engaged him in what is perceived as superior scope of work, he was expecting to be retained in such post. Unfortunately there was no legal sanction which would enable the petitioners to contend that they should be continued in these Class III positions.

38. Mr. Pendse appearing in Writ Petition no.767 of 2018, 768 of 2018, Writ Petition (St)no.1610 of 2018 and Writ Petition no.1701 of 2018

also adopted the submissions of Mr. Pai and relied upon to the decision of the Single Judge of this Court in **Municipal Transport Workers Union v/s. The Commissioner, Kolhapur Municipal Corporation and others**, in support of his contention that the Resolution passed by the Corporation contemplated absorption of 6 employees as permanent employees with a condition that the appointment was subject to the availability of S.T. candidates during a period of 3 months. On expiry of three months employees expected to be treated as deemed permanent employees but the Corporation converted them to daily wage workers. This Court held that the benefits of permanency would have to be granted to them. In the facts of that case, the decision in my opinion does not come to the assistance of the petitioners.

39. On behalf of the petitioners, further reference was made to an order dated 13th February, 2004 part in the said earlier complaints which held that the respondent Corporation had not engaged in any unfair labour practice. Reliance was placed only to show that the facts were not the same. The order passed by the Industrial Court in these earlier matters were also dealing with persons in lower posts who were engaged for duties of higher posts. The Industrial Court had then found that there was no case for granting relief since the complainants therein have failed

to prove any unfair labour practice in having deputed the persons to a higher posts where they had worked for suitable period of time. It is pertinent to note that in Writ petition no.4015 of 2004, this Court had rejected the challenge of an order of the Industrial Court while declining to interfere with the order of reversion of employees to their regular permanent posts. This order came to be unsuccessfully challenged in LPA no.358 of 2004 and the impugned order was upheld.

40. In the course of hearing parties, my attention was drawn to the fact that other petitioners involving similar issues being writ petition nos. 1950 of 2014, 1952 of 2014, 1953 of 2014 and 1988 of 2014 which were all disposed of by common order. Copy of this also is annexed to the affidavit in reply. The said writ petitions were challenging the deputation of employees of the same respondent Corporation who were initially appointed as Safai Kamgar in the post as Prabhari Safai Incharge/ Assistant Mukadam on the same wages as Safai Kamgar. The facts are also identical and the petitioners sought directions against the Corporation to take steps to sanctioned posts for Prabhari Safai Kamgar/Assistant Mukadam. The Industrial Court had found that there were no such posts sanctioned and there was no merit in the contention of the petitioners that they should be made permanent on their deputed posts. The Corporation then intended to revert all the Assistant

Mukadams to their original posts and after considering the case of the petitioners, the petitions came to be rejected. The Court rejected these contentions, holding that the appointment in the posts of Mukadam etc. was only a temporary ad-hoc arrangement. In the present case, we are concerned with the job description of peons, clerks, drivers etc. The questions to be answered are (i): Whether the 2005 Resolution is binding upon the Corporation in the absence of sanction of these posts by the State? (ii) Whether continuance of the employees for a long period of time in a job description fitting that of class III employees would entitle them to be retained in such posts despite their permanent posts as class IV employees? (iii) Whether there is any vested right in these petitioners to be retained in their present posts? For all the aforesaid reasons the answer to all these questions considering the factual nature is in the negative. In the result, these challenges cannot succeed. I therefore pass the following order:-

- (i) All the writ petitions are dismissed.
- (ii) Interim order dated 16th January, 2018 in all the writ petitions shall continue for a period of eight weeks from today.
- (iii) No costs.

(A. K. MENON, J.)