

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3948 OF 1999

The Municipal Council,
Jalgaon,
Through its Chief Officer

– PETITIONER

VERSUS

Shantaram s/o Kashinath Rane,
Age-25 years, Occu-Nil,
R/o Shani Peth, Dalphal,
Jalgaon, Tq. Dist. Jalgaon

– RESPONDENT

WITH

WRIT PETITION NO.6126 OF 1999

The Municipal Council,
Chalisgaon,
Jalgaon,
Through its Chief Officer

– PETITIONER

VERSUS

Sakhubai w/o Kalu Patil,
Age-35 years, Occu-Labourers,
R/o Chalisgaon,
Dist.Jalgaon

– RESPONDENT

WITH

WRIT PETITION NO.6137 OF 1999

The Municipal Council,
Chalisgaon,
Jalgaon,
Through its Chief Officer

– PETITIONER

VERSUS

Balusing s/o Sardarsing Jadhav,
Age-39 years, Occu-Labourer,

R/o Chalisgaon, Dist.Jalgaon

– RESPONDENT

**WITH
WRIT PETITION NO.5171 OF 1999**

The Municipal Council,
Chalisgaon,
Jalgaon,
Through its Chief Officer

– PETITIONER

VERSUS

Sakharam s/o Dhanaji Jadhav,
Age-29 years, Occu-Labourer,
R/o Chalisgaon, Dist.Jalgaon

– RESPONDENT

**WITH
WRIT PETITION NO.6134 OF 1999**

The Municipal Council,
Chalisgaon,
Jalgaon,
Through its Chief Officer

– PETITIONER

VERSUS

Kalidas s/o Hiranman Wadekar,
Age-38 years, Occu-Labourer,
R/o Chalisgaon, Dist.Jalgaon

– RESPONDENT

Mr.P.R.Patil, AGP for the petitioner.
Mr.V.Y.Patil, Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 08/05/2019

ORAL JUDGMENT :

1. In the first petition, though the matter was listed for “passing orders” on dismissal on 20/06/2019, by order dated 06/05/2019,

Mr.Patil, learned Advocate appearing on behalf of the respondents brought it to the notice of the Court that the other 2 writ petitions are being taken up for hearing and disposal on 08/05/2019 and the first petition herein, being an identical petition, may be taken up alongwith the other 2 petitions. Hence the first petition is listed today alongwith other 2 petitions.

2. In WP No.6126/1999 and 6137/1999, the Municipal Council, Chalisgaon is aggrieved by the identical judgments delivered by the Industrial Court, both dated 17/03/1997 vide which Complaint (ULP) Nos.425/1990 and 423/1990 have been allowed. The Industrial Court has declared that the petitioner is guilty of unfair labour practices under Item 6 of Schedule IV of the MRTU and PULP Act, 1971. The respondents are granted permanency as a "Majdoor" with retrospective effect, with all benefits incidental and consequential to permanency.

3. In WP No.3948/1999, the Labour Court, Jalgaon delivered the impugned judgment and award dated 05/05/1999 thereby partly allowing Ref.(IDA) No.11/1995 and by setting aside the oral termination dated 09/09/1991, reinstatement with continuity of service is granted to the respondents Shantaram Kashinath. His

statement of waiving the back wages was accepted and he was deprived of full back wages.

4. In all these petitions, this Court has passed an order on 16/08/1999, 20/07/2001 and 23/07/2001 thereby admitting the petitions and staying the impugned judgments.

5. In the case of Shantaram, CA No.199/2000 was preferred and this Court passed a reasoned order on 20/02/2002 thereby allowing Shantaram to file an affidavit in compliance of Section 17-B of the I.D. Act so as to be entitled for earning the last drawn wages on month to month basis till his petition was decided.

6. Learned Advocate for the petitioner / Municipal Council, Chalisgaon has vehemently criticized the impugned judgments. He has raised 2 significant issues in Law. Firstly, that in the case of Shantaram, since he was working on daily wages as a Majdoor from 1989 to 09/09/1991, which is a period of about 2 years, there cannot be an order of reinstatement with continuity in service after a passage of several years. Secondly, since Shantaram is not in employment for the last 28 years, there cannot be any continuity of service, with benefits incidental thereto. He relies upon the judgment

delivered by this Court in the matter of Jalgaon Municipal Council, Jalgaon Vs. Surendra Namdeo Wani dated 05/01/2017 in WP No.3108/1997, wherein this Court has set aside a similar award and has granted quantified compensation.

7. In so far as cases of Sakhubai Kalu Patil and Balusing s/o Sardarsing Jadhav are concerned, he submits that the deemed fiction of permanency cannot be made applicable to State instrumentalities and merely because an employee may have completed 240 days in continuous employment, would not render him entitled for regularization and benefits incidental thereto. He further submits that unless posts are created under the sanction of the State Government by the Director of Municipal Administration, the Municipal Council cannot grant regularization. He relies upon the judgment delivered by this Court (Coram : Ravindra V. Ghuge, J.) in the matter of Municipal Council, Tuljapur Vs. Baban Hussain Dhale and others, WP No.1843/2015 with connected matters dated 26/02/2015, Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao [2015(5) Mh.L.J.75 and the judgment of the learned Division Bench of this Court at Nagpur in the matter of Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade [2016(6) Mh.L.J. 867].

8. By consent of the parties, WP No.6134/1999, which is an identical petition, has been taken on the board alongwith the connected petition No.5171/1999.

9. Learned Advocate for the petitioner/Municipal Council advances the same submissions in these 2 petitions as well.

10. Mr.Vijay Patil, learned Advocate who appears on behalf of the workers in all these matters, submits as under :-

[a] Since these petitions are more than 20 years old, the respondents have not been in touch with him.

[b] In the case of Shantaram, the award granting reinstatement with continuity in service has been stayed by this Court.

[c] He is unaware as to whether Shantaram has received Section 17-B benefits.

[d] In the remaining cases, he submits that this Court has stayed the direction of granting permanency, but has not caused any interference in the allotment of duties to these respondents on daily wages.

11. The issues involved in these 2 set of petitions i.e. in the case of

Shantaram, who is granted reinstatement and in the other cases where the Industrial Court has granted regularization, is no longer *res-integra*.

12. Shantaram has been working with the petitioner Council as a daily wager from 1989 up to 09/09/1991. He has thus worked for about 2 years on daily wages. There is a finding of fact that he has completed 240 days in continuous employment with the Municipal Council. As such, he has worked as a daily wager for about 2 years and is out of employment for about 28 years.

13. In the above set of facts, the Hon'ble Apex Court has delivered the following 4 judgments :-

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

14. In the above said cases, the Hon'ble Apex Court has concluded in 2012 and 2013 that when employees have worked for short

durations and are out of employment for long spells of about 15 or 20 or 25 years, there cannot be an order of reinstatement with continuity of service. It would amount to foisting such employees on the State Instrumentality and reinstatement would not be pragmatic and practicable. Instead, compensation @ Rs.30,000/- or Rs.40,000/- would be granted per year of service rendered by the employee.

15. As such, I am inclined to apply the same Law in the case of Shantaram. However, I feel it appropriate to raise the compensation from Rs.30/40 thousand to Rs.50,000/- per year considering the passage of about 6 years after the Hon'ble Apex Court has delivered its judgment.

16. In view of the above, WP No.3948/1999 is partly allowed. The impugned award dated 05/05/1999 stands modified with the following directions :-

[a] The petitioner shall pay an amount of Rs.1,00,000/- as quantified compensation to Shantaram by depositing the said amount in this Court, on or before 21/06/2019.

[b] If the said amount is not deposited within the time frame as directed above, interest @ 6% p.a. shall be applicable from the date of

the award till the amount is actually deposited and the interest amount shall be paid by the Commissioner of the Municipal Corporation, Jalgaon (erstwhile Municipal Council) from his own salary and the said amount shall not be paid from the State Exchequer.

[c] Shantaram shall withdraw the said amount unconditionally from this Court upon being duly identified by the learned Advocate by making an application alongwith a recent photograph, Election Commission Voter ID Card and address proof.

[d] Rule is made partly absolute in the above terms.

17. In the remaining 4 matters wherein the Industrial Court has granted regularization from a particular date and the said judgments have been stayed by this Court, I find that the Law laid down in the matter of Mukhyadhikari (supra), and the Municipal Council, Tirora (supra) would be squarely applicable. The deeming fiction of permanency under Standing Order 4(C) of the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 would not be applicable to such State Instrumentalities. In Mukhyadhikari (supra) as well as in Municipal Council, Tuljapur (supra), this Court has concluded that as the Municipal Council or a State Instrumentality does not have the power to create posts, continuing daily wagers since work was available and being unable to

grant them regularization, would not amount to such a state Instrumentality committing unfair labour practices under Item 6 and 9 of Schedule IV of the MRTU and PULP Act, 1971.

18. In view of the above, these 4 petitions being Nos. 5171/1999. 6126/1999, 6134/1999 and 6137/1999 are partly allowed. The impugned judgments of the Industrial Court stand modified with the following directions :-

[a] There shall be no declaration of unfair labour practices against the petitioners.

[b] The petitioner/Municipal Council/Corporation, as the case may be, shall prepare a proposal of these respondents namely Sakharam Dhanaji Jadhav, Sakhubai Kalu Patil, Kalidas Hiranman Wadekar and Balusing Sardarsing Jadhav alongwith all such similarly situated daily wagers by stating the dates of their entry as daily wagers, their length of service put in, their area of work and their seniority, within a period of 8 (eight) weeks from today.

[c] Such proposals shall be submitted to the Principal Secretary, Urban Development Department, Government of Maharashtra, Mantralaya, Mumbai – 32 within the above stated period and the said Department would consider these proposals for granting regularization of these respondents, in the event they are in

continuous services as daily wagers with the Municipal Council.

[d] Final decision on such proposals shall be pronounced within a period of 4 months from the date of receipt of the proposals. Regularization would be granted to such daily wagers strictly on the basis of the length of their service as daily wagers and the seniority, depending upon the available vacant posts.

[e] If there is a shortfall in the number of posts, the said Department would not reject proposals of such daily wagers and would consider them as and when the vacancy arises and grant them regularization alongwith deemed dates in a staggered manner.

[f] In the event all these respondents are in employment as daily wagers, their services as daily wagers would not be dispensed with, save and except, in matters of disciplinary action.

[g] In the event any of such respondents are aggrieved by the decision of the concerned Departments, they would be at liberty to resort to a remedy for the redressal of their grievance, as may be permissible in Law.

19. Rule is made partly absolute in these terms.

(Ravindra V.Ghuge, J.)