

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

LETTERS PATENT APPEAL NO.52 OF 2011

IN

WRIT PETITION NO. 4562 OF 2005

Zibal Sadashiv Gajbhiye,
Aged about : years,
Occp : Service,
R/o Kamptee, Tah. Kamptee,
Distt. Nagpur.

... **APPELLANT**

V E R S U S

1. Municipal Council, Kamptee,
Tah. Kamptee, Distt. Nagpur,
Through its Chief Executive Officer,

2. State of Maharashtra,
(Through its Secretary)
Municipal Administration,
Mantralaya, Mumbai - 32.

3. President,
Municipal Council, Kamptee,
Dist. Nagpur.

... **RESPONDENTS**

None for appellant.

Shri S. W. Ghate, Advocate for respondent Nos.1 and 3.

Ms. S. S. Jachak, AGP for respondent No.2.

**CORAM: A.S. CHANDURKAR AND
G. A. SANAP, JJ.**

DATED : 20/07/2021

JUDGMENT : (PER : G. A. SANAP, J.)

1. The learned Member of the Industrial Court,
Nagpur vide order dated 02/08/2004 allowed the complaint filed

by the appellant in Complaint (ULP) No.798/1994 and granted him permanency and all benefits arising therefrom for Class-IV post with effect from the date of filing of the complaint i.e. 25/07/1994. The respondent No.1 had assailed the correctness of this Judgment and order passed by the Industrial Court by filing Writ Petition bearing No.4562/2005. The learned Single Judge allowed the writ petition vide order dated 19/07/2010 and set aside the order passed by the learned Member of the Industrial Court, Nagpur and dismissed the complaint. The appellant has assailed this Judgment and order passed by the learned Single Judge in this Letters Patent Appeal.

The facts leading to the filing of this Letters Patent Appeal are as follows :-

2. The respondent No.1 is a Municipal Council, a local authority constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. It is case of the appellant that he has been in employment of respondent No.1 since 1983. He joined the employment on daily wages. He has put in nearabout 30 years of service. It is stated that the respondent

No.1 granted benefits of permanency to other employees, who have been similarly situated and joined in 1987. According to the appellant, the respondent No.1 was under an obligation to grant benefit of permanency to him and regularize his services.

3. The respondent No.1 opposed the case of the appellant. It is contended that the appellant was employed on daily wages. There was no vacancy when he was employed on daily wages. The recruitment process was not initiated. It is, therefore, contended that the claim of the appellant that he be granted benefit of permanency in the public employment cannot be sustained.

4. The learned Member of the Industrial Court, Nagpur allowed the complaint filed by the appellant. The learned Single Judge did not agree with the view taken by the learned Member of the Industrial Court and as such, allowed the writ petition and rejected the complaint (ULP) No.798/1994.

5. Being aggrieved by the Judgment and order passed by the learned Single Judge, the appellant has come before this

Court in appeal. The grounds of challenge to the impugned order have been set out in the Memo of Appeal. The main ground is that the learned Single Judge has failed to appreciate the service of nearabout 30 years put in by the appellant with the respondent No.1. Another ground is that other employees appointed on daily wages and more particularly, similarly situated have been granted the benefit of permanency.

6. On the date of hearing, the appellant and his advocate remained absent. With the help and assistance of the learned advocate for the respondent Nos.1 and 3 and the learned Assistant Government Pleader for respondent No.2, we have gone through the record and proceedings. We have heard their arguments on merits.

7. Learned advocate for the respondent Nos.1 and 3 submitted that the learned Single Judge has appreciated the facts and the evidence in proper perspective and has applied the settled law to the facts. The learned advocate submitted that the employment with the respondent No.1 is public employment and therefore, nobody can be allowed to take a backdoor entry without

giving an opportunity to compete with the other eligible candidates. The learned advocate submitted that in view of the law laid down by the Hon'ble Supreme Court of India in the case of Secretary, State of Karnataka and others Vrs. Umadevi and others, reported in AIR 2006 1806, the claim of the appellant cannot be sustained. The learned Advocate further submitted that the view similar to the one taken by the learned Single Judge (Coram : A. S. Chandurkar, J.) in this case has been taken in Writ Petition No.190 of 2009 and other connected matters vide decision dated 05/09/2019.

8. Learned Assistant Government Pleader appearing for respondent No.2 supported the arguments advanced by the learned advocate for respondent Nos.1 and 3. The learned AGP submitted that the view taken by the learned Single Judge is the only possible view in the backdrop of the facts and applicable law.

9. The appellant was working on daily wages since 1983, as per the appointment given to him by the President of Municipal Council, Kamptee. The parties have adduced oral and documentary evidence before the Industrial Court. It has come on record in the evidence of the appellant that his appointment had

no approval from the Regional Director of Municipal Administration. The appellant has further categorically admitted that there were no vacancies in the Municipal Council, Kamptee when he joined on daily wages in 1983. In his cross-examination, he has categorically admitted that many daily wage workers like him and he was not sponsored by the Employment Exchange. His evidence would further show that the Municipal Council would appoint persons first and then their names would be sent to the office of Collector for approval. Perusal of evidence would further show that the Elected Ward Members on Committee gave permanency only to those daily wages, who were close to them. It is, therefore, crystal clear that at the time of employment of the appellant, there was no vacancy and employment given to the appellant was not in accordance with law. The employment with the Municipal Council is the public employment. The employment being public employment, all eligible persons must be given opportunity to compete and there has to be an open selection process. In this case, many daily wage workers like appellant were not sponsored by the Employment Exchange.

10. A Constitution Bench of Hon'ble Supreme Court of India in the case of Umadevi (supra) has considered the question of regularization in the public employment. The Hon'ble Supreme Court has held that there cannot be any misplaced sympathy in such matters and a person cannot claim the public employment through backdoor entry. The required procedure has to be followed. If the procedure is not followed, then the appointment made without following procedure is void *ab initio*.

11. In the decision rendered by one of us (Coram : A.S.Chandurkar, J.) in Writ Petition No.190/2009 and other connected matters, the same view has been taken. In our view, the point involved in this appeal is squarely covered by this decision.

12. The learned Single Judge has considered the decisions relied upon by the learned advocate for the appellant. The learned Single Judge on the basis of law laid down in the case of Umadevi (supra) came to the conclusion that the ratio in those Judgments would not be applicable to the facts of the case of the appellant. In our view, learned Single Judge has not committed any mistake. The legal position as set out hereinabove does not

permit us to accept the case of the appellant. The appointment given to the appellant on daily wages, cannot be granted permanency. The facts are crystal clear. We, therefore, conclude that there is no substance in the appeal. The appeal deserves to be dismissed. Hence, the following order :

ORDER

- I] The Letters Patent Appeal stands dismissed.
- II] In the peculiar facts and circumstances of the case, the parties shall bear their own costs.

(G. A. SANAP, J.)

(A.S. CHANDURKAR, J.)