

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

WRIT PETITION NO. 5425 of 1998

The Dhule Municipal Council
(Through the Chief Officer,
Dhule Municipal Council, Dhule).

... **Petitioner.**

VERSUS.

- 1) Ganesh (Kishor) Madhukar Patil,
Adult, Occ. Peon-cum-watchman,
Dhule Municipal Council,
At Dhule
- 2) Shalini Bhagwan Kokane,
Died Through her L.Rs :
- 2A) Ganesh Bhagwan Kokane,
Age 39 years, Occ. Nil,
R/o. 14, Near Maruti Temple,
Holi Chowk, Dhule, Tq. &
Dist. Dhule.
- 2B) Sunita Tukaram Gawade,
Age Major, Occ. Housewife
R/o. Pirkalyan, Jalna,
Tq. & Dist. Jalna.
- 2C) Kalpana Murlidhar Gawade,
Age Major, Occ. Nil,
R/o. Khanderao Maharaj Mandir,
Ranmala, Tq. & Dist. Dhule.
- 3) Vijay Jeevan Patil,
Adult, Occ. Clerk,
Dhule Municipal Council,
At Dhule.
- 4) Anil Sahebrao Sonar,
Adult, Occ. Clerk,
Dhule Municipal Council,
At Dhule.
- 5) Rajendra Sahebrao Wagh,

died through his L.Rs :

- 5A) Mayabai Rajendra Wagh,
Age 45 years, Occ. Nil,
R/o. At Post Tikhi,
Tq. & Dist. Dhule.
- 5B) Ashwini Rajendra Wagh,
Age Major, Occ. Nil,
R/o. At Post Tikhi,
Tq. & Dist. Dhule.
- 6) Girdhar Dhondu Sonar (Sonwane),
Adult, Occ. Peon-Cum-Watchman,
Dhule Municipal Council, At Dhule.
- 7) Dhanabai Dinkar Thakur
Died through her L.Rs. :
- 7A) Bharati Vitthal Thakur,
Age 36 years, Occ. Nil,
R/o. At Post Mohadi,
Tq. & Dist. Dhule.
- 7B) Narendra Vitthal Thakur,
Age 26 years, Occ. Nil,
R/o. At Post Mohadi,
Tq. & Dist. Dhule.
- 7C) Pradip Vitthal Thakur,
Age 24 years, Occ. Nil.
R/o. At post Mohadi,Tq. &
Dist. Dhule.
- 8) Aruna Bhimrao Ramraje,
Adult, Occ. Safai Kamgar,
Dhule Municipal Council, At Dhule.
- 9) Vimal Ukha Bhil,
Adult, Occ. Safai Kamgar,
Dhule Municipal Council, At Dhule.
- 10) Nana Dhanaji Sathe,
Died Through L.Rs. :
- 10A) Lilabai Nana Sathe,

- Age 52 years, Occ. Nil,
R/o. Ghar No. 42, Tikhi Road
Mohadi, Tq. & Dist. Dhule.
- 10B) Khandu Nana Sathe,
Age Major, Occ. Nil.
R/o. Ghar No. 42, Tikhi Road,
Mohadi, Tq.& Dist. Dhule.
- 11) Vaijayanta Prabhakar Sonawane,
Adult, Occ. Safai Kamgar,
Dhule Municipal Council, At Dhule.
- 12) Shahubai Narayan Alhat,
Adult, Occ. Safai Kamgar,
Dhule Municipal Council, At Dhule.
- 13) Mirabai Murlidhar Pawar,
Adult, Occ. Bag Kamgar,
Dhule Municipal Council, At Dhule.
- 14) Namdeo Teju Bhadane,
Died Through L.Rs.
- 14A) Sagunabai Namdeo Bhadane,
Age Major, Occ. Nil.
R/o. Kranti Chowk, Mohadi,
Tq. & Dist. Dhule.
- 14B) Yogesh Namdeo Bhadane,
Age Major, Occ. Nil.
R/o. Kranti Chowk, Mohadi,
Tq. & Dist. Dhule.
- 14C) Avinash Namdeo Bhadane,
Age Major, Occ. Nil.
R/o. Kranti Chowk, Mohadi,
Tq. & Dist. Dhule.
- 15) Santosh Wanji Mahala,
Adult, Occ. Safai Kamgar,
Dhule Municipal Council, At Dhule.
- 16) Bhimrao Abhiman Dhapate,
Died Through his L.Rs.

- 16A) Ratnabai Bhimrao Dhapate,
Age Major, Occ. Nil.
R/o. Bhatai Mata Chowk,
Mohadi, Tq. & Dist. Dhule.
- 16B) Dipak Bhimrao Dhapate,
Age Major, Occ. Nil.
R/o. Bhatai Mata Chowk,
Mohadi, Tq. & Dist. Dhule.
- 16C) Prashant Bhimrao Dhapate,
Age Major, Occ. Nil.
R/o. Bhatai Mata Chowk,
Mohadi, Tq. & Dist. Dhule.
- 16D) Ramakant Bhimrao Dhapate,
Age Major, Occ. Nil.
R/o. Bhatai Mata Chowk,
Mohadi, Tq. & Dist. Dhule.
- 17) Pramod Bhagwan Sonawane,
Adult, Occ. Clerk,
Dhule Municipal Council, At Dhule.
- 18) Madhukar Dashrath Shinde,
Died, Through his L.Rs.
- 18A) Arunabai Madhukar Shinde,
Age Major, Occ. Nil,
R/o. Bhatai Mata Chowk,
Mohadi, Tq. & Dist. Dhule.
- 18B) Atul Madhukar Shinde,
R/o. Bhatai Mata Chowk,
Mohadi, Tq. & Dist. Dhule.
- 18C) Chetan Madhukar Shinde,
Age Major, Occ. Nil,
R/o. Bhatai Mata Chowk,
Mohadi, Tq. & Dist. Dhule.
- 19) Kailash Daga Patil,
Adult, Sani Mukadam
Dhule Municipal Council, at Dhule.

- 20) Bebibai Ashok Ghode,
Adult, Occ. Safai Kamgar,
Dhule Municipal Council, At Dhule.
- 21) Pitambar Namdeo Kadre,
Died Through his L.Rs. :
- 21A) Jayavantabai Pitambar Kadre,
Age Major, Occ. Nil,
R/o. At Post Mohadi, Tq. &
Dist. Dhule.
- 21B) Jibhau Pitambar Kadre,
Age Major, Occ. Nil,
R/o. At Post Mohadi, Tq. &
Dist. Dhule.
- 22) Ravindra Raibhan Desale,
Died Through his L.Rs:
- 22A) Pratibha Ravindra Desale,
Age Major, Occ. Nil,
R/o. At Post Mohadi Tq. &
Dist. Dhule.
- 22B) Indrajit Ravindra Desale,
Age Major, Occ. Nil,
R/o. At Post Mohadi Tq. &
Dist. Dhule.
- 22C) Kajal Ravindra Desale (Patil)
Age Major, Occ. Nil,
R/o. Bhatai Mata Chowk,
Mohadi Tq. & Dist. Dhule.
- 22D) Shubhangi Ravindra Desale,
Age Major, Occ. Nil,
R/o. At Post Mohadi Tq. &
Dist. Dhule.
- 23) Bhagwan Shivaji Mandole,
Adult, Occ. Safai Kamgar,
Dhule Municipal Council, At Dhule.
- 24) Ravindra Shamrao Dhumal,
Adult, Occ. Mukadam,

Dhule Municipal Council, At Dhule.

- 25) Sunanda Dagadu Indais,
Adult, Occ. Safai Kamgar,
Dhule Municipal Council, At Dhule.
- 26) Ashok Namdeo Bhamare,
Adult, Occ. Peon,
Dhule Municipal Council, At Dhule.
- 27) Rupabai Sakharam More,
Died Through his L.Rs.
- 27A) Murlidhar Sakharam More,
Age Major, Occ. Nil.
R/o. At Post Mohadi, Tq. &
Dist. Dhule.
- 27B) Minabai Murlidhar More,
Age Major, Occ. Nil,
R/o. At Post Mohadi,
Tq. & Dist/ Dhule.
- 28) Akkabai Krishna Wagh,
Adult, Occ. Safai Kamgar,
Dhule Municipal Council, At Dhule.
- 29) Kishor Vishwanath Tote,
Adult, Occ. Safai Kamgar,
Dhule Municipal Council, At Dhule.
- 30) Anil Rajaram Shinde,
Died Through his L.Rs. :
- 30-a) Smt. Anita Anil Shinde,
Age 35 years, Occ. Nil.
- 30-b) Kalpesh Anil Shinde,
Age 10 years, Occ. Student.
- 30-c) Mayuri Anil Shinde,
Age 8 years, Occ. Student.
- 30-d) Chakuli Anil Shinde,
Age 3 years, Occ. Nil.

31) Vijay Kishanrao Lahamage,
Adult, Occ. Mukadam,
Dhule Municipal Council, at
Dhule.

... Respondents.

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Advocate for the Petitioner : Mr. Subodh Shah,
Advocate for the Respondent Nos.1 to 13, 16 to 20, 22 to 29 &
31 : Mr. N. L. Choudhary.

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 10.12.2021.

PRONOUNCED ON : 04.01.2022.

JUDGMENT :

The petitioner is a Municipal Council established and functioning under the Maharashtra Municipal Councils, Nagar Panchayats Act and Industrial Township Act, 1965 (hereinafter 'the Act'). Invoking Article 226 and 227 of the Constitution of India it is taking exception to the judgment and order dated 07.10.1996 passed by the learned Member of the Industrial Court Nasik in the complaints under Section 28 read with Item 5, 6, 9 and 10 of the Schedule IV of The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter 'the ULP Act') filed by the respondents, the operative part of which reads as under :

"1. It is declared that the Respondent has been indulging in unfair labour practice Under Item 6 of Schedule IV of the M.R.T.U. and P.U.L.P Act, 1971.

2. The respondent is directed to cease and desist from indulging into the unfair labour practices complained of.

3. The respondent is also directed to make the complainants permanent w.e. from 1-1-1993 and give them all the benefits that are available to the permanent employees to the employees to the post as shown below

from the said date.”

2. Though the Writ Petition is old one it raises the questions which are usually raised in these matters, in view of the directions of the Industrial Courts (*supra*). As usual learned advocate Mr. Shah for the petitioner would raise a submission that the petitioner is a Municipal Council. The respondents were appointed under some oral orders issued by the then President. These appointments were on daily wages. The posts on which they were appointed were non-existent. Those were neither sanctioned nor were there vacancies. The President had no power to make such appointments. Those were not advertised and no recruitment process was ever undertaken. The respondents, still, approached the Industrial Court by filing the complaint under ULP Act. He would further submit that the directions given by the Industrial Court are clearly beyond its competence and jurisdiction. In the absence of the posts no such directions could have been issued. Those are clearly in violation of the observations of the Supreme Court in the case of **Delhi Development Horticulture Employees' Union, Vs. Delhi Administration, Delhi and others; AIR 1992 Supreme Court, 789** and **Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors; A.I.R. 2006 Supreme Court, 1806**. Since there were no sanctioned posts, there was no question of petitioner Council engaging in any unfair labour practice within the meaning of Item 6 of Schedule IV of the ULP Act.

3. By referring to the decision of a division bench of this Court in the matter of **The Municipal Council, Tirora & Anr. Vs. Tulsidas Baliram Bindhade; 2016 (6) Mh.L.J. 867**, Mr. Shah would submit that after going through catena of judgments of the Supreme Court as also this Court, on a reference the division bench has clearly laid down that in the absence of vacant sanctioned posts with Municipal Council a workman who has put in continuous of 240 days cannot invoke Clause 4-C of Model Standing Orders (MSO) to claim permanency or regularisation. He would, therefore, submit that the order under challenge is clearly contrary to the law and may be

quashed and set aside.

4. Per contra, learned advocate Mr. Choudhary for the respondents would submit that the arguments as advanced on behalf of the petitioner-Council is not available to it in view of a checkered history regarding such irregular appointments by its Presidents over number of years. He would refer to the decision of this Court in the matter of petitioner Council, which was subsequently converted as Corporation, under the Maharashtra Municipal Corporation Act, in **Writ Petition No. 1028/2005; The Commissioner, Dhule Municipal Corporation, Dhule Vs. Smt. Pramila Ramdas Wagh and another** and several other connected matters decided by a coordinate bench of this Court on 10.07.2015, wherein similar directions of the Industrial Court *inter alia* regarding regularisation of such appointees was a subject matter of challenge. He would point out that this Court though held that in the absence of a permanent vacant post there could not be any unfair labour practice and to that extent the finding of the Industrial Court was set aside, the rest of the directions were upheld. The proposals were forwarded by the petitioner-Council to the State Government and in due course of time even the State Government by Government Resolution dated 04.03.2016 created number of posts of various cadre by granting approval to the staffing pattern. He would point out by referring to this Government Resolution that a total 1058 posts of Safai Kamgar are now available with the petitioner Council and the respondents can very well be absorbed.

5. Mr. Choudhari would further point out that in fact the the employees who have been subsequently regularised in view of the decision of this Court in the matter of **Smt. Pramila Ramdas Wagh and another (supra)** were junior to the respondents and therefore even on the ground of parity, irrespective of the legal scenario they will have to be regularised.

6. Learned advocate Mr. Shah, to the extent of this last submission of Mr.

Choudhari would respond by saying that the respondents herein are just sitting on the fence and never made any attempt to get this Writ Petition decided finally though it was filed way back in the year 1998 and the order was passed in their favour by the Industrial Court in the year 1996. The other employees in the matters of **Smt. Pramila Ramdas Wagh and another (supra)** were vigilant enough and could reap the benefit of the order of this Court and therefore they cannot now be allowed to claim parity with them.

7. I have carefully considered the rival submissions and perused the papers. One need not delve deep and would suffice to remember that in catena of judgments of the Supreme Court as also this Court which have been elaborately discussed and analyzed by the division bench in the matter of **Municipal Council Tirora (supra)** it has been held that there cannot be any question of unfair labour practice if there are no permanent vacant posts inasmuchas, it cannot be said that the employees were made to work for years with an object of depriving them the status and privileges of permanent employees. A clear distinction was made where it is the State or the instrumentalities of the State who are the employers, the recruitment wherein is regulated by the provisions of the Constitution of India and different statutes, where there cannot be any recruitment except by following the procedure prescribed for them. As against it, it was also pointed out that these principles would not govern the employers which do not have any such limitations on their powers to create posts. It is on the basis of such clear distinction that it was held that there was no inconsistency in the division bench decisions of this Court in the matter of **State of Maharashtra and other Vs. Pandurang Sitaram Jadhav; 2009 (Supp.) Bom. C.R. 840** and **Pune Municipal Corporation Vs. Dhananjay Prabhakar Ghokhale; 2006 (5) Bom.C.R.727** on one hand and **Ballarpur Industries Limited Vs. Maharashtra Lok Kamgar Sanghatana; 2016 (2) Mh. L.J. 183**, on the other.

8. Pertinently, this decision in the case of **Municipal Council Tirora (supra)** was rendered on 22.07.2016, however, it appears that it was not

placed before the Single Judge who decided the Writ Petitions in **Smt. Pramita Ramdas Wagh and another (surpa)** which was decided on 10.07.2015.

9. But then, admittedly, the decision in **Smt. Pramita Ramdas Wagh and another (surpa)** has reached finality. The petitioner Council then put up a proposal to the State Government and those employees were subsequently regularised.

10. In view of such peculiar state of affairs, in my considered view, the case in hand is squarely covered by the observations of the Supreme Court in the case of **Hari Nandan Prasad Vs. Employer I/R to Management of Food Corporation of India (2014) 7 SCC 190**, and particularly the following observations :

39. On a harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily-wage worker/ad hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily-wager, etc. may amount to back door entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the worker concerned does not meet the eligibility requirement of the post in question as per the recruitment rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some

scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.”
(emphasis supplied).

In view of such observations, when admittedly where number of similarly situated persons have already been regularised by the petitioner by suffering similar orders and directions, when subsequently even the posts have been sanctioned by the State Government as per the Government Resolution dated 04.03.2016, the respondents herein also will have to be given treatment at par.

11. Resultantly, though the impugned directions holding the petitioner Council having indulged in unfair labour practice is not sustainable, the rest of the direction to regularise the respondents deserves to be maintained.

12. The Writ Petition is partly allowed.

13. The declaration in the order under challenge in Clause 1 and 2 of the operative part (supra) is quashed and set aside whereas the third direction is maintained.

14. The Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

mkd/-