

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

904. WRIT PETITION No. 4168 of 1999

Nanded Waghala City Municipal Corporation,
Nanded, through its Commissioner, Nanded. ...Petitioner

VERSUS

1. Abdul Nayeem S/o Abdul Gafur, age 31 years,
2. Jaffar Hussain S/o Khaja Hussain, age 33 years
3. Merajalikhan S/o Khurshidalikhan, age 32 years
4. Nitin S/o Srinivasrao Tornekar, age 32 years
5. Mohd. Iqbal S/o Mohd. Osman, age 32 years,
6. Safeer Ahmad S/o Akhil Ahmad, age 32 years,
7. Anzar Ali Zulfekarali, age 28 years
8. Mohd. Iliyas S/o Mohd. Suleman, age 32 years
9. Javed Ahmed S/o Gulam Yezdarli, age 30 years
10. Julfekar Ahmad S/o Abdul Hamid, age 31 years
11. Nandkumar S/o Prabhakarrrao Kulkarni, age 32 years

All service by occupation and R/o Nanded Waghala City
Municipal Corporation, Nanded Taluka and Dist. Nanded.
...Respondents

Mr. M.D. Narwadkar, Adv., h/f. Mr. M.V. Deshpande,
Advocate for petitioner.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 27th June, 2019

ORAL JUDGMENT:

1. On 6th May 2019, I have passed the following order.

“1. Though this matter is listed for final hearing in the special Board for final hearing in vacation, none present for both the parties.

2. Stand over to 20/06/2019 for “passing orders” on dismissal.”

2. None appeared for the respondents on 20th June, 2019 and none appears even today. I could have dismissed this petition in-default. However, considering the law applicable to the State instrumentalities and the Corporations, I am deciding this petition in its merits.

3. Since none appears for the respondents, I have heard the learned Counsel for the petitioner at length and with his assistance, I have gone through the record available. He informs that the respondents involved in this matter have already been granted regularisation and that would be the reason why they are not appearing in the proceedings at the final hearing stage.

4. There is no dispute that the respondents are the employees of the Municipal Corporation. The issue, as to whether the Municipal Corporation could have the power to create posts and grant regularisation in service, is no longer *res-integra*. A Corporation does not have such powers and it is the Directorate of Municipal Administration or the department of Urban Development of the State of Maharashtra, as the case may be, who have the powers of creating posts and granting regularisation in accordance with the Rules.

5. This Court has dealt with similar matters and has

delivered a judgment in the matter of *Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao*, 2015(5) *Mh.L.J.* 75. Similarly, the learned Division Bench of this Court, in the face of a conflict of view amongst the two learned Single Judges at Nagpur, considered the reference and decided this issue in the matter of the *Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade*, 2016(6) *Mh.L.J.* 867. It is laid down that the fiction of permanency flowing under Clause 4-C of the Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946, will not apply to such State instrumentalities.

6. In view of the above, the impugned judgment needs to be modified. This petition is, therefore, partly allowed. The declaration of unfair labour practices under Items No. 5, 6 & 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, stands quashed and set aside. The direction of the Industrial Court that these respondents should be granted permanency with effect from 25th March, 1998, is quashed and set aside.

7. Normally, in this situation, I would have directed the petitioner to submit the proposals of the respondents to the appropriate Authorities - the Directorate of Municipal Administration/Department of Urban Development of the State of

Maharashtra. However, as these respondents have already been granted regularisation, such directions are not necessary.

8. Rule is made partly absolute accordingly.

9. In the event, any of the respondents has a grievance about the dates from which they have been granted regularisation, they would be at liberty to agitate the said cause by resorting to a remedy, as may be permissible in law.

**(RAVINDRA V. GHUGE)
JUDGE**

Madkar