

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

907. WRIT PETITION NO. 5146 OF 1999

Municipal Council, Chalisgaon
District Jalgaon
through its Chief Officer.

...Petitioner

VERSUS

Kashinath S/o Tulshiram Patil
age 35 years occupation labourer
R/o Chalisgaon District jalgaon.

...Respondent

Mr. P.R. Patil, Advocate for petitioner.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 27th June, 2019

ORAL JUDGMENT:

1. None appeared for the parties on 6th May, 2019.
None appears for the respondent even today.

2. The petitioner-Municipal Council, Chalisgaon, is aggrieved by the judgment of the Industrial Court, Nashik, dated 17th March, 1997, by which, Complaint (ULP) No. 420 of 1990, which was a part of the group of cases in Complaint (ULP) No. 419 to 423 and 425 of 1990, has been allowed. The respondent is granted permanency as a 'Majdoor' with all benefits incidental thereto. This Court has stayed the impugned judgment while admitting the petition on 4th September, 2001. The learned

Advocate for the petitioner submits that the respondent is not in employment.

3. I have considered the submissions of the learned Advocate for the petitioner and have gone through the record available. Even a cursory glance at the impugned judgment would reveal that the said judgment deserves to be quashed and set aside. I find that there is hardly an application of mind by the Industrial Court to the material on record while delivering the said judgment. The Industrial Court has merely held that it has gone through the complaint, written statement and the documentary evidence and is convinced that the worker has completed 240 days in employment and hence permanency is granted. The judgment is cryptic, perverse and erroneous.

4. The issue as regards seeking regularisation in service has now been settled by the judgment of this Court in the matter of *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 in the matter of the *Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade, 2016(6) Mh.L.J., 867*. Deemed fiction of permanency flowing under Clause 4-C of the Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 would not apply to such State instrumentalities. So also, the Municipal Council does not have

power to create posts and grant permanency. This power vests in the Directorate of Municipal Administration.

5. As such, this petition is partly allowed. The impugned judgment of the Industrial Court, Nashik, dated 17th March, 1997 is quashed and set aside. Complaint (ULP) No. 420 of 1990 is disposed of with the following directions:

- (a) If the respondent-daily wager is still working with the petitioner, the petitioner shall prepare a proposal of the respondent alongwith similarly situated daily wagers, within a period of 12 weeks from today and forward the said proposal to the Directorate of the Municipal Administration for considering the case of the respondent and others for regularisation, strictly in accordance with the Rules, Circulars, Government Resolutions, Seniority, etc., as may be applicable.
- (b) The Directorate of Municipal Administration shall decide the said proposals, within a period of four months from the date of receipt and shall consider the case of the respondent alongwith all other similarly situated employees by following the Rules of Seniority and depending upon the length of service put in by him.

6. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE)
JUDGE