

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

WRIT PETITION NO. 13158 OF 2017

Udgir Municipal Council
Tal Udgir Dist: Latur
Through its Chief Executive Officer ... Petitioner

Versus

- 1] Dhanraj Kallapa Kapale
Age: 51 Years, Occu: Service
R/o: Kapale galli, Tq: Udgir,
Dist: Latur
- 2] Director of Municipal Administration
Third Floor, GTS Building,
Sir Pochkhanwala Marg,
Varli – Mumbai ... Respondents

....

Mr. Parag Vijay Barde, Advocate for the petitioner
Mr. V. P. Golewar, Advocate for respondent No.1
Mr. Y. G. Gujarathi, AGP for respondent No.2

....

CORAM : R. G. AVACHAT, J.

**RESERVED ON : 15th FEBRUARY, 2021
PRONOUNCED ON : 07th JULY, 2021**

JUDGMENT:-

. Rule. Rule made returnable forthwith and heard finally
with consent of learned counsel for the parties.

2. The challenge in this writ petition is to the order dated 13.04.2017, passed by the Member, Industrial Court, Latur in Complaint (ULP) No.171 of 2013. By the impugned judgment and order, the Complaint (ULP) preferred by respondent No.1 (for short 'the respondent employee'), came to be allowed in terms of the following order:-

"1. Com/ULP/No.171/2013 is partly allowed.

2. The respondent No.1 is directed to forward a proposal, complete in all respects to regularize the services of the complainant with retrospective effect and for granting all such monetary benefits and seniority from such date, vis-a-vis as have been conferred to the junior workman, to the respondent No.2 within a period of two months from the date of this order.

3. The respondent Nos. 1 & 2 are directed not to terminate the services of the complainant during the pendency of said proposal and further directed to pay difference between the salary/wages actually paid to the complainant and as payable in pursuance of the instant order in accordance with the pay-scale of the permanent employee w.e.f. vis-a-vis date that junior workman is extended such benefits.

4. Parties to bear their own cost. Proceeding is closed."

The petitioner – Udgir Municipal Council is, therefore, before this Court.

3. Perused the impugned judgment and the relevant documents.

The respondent employee had filed the Complaint (ULP) contending that he was appointed as a Watchman on daily wages way back in 1971. His services were orally terminated in 1974. He, therefore, filed Industrial Dispute – Reference (IDA) No.26 of 1994. It was allowed in August 2000, directing the petitioner Council to reinstate him in service, without back wages and continuity in service. As such, he has been reinstated with effect from 26.12.2000. Since then, he has been in continuous service.

One Smt. Sundarabai Meghe, Class-IV employee, junior to him, has been made permanent in service. The respondent employee, therefore, urged for the relief of making him permanent in service and grant of all the monetary benefits.

4. The Industrial Court found that a workman/employee, junior to the respondent employee was made permanent in service. The employee is, therefore, entitled for similar benefit.

5. Shri Parag Vijay Barde, learned Advocate for the petitioner – Council, would submit that the case of Smt. Sundarabai Meghe was altogether different. She was in service from July 1985.

Her services were terminated in 1992. Smt. Sundarabai, therefore, preferred Complaint (ULP) to the Labour Court. Her complaint was allowed in March 2001, with a direction to reinstate her in service with continuity and 50% back wages. The petitioner – Council had challenged the said order in revision before the Industrial Court and then in writ petition before this Court. It has, however, been unsuccessful. According to the learned Advocate, the respondent employee, therefore, could not claim parity with Smt. Sundarabai. Moreover, the respondent employee was working as a Watchman. Sundarabai is a Sweeper. The learned Advocate would further submit that the State of Maharashtra, in Urban Development Department, had in principle, decided to grant permanency benefit to the temporary employees working with it since before March 1993. Smt. Sundarabai had therefore been granted benefit of permanency. The learned Advocate would further submit that the respondent employee has not been appointed by following due recruitment process. A mere fact of completion of 240 days continuous service would not entitle him to seek permanency. According to the learned Advocate, the impugned order suffers on facts and law, as well. He, therefore, urged for setting aside the impugned order.

6. Shri V. P. Golewar, learned Advocate for the respondent - employee, invited this Court's attention to the gradation/seniority list of some of the Class-IV employees, wherein Smt. Sundarabai is shown junior to the respondent employee. According to the learned Advocate, the Apex Court in the case reported in AIR 2006 SC 1806, has directed the State authorities and its instrumentalities that the employees working for more than ten years without intervention of orders of this Court or Tribunals, may be considered for regularisation in service. Learned Advocate would further submit that the respondent is nearing the age of superannuation. He has been in service for little over 20 years. If the relief of permanency is not granted, it would be difficult for survival of his family members and himself. The learned Advocate would further submit that in Reference (IT) No.331 of 1974, the Industrial Tribunal, way back in 1983, had directed the petitioner – Council to make permanent those daily rated workmen who have been employed in the vacant post and engaged to do job of permanent nature. The learned Advocate reiterated the reasons given by the Industrial Court in support of the impugned order.

7. Admittedly, the respondent employee was appointed on daily wages way back in 1971. His services were orally terminated in 1974. He, therefore, preferred complaint Reference/IDA/No.26/94 before the Labour Court, Latur. It was allowed on 23.08.2000 with a direction to reemploy him with continuity in service and payment of back wages. The respondent employee has been re-employed on 26.12.2000 and has been in service since then.

8. In the case of **Pune Municipal Corporation and others vs Dhananjay Prabhakar Gokhale – 2006(4) Mh.L.J. 66**, it has been observed thus:-

“5. In R. S. Bhonde’s case (supra), the Apex Court had clearly ruled that whenever a post falls vacant or is newly created with the approval of the competent authority, the same is to be filled-in by following the procedure prescribed for selection of a candidate amongst the daily wage workers, without ignoring the seniority aspect of such candidates. Indeed, it was held therein that :

“as observed by this Court in Mahatma Phule Agricultural University and ors. vs. Nazik Zilla Sheth Kamgar Union and ors., 2001 (7) SCC 346 the status of permanency cannot be granted when there is no post. Again in Ahmadnagar Zilla Shetmajoor Union vs. Dinkar Rao Kalyanrao Jagdale, 2001 (7) SCC 356, it was held that mere continuance every year of seasonal work obviously during the period when the work was available does not constitute a permanent status unless there exist posts and regularization is done.”

6. *Similarly, in Dhampur Sugar Mills Ltd. vs. Bhola Singh, reported in 2005 AIR SCW 1572, it has been ruled by the Apex Court that, it is now wellknown that completion of 240 days of continuous service in a year may not by itself be a ground for directing regularisation particularly in a case when the workman had not been appointed in accordance with the rules.*

7. *So also in M. P. Housing Board and anr. vs. Manoj Shrivastava, reported in 2006 AIR SCW 1235, it has been held by the Apex Court that, where the employee is appointed as daily wager but not against a vacant post which was duly sanctioned by the competent authority nor the appointment is made by following the statutory law operating in the field, then the employee cannot be made permanent employee and only because a person had been working for more than 240 days, he does not derive any legal right to be regularised in service.*

8. *It obviously shows that merely because an employee continued to render service for 240 days in a year, that by itself will not be sufficient for him to claim permanency in the post, unless he is able to establish that such a permanent post duly approved by the competent authority is vacant and the claimant is duly eligible for being appointed in such post. Mere completion of 240 days of service by itself is not a carte blanche to an employee to claim permanency in the service of his employer.”*

9. True, in the gradation list, which is annexed as Exhibit R-3 at page No.73 of the compilation of this petition, Smt. Sundarabai is shown junior to the respondent employee. The petitioner – Council has, however, placed on record copies of orders passed in Complaint (ULP) preferred by Sundarabai and the proceedings taken against such decision in revision and writ petition,

as well. It is evident from these documents that Smt. Sundarabai had been in employment since July-1985 on daily wages. Her services were orally terminated in August 1992. The Complaint (ULP) No.50 of 1993 preferred by her, was allowed with a direction to reinstate her in service with continuity in service, without any back wages for the period of delay and with 50% of back wages from 04.10.1993 onwards till the date of her reinstatement. The said order was challenged in revision and then in writ petition, as well. The petitioner – Council was unsuccessful in those proceedings. Smt. Sundarabai was, therefore, reinstated in April 2001. In view of direction of granting continuity in service, she was deemed to have continued in service from the date of termination of her service. It, therefore, cannot be said that the respondent employee was senior to Sundarabai.

Be that as it may, even if it is assumed that the action of the petitioner – Council in making her permanent in service is not in consonance with law, the respondent employee cannot claim parity with irregularity/illegality.

10. The respondent employee failed to show that he was appointed against a vacant and permanent post. He also failed to

show that post is vacant against which he can be appointed and made permanent. In view of the legal proposition stated in the case of **Pune Municipal Corporation** (supra). The respondent employee cannot be made permanent in service. It doesn't mean that the petitioner – Council shall not make him permanent in service as and when time comes and occasion arises.

11. For the reasons given herein above, the order impugned in this writ petition is unsustainable. Interference therewith is warranted. The writ petition, therefore, succeeds. The same is allowed in terms of prayer clause [A]. Rule is made absolute.

[R. G. AVACHAT, J.]

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