

sg

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.519 OF 2018

President/Chief Officer, Baramati Municipal Council ...Petitioner
vs
Shri. Gangaram Bapurao Sonavane & Anr. ...Respondents

WITH

WRIT PETITION NO.520 OF 2018

President/Chief Officer, Baramati Municipal Council ...Petitioner
vs
Smt. Usha Baban Kumbhar & Anr. ...Respondents

WITH

WRIT PETITION NO.521 OF 2018

President/Chief Officer, Baramati Municipal Council ...Petitioner
vs
Smt.Laxmi Ashok More & Anr. ...Respondents

WITH

WRIT PETITION NO.522 OF 2018

President/Chief Officer, Baramati Municipal Council ...Petitioner
vs
Shri. Subhash Namdeo Gargate & Anr. ...Respondents

WITH

WRIT PETITION NO.523 OF 2018

President/Chief Officer, Baramati Municipal Council ...Petitioner
vs
Meena Bodhmal Gangavane & Anr. ...Respondents

WITH

WRIT PETITION NO.524 OF 2018

President/Chief Officer, Baramati Municipal Council ...Petitioner
vs
Kusum Charls Chillal & Anr. ...Respondents

WITH

WRIT PETITION NO.525 OF 2018

President/Chief Officer, Baramati Municipal Council ...Petitioner
vs
Smt. Meera Bapu Randive & Anr. ...Respondents

**WITH
WRIT PETITION NO.526 OF 2018**

President/Chief Officer, Baramati Municipal Council ...Petitioner
vs
Smt. Kusum Subhas Nimkar & Anr. ...Respondents

**WITH
WRIT PETITION NO.527 OF 2018**

President/Chief Officer, Baramati Municipal Council ...Petitioner
vs
Smt. Savitri Raghunath Kambale & Anr. ...Respondents

**WITH
WRIT PETITION NO.528 OF 2018**

President/Chief Officer, Baramati Municipal Council ...Petitioner
vs
Smt. Faimida Mubarak Khan & Anr. ...Respondents

**WITH
WRIT PETITION NO.529 OF 2018**

President/Chief Officer, Baramati Municipal Council ...Petitioner
vs
Smt. Meena Mahadev Kharat & Anr. ...Respondents

**WITH
WRIT PETITION NO.530 OF 2018**

President/Chief Officer, Baramati Municipal Council ...Petitioner
vs
Smt. Patanga Malhari Londhe & Anr. ...Respondents

**WITH
WRIT PETITION NO.8500 OF 2017**

President/Chief Officer, Baramati Municipal Council ...Petitioner
vs
Shri. Rajaram Shridhar More & Anr. ...Respondents

.....
Mr. S.R. Nargolkar, for the Petitioner.

Mr. S.R. Ingule, for Respondent No.1.

Ms. Vaishali Nimbalkar, AGP, for Respondent No.2.

.....
CORAM : S.C. GUPTE, J.

DATED: JUNE 19, 2018

P.C. :

. Heard learned Counsel for the Petitioners and Respondent No.1 and learned AGP for Respondent No.2. The petitions challenge orders passed by the Labour Court at Pune under Section 33-C(2) of the Industrial Disputes Act, 1947.

2. The first Respondents in these petitions, who were the applicants before the Labour Court, were working with the Petitioners in their Health Department as sweepers. It was their case that each of them had completed 240 days of continuous service in twelve preceding calendar months and yet not been made permanent. They, accordingly, filed complaints of unfair labour practice before the Labour Court at Pune claiming permanency and commensurate benefits. The Court directed that the Applicants be made permanent from the respective dates of completion of 240 days of continuous service and given all corresponding benefits. Being aggrieved by the order, the Petitioner Council filed a writ petition before this Court, being Writ Petition No.6040 of 2002. The writ petition was dismissed by a learned Single Judge of this Court. The decision of the learned Judge was challenged by the Petitioner Council before a Division Bench in a letters patent

appeal, being LPA No.29 of 2003. The Division Bench dismissed the LPA and confirmed the order passed by the Labour Court. Since the Municipal Council did not comply with the order of the Labour Court, contempt petitions were filed before the Court. At that stage, the Petitioner Council complied partly with the order of the Court. It is the case of the workmen that they were entitled to be made permanent with effect from the dates of their respective completion of 240 days of continuous service and were entitled to the pay scale of other permanent employees based on their promotion and the reports of various Pay Commissions in the interregnum. In the premises, the workmen applied for orders of payment under Section 33-C(2) of the Industrial Disputes Act. The only opposition by the Municipal Council was on the basis that the Municipal Council works under the control of the Director of Municipal Administration, Mumbai; and that all administrative decisions concerning wage scale, permanency and service benefits are subject to the approval of the Director of Municipal Administration, Respondent No.2 herein, and this approval did not come about.

3. The Petitioner Council's objection was clearly untenable. The Labour Court's order directing permanency to the concerned workmen and payment of service benefits in accordance with such permanency was confirmed by a learned Single Judge and Division Bench of this Court. The order had thus attained finality. The Director of Municipal Administration merely issues administrative orders. He has no authority to resist or obstruct any judicial order that may be passed by the Labour Court and confirmed by this Court.

4. So far as the claim of difference of wages made by the applicant workmen is concerned, the Labour Court in its impugned order accepted their case that they were entitled to difference of wages between their respective dates of completion of 240 days continuous service and till December 2011. The calculations in respect of the pending dues were, accordingly, made by the Labour Court. As far as the benefits of promotion are concerned, the Court was of the view that since promotions were not a matter of right and were granted as per service rules of particular management, the onus was on the applicants to prove that they were entitled to promotion on the basis of seniority or length of service. The Court was of the view that since there were no service rules or materials produced in support of their case, these benefits could not be granted to the Applicants simply on the ground that other employees were given promotions. These benefits were, accordingly, denied to the Applicants.

5. The impugned order of the Labour Court warrants no interference. The Petitioner Municipal Council will have to pay the difference of wages worked out by the Labour Court in the impugned orders. Respondent No.2 - Director of Municipal Administration is directed to accord sanction for the disbursal of this payment. The Director of Municipal Administration is bound by the position that the concerned workmen were made permanent with effect from the respective dates of their completion of 240 days of continuous service in accordance with the order of the Labour Court dated 2 May 2002 and, accordingly, must grant sanction to the payment of difference of wages to the Petitioners as ordered by the Labour Court in its orders dated 15

February 2017. The Municipal Council shall, accordingly, make payments to the first Respondents in these petitions within a period of three months from today.

6. In view of this order, the recovery certificate issued by the revenue authority shall remain stayed and not be implemented for a period of three months to enable the Petitioner Council to make payment in accordance with this order. The petitions are disposed of.

(S.C. GUPTE, J.)