

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

WRIT PETITION NO.485 OF 2018

**THE CHAIRMAN AGRICULTURAL PRODUCE AND MARKET
COMMITTEE JALNA AND ANOTHER
VERSUS
SHAIKH WAJED SHEIKH SHAFI**

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Advocate for the Petitioners : Shri S. S. Thombre
Advocate for the Respondent - sole : Shri H. I. Pathan

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 30th January, 2019.

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PER COURT :

1. The petitioner APMC is aggrieved by the judgment and order dated 28/03/2016 delivered by the Industrial Court Jalna, by which, complaint (ULP) No. 7/2014, filed by the respondent -workman, has been allowed and the following order has been passed :-

"(A) Complaint (ULP) No. 7 of 2014 is hereby partly allowed.

(B) It is hereby held and declared that the respondents are engaged in and engaging in unfair labour practices as per Item Nos. 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971,

by not making the complainant permanent on the post of Watchman.

(C) The respondents are directed to cease and desist from such type of unfair labour practices.

(D)The respondents are directed to make complainant permanent on the post of Watchman from the date of this order and accord him status and privileges of permanent employee.

(E) The respondents to comply the order within two months from today.

(F) Parties to bear their respective costs."

2. The learned Advocate for the petitioner has strenuously criticized the impugned judgment. He has drawn my attention to the 8 (eight) grounds formulated in the memo of the petition.

3. Reliance is placed upon the judgment of the Honourable Apex Court in the matter of ***Secretary, State of Karnataka Vs. Uma Devi (3) and others, 2006 (4) SCC***. It is, therefore, contended that the appointment of the respondent was a back door. There is no policy for resorting to compassionate appointment. The uncle of the respondent was occupying a permanent post. The respondent manipulated his appointment

in place of his uncle after the demise of the latter. Such back door entries are not to be permitted.

4. The learned Advocate for the respondent submits that there is no dispute that a permanent post occupied by his uncle had fallen vacant due to his demise. He points out that there were three persons namely Ajay Prakash Jadhav – Clerk, Sambhaji Prasadrao Borade – Peon and Kiran Rameshwar More -Watchman, who were appointed for five months. The petitioner - Market Committee passed a resolution dated 31/03/2013 granting permanency to these three persons. Their proposal were forwarded to the Sub-Registrar, which rejected them. They were dismissed and they approached the Labour Court by preferring ULP Nos. 2, 3 and 4 of 2014. The Labour Court granted reinstatement. The Industrial Court rejected the revision petitions of the APMC and all of them were reinstated in service.

5. I find that it is apparent from the observations of the Industrial Court in the impugned judgment that this APMC is not following the due process of selection. *Prima-facie*, it

appears that the appointments are shrouded in clouds of doubt. Several employees have been kept in employment on account of Court orders.

6. The witness of the APMC has specifically admitted in his cross-examination which indicates that the respondent has completed 240 days in continuous employment since 2011. One Shaikh Babu Shaikh Mohammad died on 15/10/2010. His nephew Shaikh Wajed s/o Shaikh Shafi was appointed in his place, who is blind in one eye. He was shown to be appointed on a vacant sanctioned post. The widow of Shaikh Babu gave consent for the appointment of the respondent herein, in place of Shaikh Babu.

7. The learned Advocate for the APMC specifically states that the Director of Marketing Committee, State of Maharashtra, Pune is the authority, who sanctions posts. It is further stated that without there being a sanctioned vacant post, no employee can be confirmed in service.

8. This Court has taken a view in the matters of *Municipal*

Council, Tuljapur Vs. Baban Hussain Dhale in WP No. 1843/2015 and connected matters, decided on 26/02/2015, Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others, 2015 (5) Mh.L.J. 75 and the learned Division Bench at Nagpur has taken a view in the *Municipal Council Tirora and anr. Vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J.867* that when it came to regularization of employees in the State Government or state instrumentalities, the competent authority has to consider the proposal and based on the availability of a sanctioned permanent post, such regularization can be granted. It was ruled that Standing Order 4C and 4D of the MSO, framed under the Industrial Employment (Standing orders) Act 1946, are not applicable to such instrumentalities and hence completion of 240 days would not be a ground for granting permanency.

9. The learned Advocate for the respondent submits that he has almost put in eight years in service today. The post earlier occupied by his deceased uncle is permanent and vacant which is presently occupied by him. He does not mind if his proposal is forwarded to the Director, Marketing Committee for

consideration so as to regularize his service and till then, he should be continued in employment. The APMC is agreeable.

10. In view of the above, this petition is disposed off by slightly modifying the directions set out in Clause D and E reproduced above. The said two clauses would be replaced with the following directions :-

(a) The petitioner shall forward the proposal of the respondent to the Director, Marketing, State of Maharashtra, Pune within a period of four weeks from today. The details of employment of the respondent shall be stated as per the records. The copy of this order shall be annexed to the said proposal. The Director, Marketing shall keep in view that the post occupied by him is permanent due to vacancy created by the demise of Sk. Babu.

(b) The claim of the respondent shall be considered in view of the said vacant post and in the event of there being no other legal impediment.

(c) The competent authority would consider granting regularization to the respondent by assigning a particular date from which such regularization would be effected.

(d) The decision shall be taken by the Director, Marketing Committee within three months from the date of the receipt of the proposal.

11. Needless to state, the respondent would continue in employment and shall not be terminated on the ground that he is treated to be a temporary employee, save and except on account of any disciplinary action which shall not be based on concocted charges.

12. The learned Advocate for the respondent submits that Criminal (ULP) No. 8/2017 shall be withdrawn immediately after the APMC forwards his proposal to the Director, Marketing Committee for regularization.

(RAVINDRA V. GHUGE, J.)

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