

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1527 OF 2019

Municipal Council Vaijapur

...Petitioner

Versus

Shri Dnyaneshwar Chindharao Gaikwad &
Ors.

...Respondents

.....

Mr. N.D.Sonawane, Advocate for the Petitioner.

Ms. P.R.Wankhede, Advocate for the Respondent Nos. 1 to
4.

.....

CORAM : RAVINDRA V. GHUGE, J.

DATE : 02-08-2019.

PER COURT :

01. I have heard the learned Counsel for the petitioner and respondents. The respondents are the original complainants in Complaint (ULP) No. 133/2013.

02. The petitioner Municipal Council, Vaijapur has challenged the Judgment of the Industrial Court dated 13.11.2018 by which it has allowed Complaint (ULP) No. 133/2013 and has issued the following directions :

(a) The complaint is partly allowed.

(b) It is hereby declared that, the respondent

has committed unfair labour practices under Item-5 and 9 of Sch. IV of the MRTU & PULP Act, 1971.

(c) The respondent is hereby directed to cease and desist from unfair labour practices.

(d) Further, the respondent is directed to give permanency order to complainant Nos. 1 to 3 and 6 to 9 within a period of two months from today.

(e) Further, the respondent is directed to pay permanency benefits to the complainants as and when they have completed 240 days within a period of two months from today.

(f) The complainant No. 4 is retired during pendency of complainant and complainant No. 5 is died. Therefore, respondent is directed to give all permanency benefits to complainant No.4 and legal heirs of complainant No. 4 and legal heirs of complainant No. 5 till the date of retirement and date of death respectively.

(g) No order as to costs.

03. The learned Advocate for the original complainants has strenuously supported the impugned Judgment and prays that this petition be dismissed with heavy costs. It is submitted that each of these workers were working continuously on daily wages for about 20 years with the Municipal Council. Most of them joined in

1993 and began with Rs. 20/- per day and finally the amount was increased to Rs. 275/- per day.

04. It is then submitted that all these complainants have continuously discharged their duties. No disciplinary action has been initiated against them. They are entitled for the deemed status of permanency under Standing Order 4(C) and 4(D) of the Model (Standing Orders) framed under the Industrial Employment Standing Orders Act, 1946. They have sought the declaration of unfair labour practices under items 5, 6, 9 and 10 of the Schedule IV of the MRTU & PULP Act, 1971. They are still in employment and are awaiting the Orders of regularization. Most of them are nearing the age of retirement. Original complainant No. 4 Ramkisan Birunath Gawade has retired and complainant No. 5 Vishnu Laxman Jadhav has passed away during the pendency of the complaint.

05. The issue raised in this petition is no longer *res integra*. This Court has held in the matters of 1] **Municipal Council Tuljapur V/s Baban Hussain Dhale** (Writ Petition No. 1843/2015 and connected matter decided on 26.2.2015, 2] **Mukhyadhikari, Nagar Parishad, Tuljapur V/s Vishal Vijay Amrutrao & Ors.** [2015(5) Mh.L.J. 75], and 3] **Municipal Council Tirora & Anr., V/s Tulsidas**

Baliram Bindhade, [2016(6) Mh.L.J. 867], that in employment with the State or State instrumentalities like the Municipal Council in this matter, the Industrial Employment (Standing Orders) Act, would not apply and the deeming fiction of permanency applicable to the private sector industries, would not apply to such State instrumentalities.

06. The Municipal Council does not have the power to create posts, recruit persons on permanent vacant posts and issue Orders of regularization. At best, the proposals of such daily wagers keeping in view the observations of the Honourable Apex Court in paragraph 44 in the case of **Secretary, State of Karnataka V/s Umadevi and Ors., (2006) 4 SCC 1**, have to be sent to the Directorate of Municipal Administration. Depending upon the available vacant posts and the seniority of such similarly situated daily wagers, regularization can be granted.

07. There was a difference of opinion amongst two learned Single Judges at the Nagpur Bench of this Court. The matter was referred to the larger bench which has delivered a Judgment in the matter of **Municipal Council Tirora & Anr., V/s Tulsidas Baliram Bindhade, [2016(6) Mh.L.J. 867]**. The learned Division Bench has sustained

the view taken by one learned Single Judge at Nagpur that the daily wagers can not be granted regularization by the Industrial Court and the deeming fiction of permanency was not applied to them. The proposals have to be sent to the Competent Authority for granting regularization.

08. In view of the above, this petition is partly allowed. The declaration of unfair labour practices and the directions set out in Clauses B and C reproduced above stand quashed and set aside. The directions at clauses D and E shall stand modified with the following directions :

(A) The petitioner Municipal Council shall prepare the proposals of all these respondent-original complainants as well as all such similarly situated daily wagers and forward such proposals to the Directorate of Municipal Administration within a period of 12 weeks from today.

(B) These proposals shall contain the first dates of appointment of these daily wagers, their area of work, their duration of work, their present wages per day and their dates of birth.

(C) The Directorate of Municipal Administration shall consider these proposals and after taking into account the available vacant posts, these daily wagers shall be absorbed strictly as per

their seniority list in their particular categories and the deeming dates of regularization shall be announced by the said authority, with all incidental and consequential benefits, within 4 months.

(D) The Directorate of Municipal Administration shall not violate the seniority.

(E) The said authority shall also consider as to whether the daily wager is in employment atleast for some period in each year in the past decade and if certain daily wagers are found to be not in employment for a considerable period of time, their names shall be excluded.

(F) Those daily wagers, who have retired or have unfortunately died, would also be entitled for the deemed date of permanency depending upon their seniority and they will be entitled for all consequential and incidental benefits from such dates and the arrear amounts shall be payable to their widow or legal heirs as the case may be.

09. In the event of the available vacant posts being exhausted and some of the daily wagers still awaiting regularization, the directorate of Municipal Administration shall keep their proposals pending and grant such persons regularization as and when the posts are created.

10. Until the regularization of these persons, subject to their age of retirement which is 58 years, none of the daily wagers shall be terminated merely on the ground that they are daily wagers, save and except cases of disciplinary action.

11. In the event any of the daily wagers has any grievance about the decision taken by the Directorate of Municipal Administration, he / she shall be at liberty to raise a grievance and shall resort to a remedy as is permissible in law.

12. It is informed that some of the original complainants have now been granted regularization from 5.2.2019. The learned Advocate for the complainants makes a grievance that their salaries are not being disbursed, for the reason that they are being forced to sign a bond. The learned Advocate for the petitioner submits that the Govt. has issued a resolution dated 5.2.2019 by which these daily wagers would be deprived of consequential benefits for the earlier period.

13. Since this issue is not addressed to this Court, it is left open for the complainants to raise a grievance. Such decision dated 5.2.2019 shall be subject to the directions set out in this Order. Nevertheless, the

petitioners shall ensure that the unpaid wages of all the complainants / daily wagers shall not be stopped and shall be paid within four weeks from today.

[RAVINDRA V. GHUGE]

JUDGE

Dahibhate/-