

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

WRIT PETITION NO.406 OF 1999

The Chief Officer,
Chalisgaon Municipal Council,
Chalisgaon, Taluka Chalisgaon,
District Jalgaon.

...PETITIONER

-VERSUS-

Kailash Namdeo Sonwane,
Age : 35 years, Occupation : Labour,
Presently residing at Deshpande Galli,
Chalisgaon, Taluka Chalisgaon,
District Jalgaon.

...RESPONDENT

...

Advocate for the Petitioner : Shri Vikram R. Dhorde

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th June, 2019

Oral Judgment :

1 None had appeared for the respondent/ employee when this petition was taken up for final hearing of old matters in the special drive in vacation on 06.05.2019. Even today, none has caused an appearance on behalf of the respondent/ employee.

2 I have considered the submissions of the learned advocate for the petitioner/ Municipal Council. My attention is drawn to the grounds

formulated in the memo of the petition. With his assistance, I have gone through the petition paper book and the material available.

3 The respondent had approached the Labour Court in Reference (IDA) No.2/1994 with the case that he was working as an Ambulance Assistance with the petitioner from 1984. He was orally terminated on 07.02.1988. The petitioner had preferred its written statement at exhibit C-4 contending that the employee had not been orally terminated and that he had voluntarily stopped reporting for duties from 07.02.1988. Neither did he approach the employer for resumption of duties, nor did he submit any representation.

4 The Labour Court considered the entire documentary and oral evidence on record and noticed the following three aspects :-

- (a) The workman had been working continuously for two years from 08.01.1986 to 07.02.1988.
- (b) The workman had approached the Conciliation Officer under the Industrial Disputes Act, 1947 in 1994.
- (c) The Management had not issued any notice to the said workman/ employee calling upon him to report for duties, when their case is that he voluntarily stopped reporting for duties despite being deployed in a sensitive area.

5 It is settled law that a daily wager working in a State

instrumentality would not have a right to employment. So also, the deeming fiction of permanency flowing from Standing Orders 4-C and 4-D of the Industrial Employment (Standing Orders) Act, 1946 would not be applicable to the State instrumentalities.

6 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.

7 It also cannot be ignored that the employee was working for two years and is out of employment for the last 31 years. The Honourable

Supreme Court has held in the following cases that in the matters where an employee/ daily wager puts in a short period of service and is out of employment for a long period, granting reinstatement with continuity would be impracticable :-

- (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal, [2013 LLR 1009];*
- (b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, [(2013) 5 SCC 136];*
- (c) *BSNL Vs. Man Singh, (2012) 1 SCC 558; and*
- (d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, [(2009) 15 SCC 327].*

The Honourable Supreme Court has also concluded that in such cases, quantified compensation for having put in a particular number of years of service can be granted at the rate of Rs.30,000/- to Rs.40,000/- per year of service.

8 I find that since the judgments of the Honourable Supreme Court referred to herein above have been delivered almost six years ago, it would be appropriate to grant compensation to the respondent/ employee at the rate of Rs.50,000/- per year of service in lieu of reinstatement and continuity that has been granted by the Labour Court. This compensation would be commensurate keeping in view that the respondent/ employee

would be entitled to the last drawn wages under Section 17-B of the Industrial Disputes Act, 1947 in view of the pendency of this petition and the impugned award being stayed.

9 In view of the above, this Writ Petition is partly allowed as under :-

- (a) The impugned award granting reinstatement with continuity in service without back wages, shall stand modified and the petitioner/ Municipal Council shall pay compensation of an amount of Rs.1 lac by depositing the same in this Court on or before 31.07.2019.
- (b) The respondent/ employee would be at liberty to withdraw the said amount without conditions, under proper identification, on or before 31.12.2019.
- (c) The Registry of this Court shall issue an intimation to the respondent/ employee as regards the depositing of the above stated amount.
- (d) The respondent shall tender his recent photograph, address proof, cellular/ landline telephone number and the photocopy of Voters Identity Card issued by the Election Commission of India, while making an application for withdrawal of the amount.
- (e) In the event, the respondent does not withdraw the said

amount on or before 31.12.2019, the Registry shall forfeit the said amount and transfer it to the High Court Legal Services Sub- Committee, Aurangabad after 31.12.2019.

10 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)