

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13762 OF 2018

Rajendra Mahadu Jagtap & Ors.	Petitioners
Versus	
The Commissioner, Malegaon	
Municipal Corporation & Anr.	Respondents

WITH
WRIT PETITION NO.670 OF 2019
WITH
CIVIL APPLICATION NO.29153 OF 2018
IN
WRIT PETITION NO.670 OF 2019

Prakash Uttam Chaudhary & Ors.	Petitioners
Versus	
The Commissioner, Malegaon	
Municipal Corporation & Anr.	Respondents

WITH
WRIT PETITION NO.1994 OF 2019

Dr. Ansari Atik Ahamad Khalil Ahamad	Petitioner
Versus	
The Commissioner, Malegaon	
Municipal Corporation & Anr.	Respondents

WITH
WRIT PETITION NO.13725 OF 2018

Smt. Bhikubai Chhotelal Ahirrad	Petitioner
Versus	
The Commissioner, Malegaon	
Municipal Corporation & Anr.	Respondents

WITH
WRIT PETITION NO.13760 OF 2018

Mohamad Rafiq Hamidujjana	Petitioner
Versus	
The Commissioner, Malegaon	
Municipal Corporation & Anr.	Respondents

Ms. Lata Patne, Advocate for the Petitioners.
Mr. Rahul Saste, Advocate for Respondent No.1.
Mrs. M.P. Thakur, AGP for the Respondent-State.

**CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.**

DATE : 8th AUGUST, 2019.

P. C. :

1. The petitioners who have been employees of Malegaon Nagar Parishad and subsequently, the employees of Malegaon Municipal Corporation have approached the Industrial Court being aggrieved by their engagement on daily wages basis in consequence of the termination orders issued to them. From the year 1988 to 2001 various complaints were instituted by the petitioners before the Industrial Court and the Industrial Courts have directed the respondents to stop and desist from the unfair labour practices. Directions were also issued to grant them permanency benefits and pay them wages on par with their counter-parts in permanent establishment. The arrears of wages were also directed to be paid to the complainants from the date of filing of the complaint.

2. The grievance of the petitioners today is that pursuant to the said directions issued by the Industrial Court, the State Government issued a resolution dated 16.08.2012. The learned counsel for the petitioners invited our attention to the said Government Resolution, which is at Exhibit "C" to the petition. She would submit that by the said Government Resolution, supernumerary posts have been created and the

Government has taken a note of the fact that the Industrial Tribunal had passed various orders in favour of the employees of the Corporation in various complaints and it had observed that the orders had attained finality since the Corporation has not challenged the said orders, and therefore, the State Government has resolved to absorb the petitioners by creating posts in the services of Corporation.

3. We have perused the said resolution. It is no doubt true that the Government has taken into consideration the factual aspect namely that several employees working with the corporation had approached the Industrial Court, and in order to give effect to the order of the Industrial Court, it created 97 permanent posts since 105 employees were required to be absorbed, which included one post of driver and 96 posts of peon in the admissible pay scale. Pursuant to the said order passed by the State Government, the Corporation issued order on 06.10.2012 appointing all the petitioners on the Class IV posts in the prescribed pay scale and had also contemplated relaxation of the qualification criteria for Class IV and also directed that Contributory provident fund pension scheme to be made applicable to those who are appointed after 30.11.2005.

4. The grievance of the learned counsel for the petitioners is that in spite of the orders passed by the Industrial Court, directing permanency benefits and payment of back wages in form of arrears to be paid, the State Government had issued a Government Resolution pursuant to

which the petitioners have been absorbed since 06.10.2012 in the prescribed pay scale. Her grievance is that the order passed by the Industrial Tribunal have not been complied with since the back wages and arrears are not paid.

5. We have also taken note of the fact that the petitioners have resumed their duties in terms of the order issued by the Corporation on 06.10.2012 and though it is vehemently argued before us that the said orders were accepted under protest, we could see that from 08.10.2012 the petitioners are working on the regular posts and enjoying the regular pay scale. The petitioners had also approached the Industrial Court after issuance of the Government Resolution by filing Complaint (ULP) No.75/2014 in which they made a grievance that the back wages have not been paid. The Industrial Tribunal by judgment dated 22.09.2017 dismissed the said complaint and rightly so with the observation that the issue of back wage was already considered in the earlier matters of which the proceedings which were instituted by the complainants under Items 5, 9 & 10 of Schedule IV of the MRTU & PULP Act, 1971 and at the relevant time, back wages were granted. The Industrial Court, therefore, refused to interfere in the said Government Resolution and the subsequent act of the Corporation in implementing the Government Resolution which absorbed the petitioners without back wages. Thus, by the Government Resolution the petitioners have been converted from the daily wages employees to Regular Employees with a pay scale and the petitioners are

working with the Corporation since 08.10.2012.

6. In such circumstances, since it is a policy decision of the State Government to create additional posts and absorb the petitioners, we do not find that in exercise of our writ jurisdiction, we would interfere with the said policy decision of the State Government, which is implemented by the corporation. As far as non-implementation of the orders passed by the Industrial Court is concerned, the petitioners nonetheless have the remedy to approach the Industrial Court by initiating proceedings under Section 48 of the MRTU & PULP Act, 1971. In any case, we leave this remedy open to the petitioners and it is always so.

7. In such circumstances, we are not inclined to interfere with the Government Resolution dated 06.10.2012 and as far as the implementation of the orders passed by the Industrial Court, we feel that the petitioners can avail the remedy, if the law permits.

8. Resultantly, the writ petitions are disposed off.

9. In light of the disposal of writ petitions, nothing survives in the Civil Application and the same are also disposed off.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]