

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

920. WRIT PETITION NO. 4437 OF 2001
WITH
CA/705/2009 IN WP/4437/2001

1. Anjali W/o Rajan Kote,
age 35 years occupation service
R/o Shirdi At post Rahata
Taluka Kopargaon District Ahmednagar
2. Digambar S/o Vitthal Bhujbal,
age 36 years occupation & R/o as above
3. Prabhakar S/o Laxman Gujar,
age 31 years occupation service
R/o Shirdi at post Rahata Tal. Kopargaon Dist. Ahmednagar.
...Petitioners

VERSUS

1. Shirdi Nagar Panchayat,
Shirdi Taluka Kopargaon Dist. Ahmednagar
through the Chief Officer.
2. Shirdi Nagar Panchayat,
Shirdi Taluka Kopargaon Dist. Ahmednagar
through the Administrator
3. The State of Maharashtra
4. Sarjerao S/o Sitaram Kamble,
age 36 years occupation service
R/o Shirdi A/P Rahata Tal. Kopargaon Dist. Ahmednagar
5. Smt. Jayashree W/o Gorakh Aasane,
age 33 years occup. & R/o as above.
6. Kailas S/o Sukhdeo Wani,
age 36 years occupation & R/o as above
7. Balu S/o Dada Shelar,
age 38 years occupation & R/o as above
8. Dinkar S/o Bhimaji Wani,
age 37 years occupation & R/o as above

9. Bapusaheb S/o Rajaram Kalwaghe,
age 35 years occup. & R/o as above.
10. Dileep S/o Nivrutti Pachore,
age 34 years occup. & R/o as above
11. Somnath S/o Changdeo Gadekar,
age 39 years occup. & R/o as above.
12. Karbhari S/o Punjaba Malkar,
age 33 years occupation & R/o as above.
13. Sanjay S/o Jagannath Kote,
age 33 years occup. & R/o as above.

...Respondents

Mr. A.S. Shelke, Advocate for petitioners

Smt. Renuka Ghule-Palve, Advocate for respondents No.1 & 2

Mr. N.T. Bhagat, Asstt. Govt. Pleader for Respt. No.3.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 27th June, 2019

ORAL JUDGMENT:

1. I have heard the learned Advocates for the petitioners, respondents No.1 and 2 and the learned Asstt. Govt. Pleader on behalf of respondent No.3. Despite service of the Court notices, respondents No.4 to 11 have not chosen to cause their appearance in this matter. Respondents No.12 and 13 have remained absent.

2. From their submissions and the record available, a very short point is required to be adjudicated upon.

3. The issue that needs to be considered in this petition is, as to whether seniority of the petitioners can be overlooked while granting regularisation to daily wagers only for the reason that some daily wagers had approached this Court.

4. The learned Asstt. Govt. Pleader emphatically submits that no authority has the power to overlook the seniority when it comes to granting of service benefits.

5. There were about 77 employees, who had approached the Industrial Tribunal, Ahmednagar, in Reference I.T. No. 1 of 1997. The Industrial Tribunal, vide its Award dated 6th May, 1998, granted the relief of regularisation to the 77 workers, whose claims were espoused by their union. However, the date, from which they should be granted regularisation, was not mentioned in the Award.

6. The respondent-Shirdi Nagar Panchayat had approached this Court in Writ Petition No. 4374 of 1998. A short order was passed by this Court considering the consent of the parties, which is as under:

“ *Heard all the advocates for their respective parties.
Rule, Heard forthwith, By the impugned Award the learned Tribunal has granted the demand of 77 employees permanency but without specifying the date from which the effect of permanency is to be given. The learned advocate*

Mrs. Renuka Palve for the petitioner is agreeable to give the effect of permanency from the respective dates of the sanctions given by the Government to the posts in accordance with the seniority of 77 employees.

Shri Shelke accepts the said dates for permanency. It is expected that the petitioners shall implement this order within 3 months as far as possible.

Rule is made absolute as above.

No order as to costs.”

7. It is evident from the reproduced order of this Court that the Municipal Council agreed to grant regularisation to the 77 employees from the dates when their proposals would be sanctioned by the Government in accordance with their seniority.

8. These three petitioners had preferred Complaint (ULP) No. 134 of 1994, 60 of 1993 and 61 of 1993, respectively, before the Industrial Court, Ahmednagar. By a common judgment dated 3rd November, 1999, they were granted regularisation from the date of filing of their respective complaints. Being aggrieved by the relief granted by the Industrial Court, these three petitioners, out of the nine original complaints, have approached this Court.

9. The Seniority List placed on record is perused by the learned Advocate for the respondent-Municipal Council. It is not disputed that petitioner No.1 Anjali Rajan Kote is at serial No.

10, petitioner No.2 Digambar Vitthal Bhujbal is at serial No. 4 and petitioner No.3 Prabhakar Laxman Gujar is at serial No. 3. It is also not disputed that this Seniority List has not been disturbed by the Municipal Council. It is then conceded that those 77 workers, who were granted regularisation under the statement of the Municipal Council, recorded by this Court in the above reproduced order dated 9th November, 1998, were all junior to these three petitioners. It is also not disputed that the judgment in favour of these petitioners was delivered by the Industrial Court on 3rd November, 1999. However, it does not call for any debate that when the Municipal Council made the statement before this Court recorded in the order dated 9th November, 1998 that they would grant sanction for regularising 77 employees in accordance with the seniority, the Municipal Council could not have disturbed the seniority, much less overlooked the claims of these petitioners.

10. As such, if the Municipal Council has treated 77 workers in a particular way, these three petitioners, who were senior to 77 workers, could not have been deprived of their deemed dates of regularisation considering their seniority in view of the Municipal Council being committed to the seniority list.

11. In view of the above, this petition is allowed. The

impugned judgment of the Industrial Court is modified only to the extent of granting the deemed date of regularisation to these petitioners as being 1st July, 1992 in view of the consent of these three petitioners. The seniority of these petitioners Prabhakar Laxman Gujar, Digambar Vitthal Bhujbal and Mrs. Anjali W/o Rajan Kote shall be maintained as they stood at serial Nos. 3, 4 & 10 in the then seniority list, placed on record at page Nos. 19 & 20 of the petition paper book. Consequently, these three petitioners would be entitled for arrears and pay scales, as are admissible.

12. Rule is made absolute in the above terms.

13. Considering the length of the litigation for about 25 years, it is expected that the Shirdi Nagar Panchayat – respondents No.1 & 2 shall implement these directions as expeditiously as possible and preferably, within a period of four months.

14. Pending civil application does not survive and stands disposed.

**(RAVINDRA V. GHUGE)
JUDGE**