

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

WRIT PETITION NO.9868 OF 2017

1. Pramila Vilas Hannure,
Age: 48 years, Occu: Nil,
R/o: Near Kapileshwar Mandir,
Par Galli, Maliwada, Ahmednagar.
2. Deepak Bhikardas Aher,
Age : 47 years, Occu: Nil
R/o. Ladwani Galli, Vaijapur,
Tq. Vaijapur, Dist. Aurangabad.
3. Kachrusing Babusing Pardeshi,
Age : 41 years, Occu: Nil,
R/o. House No.5092, Sherkar Galli,
Maliwada, Ahmednagar.
4. Ganesh Nana Khele,
Age : Nil years, Occu: Nil,
R/o. H. No.204-1 Namrata Colony
Bhushan Nagar Kedgaon, Ahmednagar
Tq. and Dist. Ahmednagar.
5. Subhash Babasaheb Jagtap
Age : Nil years, Occu: Banpimpri,
Mandavgan Ahmednagar,
Tq. and Dist. Ahmednagar.
6. Laxman Bansi Mahajan,
Age : 48 years, Occu: Nil
R/o. 26, Municipal Colony, TV Centre,
Savadi, Ahmednagar, Dist. Ahmednagar
7. Narayan Lobhaji Harba,
Age : 46 years Occu: Nil,
R/o. House No.3213, Parsha Khunt,
Halwai Galli, Ahmednagar, Dist. Ahmednagar.
8. Nitin Vitthal Hucche,
Age : 44 years, Occu: Nil,
R/o. House No.47, Brahman Galli,
Panchpir Chawdi,
Ahmednagar, Tq. and Dist. Ahmednagar
9. Abdul Karim Haroon Khan,
Age : 46 years, Occu: Nil.
R/o. House No.742, Zendi Gate,
Ahmednagar, Tq. and Dist. Ahmednagar.
10. Janabai Prabhakar Nevhal
Age : 47 years, Occu: Nil,
R/o. H. No. 4956, Nevale Galli,

Maliwada, Ahmednagar,
Dist. Ahmednagar.

11. Rajashri w/o Sanjiv Raut,
Age : 52 years, Occu: Unemployed,
R/o. Bagde Mala, Balika Ashram Road,
Ahmednagar, Dist. Ahmednagar.

... **PETITIONERS**

VERSUS

1. The State of Maharashtra,
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai -32.
2. The Principal Secretary,
Urban Development Department-2 ,
Mantralaya, Mumbai -32.
3. Ahmednagar Municipal Corporation,
Ahmednagar, through its Commissioner.

... **RESPONDENTS**

WITH

WRIT PETITION NO.10964 OF 2017

1. Santosh Anandrao Nalge,
Age : 46 years, Occu: Nil,
R/o. Para Galli, Maliwada,
Ahmednagar, Dist. Ahmednagar
2. Shaikh Taj Mohammad Babulal,
Age : 51 years, Occu: Nil,
R/o. House No.796, New Hina Park,
Mukundnagar, Ahmednagar.
3. Sayyed Kaisar Issaq,
Age : 49 years, Occu: Nil,
R/o. House No.5362, Near Kamala
Neharu Park, Hatampura, Ahmednagar.
4. Usha Arvind Mhaske,
Age : 56 years, Occu: Nil,
R/o. Plot No.44, Sattha Colony,
Station Road, Ahmednagar,
Dist. Ahmednagar.
5. Sarojini Samual Shinde
Age : 51 years, Occu: Nil,
R/o. Mear Patil Hospital,
Kothi Station Road, Ahmednagar.
6. Raju Sadashiv Shinde,
Age : 53 years, Occu: Nil,
R/o. Burudgaon Road, Bhosale Akhada,

- Ahmednagar, Tq. & Dist. Ahmednagar
7. Jalindar Kisan Salve,
Age : 46 years, Occu: Nil,
R/o. Railway Station Road,
Shivneri Chowk, Bhimwadi,
Ahmednagar, Dist. Ahmednagar.
 8. Bhaskar Vilas Kale,
Age : 45 years, Occu: Nil,
R/o. House No.7, Vinayak Nagar,
Burudgaon Road, Ahmednagar.
 9. Chandan Shengya Chavhan,
Age: 58 years, Occu: Nil,
R/o. Shastrinagar, Kedgaon,
Ahmednagar, Dist. Ahmednagar.
 10. Vasant Baburao Gaikwad,
Age : 58 years, Occu: Nil,
R/o. Burudgaon Road, Machindranath Galli,
Ahmednagar, Tq. and Dist. Ahmednagar.
 11. Kisan Shankarrao Mhaske,
Age: 56 years, Occu: Nil,
R/o. Plot No.44, Station Road,
Sandhya Colony, Ahmednagar
 12. Shaikh Arif Babasaheb,
Age : 47 years, Occu: Nil,
R/o. Tambe Galli, Burudgaon,
Ahmednagar, Dist. Ahmednagar
 13. Gangubai Rambhau Aushikar,
Age : 48 years, Occu: Nil,
R/o. Opp. Civil Hospital, Lal Taki Road,
Gavaliwada, Ahmednagar
 14. Gorakh Dadasaheb Supekar,
Age : 55 years, Occu: Nil,
R/o. Supekar Wadi, At Post Kuldharan,
Karjat, Tq. and Dist. Ahmednagar.
 15. Sanjay Januappa Zarkande,
Age : 45 years, Occu: Nil,
R/o. 337, HUDCO, Savarkar Nagar,
Manmad, Tq. Manmad, Dist. Nashik
 16. Anjana Bhivaji Kadam,
Age : 55 years, Occu: Nil,
R/o. Plot No.19, Balaji Society,
Kedgaon, Tq. and Dist. Ahmednagar.
 17. Gorakh Rangnath Karale,
Age : 45 years, Occu: Nil,
R/o. Deogaon, Agadgaon,
Tq. and Dist. Ahmednagar.

18. Ramesh Sukhdeo More,
Age : Major years, Occu: Nil,
R/o. Dhawale Vasti, Pokhardi, Shendi,
Ahmednagar Tq. and Dist. Ahmednagar.
19. Ashok Dattatraya Kaware,
Age : 44 years, Occu: Nil,
R/o. Anand Nagar, Malhar Chowk,
Railway Station Road, Ahmednagar
20. Shaikh Gaffar Hussain Shaikh,
Age : 46 years, Occu: Nil,
R/o. House No.7119, Pinjar Galli,
Ahmednagar, Dist. Ahmednagar.
21. Bhausahab Dattatraya Honrao,
Age : 56 years, Occu: Nil,
R/o. House No.5, Sai Park,
Ahmednagar, Dist. Ahmednagar.
22. Santosh Fakirachand Hajare,
Age : 49 years, Occu: Nil,
R/o. Nagar Kalyan Road, Yashovardhan
Colony, Jadhavnagar, Nalegaon, Ahmednagar.
23. Mohan Vitthal Parbhane,
Age : 46 years, Occu: Nil,
R/o. 1546, Shani Galli, Zendi Gate,
Ahmednagar, Dist. Ahmednagar.
24. Bapu Rangnath Pathare,
Age : 45 years, Occu: Nil,
R/o. Bandh Pimpri, Mandav Gan,
Shrigonda, Tq. Shrigonda, Dist. Ahmednagar.
25. Nanasahab Sitaram Jagtap,
Age : 47 years, Occu: Nil,
R/o. Gavthan, Banpimpri,
Ahmednagar Dist. Ahmednagar
26. Rohidas Namdeo Jagtap,
Age : 43 years, Occu: Nil,
R/o. Banpimpri, Mandavgan,
Ahmednagar Dist. Ahmednagar.
27. Raju Thamaji Raskar,
Age : 45 years, Occu: Nil,
R/o. 827, Mal Galli, Samata Chowk,
Bhingar, Ahmednagar, Tq. and Dist. Ahmednagar.
28. Santosh Laxman Galande,
Age : 53 years, Occu: Nil,
R/o. Plot No.06, Dhavan Vasti
M.I.D.C. Road, Savedi Anager
Ahmednagar Dist. Ahmednagar.

29. Anil Bhausahab Pathare,
Age: 43 years, Occu: Nil,
R/o. Banpimpri, Mandavgan,
Ahmednagar, Dist. Ahmednagar.
30. Sarjerao Godaram Jagtap,
Age : 59 years, Occu: Nil,
R/o. Ambar Apartment Room No.213
Behind old Labour Court Savedigro,
Ahmednagar Dist. Ahmednagar
31. Dattusingh Ramsing Pardeshi,
Age : 56 years, Occu: Nil,
R/o. Bolhegaon Road, Chobhe Vasti,
Nagapur, Ahmednagar Dist. Ahmednagar
32. Vijaya Ashok Pawar,
Age : Major Occu: Nil,
R/o. Sai Baba Mandir, Javal
H.No. 68 Wagh Galli Nalegaon
Ahmednagar Dist. Ahmednagar
33. Nanda Vijay Lande,
Age : Major, Occu: Nil,
R/o. Warulacha Maruti Nalegaon
Ahmednagar Dist. Ahmednagar.
34. Bappusaheb Subhash Kardile,
Age: Major, Occu: Nil,
R/o. H. 41 – Ashiyana Colony
Pipeline Road, Maroti Mandir Savedi,
Ahmednagar Dist. Ahmednagar
35. Sunil Digambar Ware,
Age: 47 years, Occu: Nil,
R/o. House No.22, Shah Colony,
Govindpura, Ahmednagar Dist. Ahmednagar
36. Sunil Sopanrao Rohokale,
Age : Major, Occu: Nil,
R/o. Near, Warulacha Maruti
Rohokale Mala Nalegaon
Ahmednagar Dist. Ahmednagar
37. Baban Miru Rokade,
Age : Major, Occu: Nil,
R/o. F.C.I. Godown Behind Kedgaon Devi
Samta Colony, Shasaninagar Kedgaon Nagar
Ahmednagar Dist. Ahmednagar
38. Dilip Kashinathrao Rohakale,
Age : Major, Occu: Nil,
R/o. Near Maruti Mandir 293
Warulacha Maroti Road,
Ahmednagar Dist. Ahmednagar

39. Balu Sampatrao Aadhav,
Age : Major, Occu: Nil,
R/o. 6704 Rohakale Gali Near
Maruti Mandir, Nalegaon,
Ahmednagar Dist. Ahmednagar
40. Shahabai Revji Lande,
Age : 55 years, Occu: Nil,
R/o. 54, Lande Galli, Nalegaon,
Ahmednagar Dist. Ahmednagar
41. Rabhaji Kishan Umap,
Age : 50 years, Occu: Nil,
R/o. Opp. Chatrapati Shivaji Vyapari Sankul,
Municipal Colony, Nalegaon, Ahmednagar.
42. Shashikant Shivaji Gangekar,
Age : Major, Occu: Nil,
R/o. Sardar Patel Chok, Abhishek Nivas
H.No.1323 Vanjar Galli,
Ahmednagar Dist. Ahmednagar
43. Ravindra Sitaram Patait,
Age : Major, Occu: Nil,
R/o. H.No. 47 Gaurav Kunj
A'bad Road Renuka Nagar, Near Renuka
Mata Mandir, Opp. Vasant Tekadi
Ahmednagar Dist. Ahmednagar
44. Janabai Prabhakar Nevhal
Age : Major, Occu: Nil,
R/o. 4956 Neval Galli Malewada
Ahmednagar Dist. Ahmednagar
45. Rajesh S/o. Bansilal Bahot
Age : Major, Occu: Nil,
R/o. 4 No. Shale samor
H.No.1889 Zendi Gate,
Ahmednagar Dist. Ahmednagar.
46. Arun s/o. Vishnudas Sonawane,
Age : 53 years, Occu: Unemployed,
R/o. Junabajar, Ahmednagar,
Tq. Ahmednagar, Dist. Ahmednagar.
47. Indrajeet s/o. Chakranarayan Salve,
Age : 52 years, Occu: Unemployed,
R/o. 12-A, Amarpriti, Ganeshnagar,
Wadar Wadi, Near Pandit Hospital, Bhingar,
Ahmednagar, Dist. Ahmednagar.
48. Vijay s/o. Tanhaji Wagmare,
Age : 52 years, Occu: Unemployed,
R/o. Junabajar, Ahmednagar,
Ahmednagar, Dist. Ahmednagar.

49. Shri Rajesh s/o. Ananda Thange,
Age : 46 years, Occu: Unemployed,
R/o. Plot No.11, ST Colony,
Sudharshan apartment, Tapovan Road,
Ahmednagar, Dist. Ahmednagar.

... PETITIONERS

VERSUS

1. The State of Maharashtra,
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai -32.
2. The Principal Secretary,
Urban Development Department-2 ,
Mantralaya, Mumbai -32.
3. Ahmednagar Municipal Corporation,
Ahmednagar, through its Commissioner.

... RESPONDENTS

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Advocate for Petitioners : Mr. Avishkar S. Shelke
AGP for respondent Nos. 1 and 2 : Mr. Y.G. Gujarathi
Advocate for Respondent No.3 : Mr. S.P. Shah

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CORAM : MANGESH S. PATIL, J.
Reserved on : 09.12.2021
Pronounced on : 04.01.2022

JUDGMENT :

Heard. Rule in both the Writ Petitions. It is made returnable forthwith. At the joint request of the parties, the petitions are heard finally at the stage of admission.

2. The petitioners in both these Writ Petitions are coming with following prayers :

Writ Petition No.9868/2017

C. By issuing writ of Certiorari or any other writ, order or direction in the like nature, the impugned

order/communication dated 03.04.2017 issued by the Desk Officer, Urban Development Department, Mantralaya, Mumbai, may kindly be quashed and set aside.

- D. By issuing appropriate writ, order or direction in the like nature, the respondents be directed to make the petitioner employees permanent as per the judgment and order dated 18.02.1999 passed by the Ld. Member, Industrial Court, Ahmednagar on available vacant posts.*

Writ Petition No.10964/2017

- C. By issuing writ of Certiorari or any other writ, order or direction in the like nature, the impugned order/communication dated 07.01.2017 issued by the Desk Officer, Urban Development Department, Mantralaya, Mumbai, may kindly be quashed and set aside.*
- D. By issuing appropriate writ, order or direction in the like nature, the respondents be directed to make the petitioner employees permanent as per the judgment and order dated 17.07.1998 passed by the Ld. Member, Industrial Court, Ahmednagar on available vacant posts.*

3. The limited facts which are necessary to be mentioned are as follows:

- i) The petitioners were working with the respondent No.3 Municipal Council which was subsequently transformed into a Corporation under the Maharashtra Municipal Corporation Act were working on daily wages. Having completed 240 days in a calendar year but were continued for years together,

filed complaints with the Industrial Court under Section 28(1) read with Item Nos.5,6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter the ULP Act) seeking permanency and consequential benefits. The Industrial Court allowed the complaints by separate judgments dated 18.02.1999 and 17.07.1998 respectively. The respondent No.3 Corporation challenged these judgments and orders before this Court in Writ Petition Nos.3333/1999 and 3339/1999. The Writ Petitions were admitted but operation of the judgments of the Industrial Court were not stayed.

- ii(a) In both the Writ Petitions the in charge Assistant Commissioner of the respondent Corporation filed separate affidavits. In Writ Petition No.3333/1999 in his affidavit he stated that out of 40 employees only 3 were in service and the rest were not in service for more than 10 to 15 years.
- (b) In affidavit filed in Writ Petition No.3339/1999 he submitted that due to sanction of 305 post by the Directorate of Municipal Administration, out of 336 employees, only 212 employees were made permanent. It was also mentioned that 117 employees out of those 336 were not in service since long and had not reported to the duty.

- iii) A coordinate bench of this Court partly allowed both these writ petitions on 05.01.2017 and 08.09.2016 respectively holding that since the respondent No.3 was a Municipal Corporation could not have itself created posts and therefore it could not have been held guilty of any unfair labour practice. The judgments of the Industrial court were modified with following observations in paragraph No.7 and 15 of the Writ Petition No.3339/1999 and Writ Petition No.3333/1999 respectively which are relevant for decisions of the present Writ Petitions are as under :

Writ Petition No.3339/1999 -

7. The impugned common judgment of the Industrial Court dated 17.1.1998 stands modified as under:-

“(A) The complaints are partly allowed.

(B) There shall be no declaration of ULP under item 9 of Schedule IV against the petitioner.

(C) The petitioner shall forward the proposals of those 117 complainants, mentioned in Annexure X-4 to the affidavit dated 10.3.2016 of Shri Ashok D. Sable, to the Directorate of Municipal Administration, within a period of four weeks from today.

(D) The representatives of these 117 workers, which would comprise of only three members, with the liberty to include an Advocate amongst these three, shall appear on 18.11.2016, at 3.00 pm, before the Directorate of Municipal Administration, Mumbai.

(E) The petitioner / Corporation is duty bound to transmit a copy of this order to the said authority, with an intimation that the hearing would commence on 18.11.2016.

(F) The said authority shall consider the contention of these 117 complainants through their representatives, as well as the representative of the Municipal Corporation and shall, thereafter, take a decision as to whether these

117 complainants could be regularized in employment. Decision upon being taken shall be conveyed to the representatives of both the sides within three weeks.

(G) In the event any of these 117 complainants are aggrieved by the decision of the said authority, they shall be at liberty to seek redressal of their grievance as may be permitted in law.”

Writ Petition No.3333/1999 -

15. The impugned common judgment of the Industrial Court dated 18.02.1998 stands modified as under:

“(A) The complaints are partly allowed.

(B) There shall be no declaration of ULP under item 9 of Schedule IV of the MRTU & PULP Act, 1971 against the Petitioner.

(C) The Petitioner shall forward the proposals of the concerned employees to the Principal Secretary, Urban Development Department, Maharashtra State, Mantralaya, Mumbai 400032, within a period of FOUR WEEKS from today.

(D) The representatives of these concerned employees, which would comprise of only three members, with the liberty to include an Advocate amongst these three, shall appear on 06.03.2017 at 03:00 pm, before the Principal Secretary, Urban Development Department, Maharashtra State, Mantralaya, Mumbai - 400032.

(E) The Petitioner / Municipal Corporation is duty bound to transmit a copy of this order to the said authority, with an intimation that the hearing would commence on 06.03.2017.

(F) The said authority shall consider the contention of these employees through their representatives, as well as the representative of the Municipal Corporation and shall, thereafter, take a decision as to whether these employees could be regularized in employment. Decision upon being taken shall be conveyed to the representatives of both the sides within three weeks.

(G) In the event any of these employees are aggrieved by the decision of the said authority, they shall be at liberty to

seek redressal of their grievance as may be permitted in law.

(H) The above directions shall not be applicable to those employees mentioned in paragraph Nos.10, 11 and 13 as above.”

- iv) The petitioners seriously dispute the statements in the affidavit filed on behalf of the respondent corporation about several of them having not been in service for years together.
- v) Pursuant to the proposal as per the directions of this Court the respondent State Government and the Municipal Administration called a meeting. A staffing pattern of the respondent No.3 Corporation was revised *inter alia* sanctioning 1915 posts of Class IV cadre under different establishments out of which 234 posts are vacant.
- vi) It is now being alleged that in spite of the judgments of the Industrial Court as modified by this Court, the petitioners are not being regularized and instead a recruitment process has been undertaken. Hence this Writ Petitions.

4. The learned advocate Mr. Shelke referring to the above facts submitted that in spite of the directions by this Court, the respondents have deliberately refused to regularize the petitioners. He would submit that pursuant to the order of this Court dated 26.02.2020 the petitioners have filed their affidavits to the effect that though they have not been in the employment for years together, they have not acquired any alternate regular employment after 2003 and were wholly dependent of the out come of these

Writ Petitions and that they were working during these last 17 years as and when the work was available for their survival. He would therefore submit that there was no reason for the State Government not to accept the proposal for regularization of the petitioners.

5. The learned AGP for the respondent Nos. 1 and 2 and the learned advocate Mr. Shah for the respondent No.3 Corporation by referring to the affidavits in reply would submit that pursuant to the directions of this Court, the proposal was forwarded by the respondent No.3 Corporation to the respondent No.2 and it was duly considered. However, due to policy decision of the State Government and since the petitioners were merely appointed against leave vacancies on purely temporary basis they could not be regularized. The administrative expenses of the respondent No.3 Corporation had already exceeded the cap of 35% as laid down in the Government Resolution dated 04.05.2006 while approving the staffing pattern for the Municipal Corporations through out the State and by the orders/communication dated 07.01.2017 the State Government has rejected the proposal regarding regularization forwarded by the respondent No.3 Corporation. The rejection is on two counts. Firstly, the expenditure of the Corporation had already exceeded 35% which was the prescribed limit. Secondly, that these petitioners were out of employment from 1993 and as a policy decision, the State Government had merely resolved to regularize the appointments which were made only up to the year 1993. They would therefore submit that though unfortunately for the petitioners, it is a matter

of policy decision of the State Government and the issue would not be justiciable.

6. As can be appreciated from the rival contentions and the aforementioned facts and circumstances the only question that needs to be answered is as to if any further directions can be issued in these petitions which in substance seek execution of the orders passed by the Industrial Court in the petitioners' complaints and the directions issued by this Court in the earlier round of litigation.

7. To repeat, this Court had merely directed the respondent No.3 Corporation to forward a proposal for regularization of the petitioners and expected the State Government to consider it. It is trite that since thereafter the issue was with the State Government and squarely fell under its executive and legislative power. If as a policy decision and for whatever reasons, the State Government has rejected the proposal in respect of the petitioners, indeed, there would be a serious issue regarding its justiciability. It is trite that being a policy decision, this Court in exercise of the constitutional powers would be slow in examining its correctness or otherwise.

8. For that matter the Writ Petitions are absolutely devoid of legitimate and permissible grounds on which this policy decision of the State Government can be subjected to any scrutiny. When the State has taken a conscious decision not to regularize the petitioners since they were appointed after the cut off date 10.03.1993, though unfortunate for the

petitioners, there are no sufficient and cogent reasons and grounds which would enable this Court to transgress the administrative power of the State Government by undertaking a judicial review.

9. In this context it would be appropriate to refer the observations of this Court in similar matters of a different Municipal Council, in the case of **Shrirampur Municipal Council Vs. V.K. Barde and Ors. ; 2011 (4) Mh.L.J 875**. Though the facts in that matter were slightly different, those were similar in material particulars. Even the arguments that were advanced were similar to one advanced in the matters in hand. Following observations, to my mind are squarely applicable to the facts of the present matter as well :

“23. In present matters, the respondent trade union itself accepts absence of posts and inability of Municipal Council to create it. By demand 1, it sought increase in number of posts on establishment schedule & by demand 2, relief of grant of permanency has been asked. Thus absence of permanent posts or vacancies in sanctioned strength to accommodate its members is/was never in dispute. Respondent Union was aware of the bar on powers of its employer due to Section 76 of 1965 Act and had contended that prior approval of proposals therefor by State government was a time consuming process. It is apparent that this statutory requirement of prior approval therefore could not have been dispensed with by the Industrial Court. Its consideration in from paragraph 37 onwards shows scrutiny of evidence about additional posts required and in para 38, a finding of absence of specific evidence about exact number thereof as required in various departments. Its entire application of mind therefore reveals absence of any evidence about number of sanctioned posts already available in concerned department or then about workload expected to be shouldered by permanent holders thereof. Continuation of large number of workmen on daily wages is no doubt prima facie indication of increased workload & need of

additional man power. But then this principle which may hold good for private employer can not always be extended to public employment. Exercise undertaken while sanctioning a particular number of posts in any compliment earlier needs to be reviewed in the light of alleged additional load and also capacity of such public employer/ State to incur expenditure therefor. Merely because daily wagers are being employed in public employment like present one, it may not warrant additional posts in all cases. Not only this, when salary is to come from public exchequer, ability to bear this extra burden either in full or in part, also assumes significance. The Government may even if satisfied with additional workload, due to other constraints, may not grant approval to creation of any post or some posts. The task essentially consists of a decision on executive side. Admittedly, State Government is releasing grants for paying DA to workmen within sanctioned strength and also for various municipal developments. What expenditure should be viewed as on establishment & when it should be treated as for development work or towards rendering service is therefore within province of State, provided it applies those accounting norms on uniform basis. Industrial Court has not recorded a finding that the said treatment in present case is contrary to such norms or discriminatory. Opinion of Industrial Court that expenditure on wages of field staff can not be accepted as establishment expenditure is therefore unsustainable. Similarly when Municipal Council is required to pay less amount as daily wage, finding that after grant of permanency, it will start receiving 85% grants towards DA and its burden gets reduced is erroneous. Municipal Council has to release more amount towards basic salary as also pay other allowances to such incumbent. It also has to shoulder 15% of the DA. The conclusion that as workmen on daily wage already working are being given permanency, there is no new recruitment or creation of new posts is equally unsustainable. Without verifying the mode & manner in which these 198 workmen got the work & their eligibility for the same, a blanket direction for grant of permanency to one & all is unconstitutional. Respondent trade union has not brought on record necessary material on record and effort before this Court is to justify the allotment of work contending that no statutory provisions regulate it. Thus constitutional scheme as noticed above is being ignored. Not only this, but stand that as per settled practice, first a direction like impugned direction is to be

- obtained from Industrial Court & then State Government is to be approached seeking required "prior approval" also overlooks mandate of Art. 14 and other eligible aspirants who lose an important opportunity in their life.*
25. *Argument that State Government has become party to award & is bound to implement it as it permitted said award-II to be published in gazette is equally misconceived. The dispute was between Municipal Council and trade union of its workmen. State Government was never party to that dispute & was not in picture before the Industrial Court. Trade Union also did not claim any relief against or relationship with State. State Government came to be joined for the first time before this Court in WP 3238/1992. Hence, S. 17A of IDA has no application here. Moreover, as per Section 18(2) thereof, the award is binding only on parties thereto viz. Municipal Council & respondent trade union.*
 28. *It is apparent that work provided to members of respondent trade union is not after conducting any competitive & open selection process. It is not against any sanctioned post or vacancy. Hence, their continuance in employment is not irregular but illegal. Even State Government can not regularize it as one time measure. The workmen can not contend that they were/are not aware of constitutional requirements or statutory provisions in this respect. Stand that they have to first obtain suitable direction from Industrial Court & then Municipal Council has to approach State Government for creation of requisite number of new posts is misconceived. These members had no right to post and hence, can not legitimately expect permanency or pension or then compassionate employment for their dependents. What ever benefits they could derive till now do not & can not cloth them with any better right either in law or equity. Arguments to show sympathy or to take lenient view & not to disturb the status-quo prevailing since long are misplaced and can not be accepted.*
 29. *WP 1641/1994, 176/1993, 5816 & 5817 of 1995 filed by the Municipal Council have been dismissed by this Court and that was not questioned further. WP 4044/1991 which came to be admitted for hearing along-with WP 3238/1992 has been disposed off on 12/12/2003 because of directions in WP 3238/1992. Parties before this Court did not seek any re-hearing in these WPs & same are not restored back for hearing. Reliance of Unions on standing order issued on 15/1/2004 about policy decision of State Government to absorb municipal employees in regular service shows a firm*

decision not to take such employees recruited after 11/3/1993 till 27/3/2000 on permanent pay scales. How cases of workmen prior to 11/3/1993 are treated by State Government is not demonstrated and in any case, such policy decision is of no help in present challenge.”

With respect, I find no hesitation in subscribing to the views expressed in this decision.

10. It thus appears that in the earlier round of litigation when the parties were before this Court in Writ Petition No.3333/1999 and 3339/1999, this Court merely expected the respondents to take a policy decision so that the petitioners can be regularized if at all they could have been. A *bona fide* and genuine attempt has been made by the respondents while rejecting the proposal in respect of the petitioners as a matter of policy. If that is so, this Court while exercising a jurisdiction under Section 227 of the Constitution of India cannot sit in appeal and examine the virus of such decision.

11. The Writ Petitions are dismissed. The Rule is discharge.

(MANGESH S. PATIL, J.)

habeeb