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

916 WRIT PETITION NO.3434 OF 2020

NAGAR PANCHAYAT SHINDKHEDA THROUGH ITS
CHIEF OFFICER
VERSUS
DAYARAM MORCHAND BHIL ALIAS SONAWANE AND
OTHERS

...

Mr A. D. Pawar, Advocate for petitioner;
Mr A. M. Gholap, Advocate for respondent No.1
Mr N. T. Bhagat, A.G.P. for respondents/State

WITH

WRIT PETITION NO.7421 OF 2019

NAGAR PANCHAYAT SHINDKHEDA THROUGH ITS
CHIEF OFFICER
VERSUS

NAJMA FAKIRA MEHETAR AND OTHERS

WITH

WRIT PETITION NO. 7429 OF 2019

NAGAR PANCHAYAT SHINDKHEDA THROUGH ITS
CHIEF OFFICER
VERSUS

KANIJA ASAD MEHATAR AND OTHERS

WITH

WRIT PETITION NO. 7430 OF 2019

NAGAR PANCHAYAT SHINDKHEDA THROUGH ITS
CHIEF OFFICER
VERSUS

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HURUNISA MURTEJA MEHATAR AND OTHERS

WITH

WRIT PETITION NO. 7420 OF 2019

NAGAR PANCHAYAT SHINDKHEDA THROUGH ITS
CHIEF OFFICER
VERSUS

FARIDABEE MUSLIM MEHATAR AND OTHERS

WITH

WRIT PETITION NO. 7418 OF 2019

NAGAR PANCHAYAT SHINDKHEDA THROUGH ITS
CHIEF OFFICER
VERSUS

MALEKA MANJUR MEHATAR AND OTHERS

WITH

WRIT PETITION NO. 7431 OF 2019

NAGAR PANCHAYAT SHINDKHEDA THROUGH ITS
CHIEF OFFICER
VERSUS

PARVIN ANJUM MEHATAR AND OTHERS

WITH

WRIT PETITION NO. 7432 OF 2019

NAGAR PANCHAYAT SHINDKHEDA THROUGH ITS
CHIEF OFFICER
VERSUS

SAYARABI AKHTAR MEHETAR AND OTHERS

WITH

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WRIT PETITION NO. 7433 OF 2019

NAGAR PANCHAYAT SHINDKHEDA THROUGH ITS
CHIEF OFFICER
VERSUS

SHARIPABEE MOHAMMAD MEHATAR AND OTHERS

WITH

WRIT PETITION NO.7419 OF 2019

NAGAR PANCHAYAT SHINDKHEDA THROUGH ITS
CHIEF OFFICER
VERSUS

SANGITA RAJESH (RAJENDRA) DODAVE AND OTHERS

...

Mr A. D. Pawar, Advocate for petitioner;

Mr S. S. Patil, Advocate for respondent No.1

Mr N. T. Bhagat, A.G.P. for respondents/State

Mr A. S. Shelke, Advocate for respondent No.3 in WP/7419/2019

CORAM : RAVINDRA V. GHUGE, J

DATE : 10th March, 2022

PER COURT:

1. In all these matters, the petitioner Nagar Panachayat, Shindkheda, District Dhule has challenged the Judgment and order delivered by the Industrial Court, dated 20/12/2019, by which, the complaints are allowed and the following directions are issued. :-

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ORDER

(1) Complaint ULP No. 41/2016 is hereby allowed with costs.

(2) It is hereby declared that, the Respondents No. 1 and 2 have been engaged in unfair labour practices under Items 5, 6 and 9 of the Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, regarding the service, particularly absorption and regularization and payment of wages, of the Complainant.

(3) The Respondent No. 1 and 2 are hereby directed by permanent injunction to cease and desist from being engaged in unfair labour practices declared as above or otherwise in regard with the services of the Complainant.

(4) The Respondents are hereby directed to take affirmative action for the absorption and regularization of the complainant on sanctioned vacant and permanent post of Sweeper on the establishment of Respondent No. 1 Nagar panchayat Shindkheda, with effect from the date of the sanction and creation of permanent post by approving the staffing pattern for the Respondent No.1.

(5) The Respondent No. 1 and 2 shall ensure that the Respondent No. 1 shall pay the Complainant the pay and allowances for the permanent, vacant, sanctioned post of Sweeper in accordance with the recommendation of 5th and 6th pay commission as have been made applicable by the orders No. नपप्रस / शिंदखेडा न.प./आकृतीबंध/समावेशन/स 3572/2013 / का-६ dated 17/06/2013 and नपप्रस/शिंदखेडा न.प./आकृतीबंध/समावेशन/स 3572/2013 / का-6/4696 19/12/2016 with effect from the date of the absorption

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and regularization of the Complainant on sanctioned vacant permanent post on the establishment of Respondent No. 1.

(6) If the Respondents fail to pay the arrears of pay and allowances to the Complainant within a period of three months from the date of this order, it shall carry interest at the rate of six percent per annum till realization.”

2. Having considered the strenuous submissions of the learned Advocates for the respective sides, it is apparent that these cases are covered by the Judgment delivered by this Court in **Mukhyadhikari Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao, 2015 (5) Mh.L.J. 75.**

3. The learned Advocate for the petitioner Nagar Panchayat submits on instructions that, after the Grampanchayat became a Nagar Panchayat, it had 44 vacant posts for ‘Safai Kamgar’ and some other category of workers, which were filled in, strictly going by the seniority of the Safai Kamgar. 21 out of 44 are sanctioned Safai Kamgar posts, out of which, 8 are vacant today and 13 have been filled in as per the seniority list. These are 9 Safai Kamgars as per the seniority list.

4. The 10th employee in Writ Petition No.3434/2020 Dayaram Morchand Bhil (Sonawane) was a driver with the Grampanchayat.

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He is presently working as a driver with the Nagar Panchayat. He submits that, as there is no post of driver available, being a Clause-IV employee, the petitioner can accommodate him at any such place, where he would be able to work in the said capacity and not as a driver. In the event, post for driver is created, he can be considered, provided until then, he is not absorbed on any other post.

5. The learned Advocate for the petitioner submits that he would take a call on this request and do the needful as is legally permissible.

6. It is well settled that the Industrial Court cannot direct absorption even if there are permanent posts available. It can only direct consideration of the proposals of such employees for absorption as the Nagar Panchayat is not the authority to grant regularization. In the light of this legal position, the directions issued by the Industrial Court, Dhule in Clause Nos.2, 3, 5 and 6 cannot be sustained.

7. The learned Advocate for the petitioner submits that the State Government has issued a Government Resolution dated 19/01/1970 for the formation of a specific Committee region-wise

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and the Divisional Commissioner of the said Division is the Chair person of the said Committee. The purpose was to have a dedicated committee for considering the proposals for regularization, keeping in view the Judgments delivered by this Court in several matters, like **Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao (supra), Chief Officer, Municipal Council, Tuljapur Vs. Baban Hussain Dhale in W.P. No.1843/2015, dated 26/02/2015 and Municipal Council, Tirora Vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J. 867.**

8. In view of the settled position of law, all these petitions are disposed off with the following directions :-

a) The directions in Clause Nos.2, 3, 5 and 6 are quashed and set aside.

b) The direction No.4 shall be replaced with the following direction :-

(i) The proposals forwarded by the petitioner with regard to the 'Safai Kamgar' shall be considered by the newly constituted Committee headed by the Divisional Commissioner, Nashik with reference to these cases and considering the vacant posts available

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and the seniority of such Safai Kamgar, these 8 posts shall be filled in by granting regularization to such Safai Kamgar;

(ii) The above exercise shall be completed, on or before 30/06/2022 and the order directing absorption would be passed prior to 31/07/2022.

(iii) Insofar as the other Safai Kamgar amongst these respondents are concerned, their proposal will be forwarded as and when there are vacancies available and they would be considered for absorption along with all similarly situated Safai Kamgar, strictly as per their seniority and on the availability of the vacant posts.

c) Insofar as the request of Dayaram Morchand Bhil is concerned, the same shall be considered by the petitioner within the prescription of law and if a post of driver is available, the proposal of the respondent Dayaram alongwith any other driver, if already in employment and not freshly recruited subsequently, would be forwarded to the concerned Committee, which shall consider the proposal

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for regularization strictly by the seniority of the drivers who are included in the proposal.

d) The direction of the Industrial Court that such regularization will be from the date of vacancies has occurred, provided that the employee is in employment on the said date, is sustained.

9. Needles to state, until the proposal of these original complainants are decided, they shall not be disengaged only on the ground that they are temporaries or daily wagers. This protection will not include cases of disciplinary action.

(RAVINDRA V. GHUGE, J.)

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