

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

**WRIT PETITION NO. 15357 OF 2019**

Udgir Municipal Council  
Through its Chief Executive Officer  
Tq: Udgir Dist: Latur

**... Petitioner**

***Versus***

- 1] Dashrath Bhimrao Mamadge  
Age: 44 Years, Occu: Service  
R/o: Trade Union Office  
Jalkot Road, Udgir  
Tq: Udgir Dist: Latur **(Org. Complainant)**
- 2] Director of Municipal Administration  
Government Transport Service Building  
3<sup>rd</sup> Floor, Sarpochkhanwala Marg,  
Varli – Mumbai-30
- 3] Divisional Commissioner  
and Regional Director of  
Municipal Administration Aurangabad Division  
Commissioner Office, Aurangabad **... 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 and 3

....

**CORAM : R. G. AVACHAT, J.**

**RESERVED ON : 15<sup>th</sup> FEBRUARY, 2021  
PRONOUNCED ON : 07<sup>th</sup> 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 30.07.2019, passed by the Member, Industrial Court, Latur in Complaint (ULP) No.61 of 2017. 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. The complaint is partly allowed.*

*2. The respondent No.1 is directed to forward a proposal towards grant of permanency to the complainant complete in all respect, within a period 3 months to the respondent no.2, from the date of instant order.*

*3. The respondent no.2 is directed to consider the said proposal according to the seniority of the complainant amongst similarly situated workmen and availability of vacant posts with the respondent 1.*

*4. The respondent no.2 is directed to decide the said proposal within a period of three months from the receipt of the same from respondent no.1.*

*5. The respondent no.1 is directed not to terminate the services of the complainant without following the due process of law during the pendency and disposal of such proposal.*

6. *No order as to costs.*

7. *The proceedings are closed.”*

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

3. Perused the impugned judgment and the relevant documents.

The respondent employee preferred Complaint (ULP) No.61 of 2017 against the petitioner – Council and Director, Municipal Administration. It is alleged in the complaint that he had been in service with the petitioner – Council as a Sweeper on daily wages since 01.07.1982. His services were orally terminated on 05.12.1985. He, therefore, preferred industrial dispute before the Labour Court, Latur. The same was allowed in March 2004, with a direction to reinstate him in service. Since the said order was not implemented, he had preferred Complaint (ULP) No.390 of 2004. The same was allowed on 26.10.2004. The petitioner – Council preferred writ petition against the order passed by the Industrial Court. It has, however, been unsuccessful in the said proceeding. The respondent employee has thus been reinstated in service with effect

from 03.05.2007 as a Sweeper on daily wages. He has been in continuous service since then. As per the Industrial Employment Model Standing orders, he becomes entitle for permanency in service on account of having completed continuous service of more than 240 days. The employees junior to him have been made permanent in service.

4. The petitioner – Council had resisted the Complaint (ULP) No.61 of 2017, contending that the respondent employee has been in service as an outcome of an interim order passed by this Court in Writ Petition No.7302 of 2004. He cannot claim any benefit on the basis litigious employment. Industrial Employment Standard Orders Act, is not applicable to the petitioner – Council. The learned Advocate, therefore, urged for setting aside the impugned order.

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

6. Shri Parag Vijay Barde, learned Advocate for the petitioner – Council, would 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.

7. Shri V. P. Golewar, learned Advocate for the respondent - employee, invited this Court's attention to the gradation/seniority list of the Class-IV employees, wherein Smt. Sundarabai is shown permanent. 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 has been in service for many 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.

8. Admittedly, the respondent employee joined the service as a Sweeper, way back in July 1982, on daily wages. His services were terminated on 05.12.1985. The respondent employee preferred industrial dispute against the order of his oral termination. It was allowed with a direction to re-employ him in service. The petitioner – Council, preferred writ petition against the said order. By way of an interim order passed in the said writ petition (Writ Petition No.7302 of 2004), the respondent employee came to be reinstated with effect from 03.08.2007. Since then, he has been in continuous service. The question is whether the respondent employee would be entitled to the relief of permanency, merely on the ground of having completed 240 days of continuous service.

9. 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. ....”*

10. The respondent employee has been in continuous service since 03.08.2007, he had not been granted continuity in service from the date of oral termination of his service in December 1985. It appears that the respondent employee and the similarly placed employees were called upon to submit various documents pursuant to letter dated 22.08.2006. The said action, however, in no way can be termed to have conferred on the respondent employee right to become permanent in service. In the pleadings before the Industrial Court, there is no claim of parity with the case of Sundarabai Meghe, who has been made permanent in service.

11. 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.

12. 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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