

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

WRIT PETITION NO.10795 OF 2018

- 1) Shivaji s/o Pundlikrao Darade,
Age; 58 years, Occ; Retired,
R/o; At: Kendrewadi, Post; Andhori,
Tq. Ahmedplur, Dist; Latur.
- 2) Chatrabhuj s/o Apparao Bikkad,
Age; 65 years, Occ; Retired,
R/o; At Post; Kingaon,
Tq. Ahmedpur, Dist. Latur.
- 3) Tryambak s/o Shankar Chate,
Age; 61 years, Occ; Retired,
R/o; At: Gaulwadi, Post: Rani Savargaon,
Tq. Gangakhed, Dist. Parbhani.
- 4) Pandurang s/o Laxman Wagdive,
Age; 62 years, Occ; Retired,
R/o; At Post; Ramwadi,
Tq. Renapur, Dist. Latur.
- 5) Taterao S/o Namdev Sonkamble,
Age; 61 years, Occ; Retired,
R/o; At Post: Kingaon,
Tq. Ahmedpur, Dist. Latur.
- 6) Walmik S/o Kisanrao Nagargoje,
Age; 65 years, Occ; Retired,
R/o; Dampuri, Post: Rani Savargaon,
Tq. Gangakhed, Dist. Parbhani.
- 7) Gangadhar S/o Nivruttirao Gade,
Age; 60 years, Occ; Retired,
R/o; At Post: Rani Savargaon,
Tq. Gangakhed, Dist. Parbhani.
- 8) Ram S/o Gurubasappa Dhonde,
Age; 58 years, Occ; Retired,
R/o; At Post; Ahmedplur,

Tq. Ahmedpur, Dist; Latur.

- 9) Madhukar s/o Madhavrao Kadam,
Age; 58 years, Occ; Retired,
R/o; At Post: Bori,
Tq. and Dist; Latur.
- 10) Smt Sheshabai W/o; Ram Kegode,
Age; 61 years, Occ; Household,
R/o; At: Shenkud, Post: Ahmedpur,
Tq. Ahmedpur, Dist; Latur.

...PETITIONERS

V E R S U S

- 1) The State of Maharashtra
Through its Chief Secretary,
Rural Development & Water
Conservation Department,
Madam Kama Marg, Hutatma Chowk,
Mantralaya, Mumbai-32.
- 2) The Chief Executive Officer,
Zilla parishad, Latur, Dist. Latur.
- 3) The Member Secretary,
Maharashtra Jeewan Pradhikaran,
Express Tower, Nariman Point,
Mumbai-32.

..RESPONDENTS

WITH

WRIT PETITION NO. 10810 OF 2018

- 1) Madhav s/o Yeshwantrao More,
Age; 55 years, Occ; Service,
R/o; At Post: Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
- 2) Bhagwan S/o; Mugaji Kamble,
Age; 54 years, Occ; Service,

R/o; At: Ummrga Ye, Post: Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

- 3) Shivaji S/o; Dagadu Bhosle
Age; 56 years, Occ; Service,
R/o; At: Kingaon, Post: Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
- 4) Yeshwant S/o; Ganesh Mundhe,
Age; 57 years, Occ; Service,
R/o; At: Kingaon, Post: Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
- 5) Shambhaji S/o Manik Nagargoje,
Age; 55 years, Occ; Service,
R/o; As Post: Andhori,
Tq. Ahmedpur, Dist. Latur.
- 6) Vitthal S/o; Shivram Musale,
Age; 56 years, Occ; Service,
R/o; At Post: Andhori,
Tq. Ahmedpur, Dist. Latur.
- 7) Dattatraya s/o Nilkanth Kendre,
Age; 54 years, Occ; Service,
R/o; At: Kendrewadi, Post: Andhori,
Tq. Ahmedpur, Dist. Latur.
- 8) Dnyanoba S/o Mahitapati Holmbe,
Age; 57 years, Occ; Service,
R/o; At Post: Ramwadi,
Tq. Renapur, Dist; Latur.
- 9) Venkat s/o Taterao Kendre,
Age; 56 years, Occ; Service,
R/o; At : Kendrewadi, Post: Andhori,
Tq. Ahmedpur, Dist. Latur.
- 10) Shankar s/o Madhav Panchal,
Age; 55 years, Occ; Service,
R/o; At Post: Kingaon,
Tq. Ahmedpur, Dist. Latur,
- 11) Somnath S/o; Babayya Swami,

Age; 54 years, Occ; Service,
R/o; At Post: Chapoli,
Tq. Ahmedpur, Dist: Latur.

- 12) Prabhakar S/o; Tukaram Kendre,
Age; 57 years, Occ; Service,
R/o; At Post: Anandwadi, Post: Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
- 13) Sanjay S/o; Manmathappa Pune,
Age; 56 years, Occ; Service,
R/o; At Post: Sonkhed,
Tq. Ahmedpur, Dist; Latur.
- 14) Laxman S/o Mariba Kegade,
Age; 54 years, Occ; Service,
R/o; At Shenkud, Post: Ahmedpur,
Tq. Ahmedpur, Dist; Latur.
- 15) Bhimrao S/o; Ramrao Jadhav,
Age; 57 years, Occ; Service,
R/o: At Post: Thergaon,
Tq. Ahmedpur, Dist. Latur.
- 16) Sayyad Anwar Ali S/o Afsar Ali,
Age; 55 years, Occ. Service,
R/o; At Post: Renapur,
Tq. Renapur, Dist. Latur.
- 17) Udhav S/o Harischandra Pawar,
Age; 54 years, Occ; Service,
R/o; At Post: Latur,
Tq. Latur, Dist. Latur.
- 18) Babasaheb s/o Venkati Majage,
Age; 57 years, Occ; Service,
R/o; At Post: Nagdarwadi,
Tq. Chakur, Dist. Latur.
- 19) Dnyanoba s/o Madhavrao Panchal,
Age; 58 years, Occ; Service,
R/o: At Post: Kingaon,
Tq Ahmedpur, Dist. Latur.

- 20) Vaijnath S/o; Hawlingappa Swami,
Age; 57 years, Occ; Service,
R/o; At Post: Shirur Taj,
Tq. Ahmedpur, Dist. Latur.
- 21) Raosaheb S/o Chandu Waghmare,
Age; 55 years, Occ; Service,
R/o; At Post: Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
- 22) Ganpat S/o; Bapurao Rajure,
Age; 57 years, Occ; Service,
R/o; At: Hadolti, Post: Ahmedpur,
Tq. Ahmedpur, Dist; Latur.
- 23) Ramrao S/o Nivrutti Shembale,
Age; 56 years, Occ; Service,
R/o; At Post: Ahmedpur,
Tq. Ahmedpur, Dist: Latur.
- 24) Vikram S/o Makaji Narvate,
Age; 55 years, Occ; Service,
R/o: At: Shenkud, Post: Ahmedpur,
Tq. Ahmedpur, Dist: Latur.
- 25) Raju s/o Gurunath Gore,
Age; 56 years, Occ; Service,
R/o; At: Hadolti, Post: Ahmedpur,
Tq. Ahmedpur, Dist: Latur.
- 26) Plandurang S/o Narayan Vigve,
Age; 57 years, Occ; Service,
R/o; At : Hadolti, Post: Ahmedpur,
Tq. Ahmedpur, Dist: Latur.
- 27) Govind S/o; Bhujang Pawar,
Age; 56 years, Occ; Service,
R/o; At: Hadolti, Post: Ahmedpur,
Tq. Ahmedpur, Dist: Latur.
- 28) Namdeo S/o; Atmaram Belsarwad,
Age; 58 years, Occ; Service,
R/o: At : Hadolti, Post; Ahmedpur,
Tq. Ahmedpur, Dist: Latur.

- 29) Shaikh Mahamad Fakrusab,
Age; 57 years, Occ; Service,
R/o; At: Hadolti, Post: Amedpur,
Tq. Ahmedpur, Dist. Latur.
- 30) Annarao S/o Manikrao Kamble,
Age; 57 years, Occ; Service,
R/o; At: Hadolti, Post: Ahmedpur,
Tq. Ahmedpur, Dist: Latur.
- 31) Udhav S/o Bhoju Jangwad,
Age; 56 years, Occ; Service,
R/o; At : Shenkud, Post: Ahmedpur,
Tq. Ahmedpur, Dist: Latur.
- 32) Shivraj S/o Maroti Nilewar,
Age; 55 years, Occ; Service,
R/o; At/ Post: Hadolti,
Tq. Ahmedpur, Dist; Latur.

...PETITIONERS

V E R S U S

- 1) The State of Maharashtra
Through its Chief Secretary,
Rural Development & Water
Conservation Department,
Madam Kama Marg, Hutatma Chowk,
Mantralaya, Mumbai-32.
- 2) The Chief Executive Officer,
Zilla parishad, Latur, Dist. Latur.
- 3) The Member Secretary,
Maharashtra Jeewan Pradhikaran,
Express Tower, Nariman Point,
Mumbai-32.

..RESPONDENTS

WITH

WRIT PETITION NO. 7989 OF 2019

- 1) Shaikh Abdulla Shaikh Mohammad
Age; 68 years, Occ; Retired,
R/o At: Post Hadolti,
Tq. Ahmedpur, Dist; Latur.
- 2) Venkat S/o; Pandhari Pawar,
Died through Lrs..
Satyakala Venkat Pawar,
Age; Major, Occ; Nil,
R/o; At: Post Hadolti,
Tq. Ahmedpur, Dist. Latur.
- 3) Vijaykumar S/o; Gaurishankar Bagare,
Age; 66 years, Occ; Retired,
R/ At: Lakshmi Colony,
Old Ausa Road, Latur.
- 4) Vitthal S/o; Narayan Bigwe,
Age; 64 years, Occ; Retired,
R/o; At: Post Hadolti,
Tq. Ahmedpur, Dist; Latur.
- 5) Narsing S/o Ramrao Vandale,
Died through Lrs.
Smt. Sarjabai Narsing Vandale,
Age; 60 years, Occ; Nil,
R/o; At: Anand Wadi Post, Hadolti
Tq. Ahmedpur, Dist; Latur.
- 6) Ramakishan S/o; Gundiba Tekale,
Died through Lrs.
Smt. Sojarabai W/o; Ramkrishna Tekale,
Age; 59 years, Occ; Housewife,
R/o; At: Kanheritanda, Mantrinagar, Latur.
- 7) Baliram S/o; Sakharam Pawar,
Died Through Lrs.
Smt. Kalawadi Baliram Pawar,
Age; 59 years, Occ; Nil,
R/o; At: Post Hadolti,

Tq. Ahmedpur, Dist. Latur.

- 8) Prabhakar S/o; Haridas Pawar,
Age; 60 years, Occ; Retired,
R/o; At: Post Hadolti,
Tq. Ahmedpur, Dist; Latur.
- 9) Shivchandra @ Bapu So Narba Jagtap,
Age; 62 years, Occ; Retied,
R/o; At: Post Hadolti,
Tq. Ahmedpur, Dist; Latur.
- 10) Shaikh Vahidsab Hakimsab,
Died through Lrs.
Sheikh Anwarbee Wahid Sab
Age; 60 years, Occ; Nil,
R/o; At: Post Shirue,
Tq. Ahmedpur, Dist; Latur.
- 11) Ganpat S/o Nivruttirao Kesgire,
Age; 62 years, Occ; Retired,
R/o At: Post Wadhona (Bk),
Tq. Udgir, Dist. Latur.
- 12) Lalita Sudhakar Damkondwar,
Age; 60 years, Occ; Retired,
R/o; At: Hawgiswami Chowk,
Tq. Udgir, Dist. Latur.
- 13) Chandrakant S/o; Sidram Birajdar
Age; 64 years, Occ; Retired,
R/o; At: Shellal Road, Swami Viveknand
Nagar, (Mahajanniwas), Tq. Udgir,
Dist. Latur.
- 14) Bhanudas S/o; Ganpati Gundre,
Age; 65 years, Occ; Retired,
R/o; At: Ganganagar Nalegao Road,
Behind Usha Chitramandir
Tq. Udgir, Dist; Latur.
- 15) Nivritti S/o; Ganpati Gaikwad,
Age; 63 years, Occ; Retired,
R/o; At : Hebatpur, Post; Tondar,
Tq. Udgir, Dist; Latur.

16) Hanumant S/o; Durgagi Mane,
Age; 66 years, Occ; Retired,
R/o; At: Post Chera,
Tq. Jalkot, Dist. Latur.

17) Maruti S/o; Umaji Kamble,
Age; 61 years, Occ; Retired,
R/o; At: Post Hadolti,
Tq. Ahmedpur, Dist. Latur.

...PETITIONERS

V E R S U S

1) The State of Maharashtra
Through its Chief Secretary,
Mantralaya, Mumbai-32.

2) The Chief Executive Officer,
Zilla parishad, Latur, Dist. Latur.

3) The Member Secretary,
Maharashtra Jeewan Pradhikaran,
Express Tower, Nariman Point,
Mumbai-32.

..RESPONDENTS

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Advocate for Petitioners Nos. 1 to 10 : Mr.Bhumkar R.P.

AGP for Respondent No. 1-State : Mr.S.G.Karlekar

Advocate for Respondent No. 2 : Mr.Hon Ashwin V. and Mr. V.P. Patil

Advocate for Respondent No. 3 (in WP No. 10810/2018) : Mr.

A.G.Vasmatkar

Advocate for Respondent No. 2 (in WP No.7989/2019) : Mr. S.S. Manale

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**CORAM : RAVINDRA V. GHUGE, &
ANIL L. PANSARE, JJ.**

DATE : 29th JUNE, 2022

ORAL JUDGMENT : (PER - RAVINDRA V. GHUGE, J.)

1. Rule. Rule made returnable forthwith and heard finally, with the consent of the parties.

2. The identically placed petitioners have putforth prayer
Clauses (B), (C) and (D), as under :

(B) By issuing writ of mandamus or any other appropriate writ, order or direction, or writ of mandamus like nature and to directing the respondent Nos. 1 and 2 to declare that the petitioners are permanent Employee of Zilha Parishad and comply the agreement dated 15.09.1998 and pay the regular pension and family pension and other consequential benefits and also pay the arrears of 6th Pay Commission including the time bound pay scale as per the G.R. dated 01.04.2010.

(C) By issuing writ of mandamus or any other appropriate writ, order or direction, or writ of mandamus like nature and to directing the respondents to pay the regular pension and family pension and its consequential and also direction to pay the arrears of 6th Pay Commission and the time bound pay scale as per the G.R. dated 01.04.2010.

(D) Pending hearing and final disposal of the writ petition direction like nature and direct the respondent Nos. 1 and 2 to declare that the petitioners are permanent Employee of Zilha Parishad and comply the agreement dated 15.09.1998 and pay the regular pension and family pension and other consequential benefits and also pay the arrears of 6th Pay Commission including the time bound pay scale as per the G.R. dated 01.04.2010."

3. After these matters were considered by the earlier Bench
(Coram : Ravindra V.Ghuge and S.G. Mehare, JJ), an order was passed

on 15th September, 2021, which reads as under :

“1. We have briefly heard the learned advocates for the respective sides. There is no dispute that the Maharashtra Water Supply and Sewerage Board (presently the Maharashtra Jeewan Pradhikaran) had transferred water supply schemes at various districts to the zilla parishads. The scheme, along with the employees and the sanctioned posts which they have occupied with the board, were all shifted to the zilla parishad.

2. In identical set of facts, in Writ Petition Nos.947, 3659, 3660, 4030 and 4479 of 1997, this Court had delivered an order on 23.09.1998 recording the fact that the board had transferred the scheme, along with the employees after due notice to the union, to the respective municipal councils. The understanding was that all the posts in existence then with the board in a particular water supply scheme, would stand transferred to the municipal council. In the case in hand, a tripartite settlement was arrived at on 15.09.1998 between the MJP, the CEO Zilla Parishad, Latur and the Executive Engineer MJP Construction Division. By the said agreement, several activities were transferred to the zilla parishad. Notwithstanding clause-2 on internal page no.2 of this agreement, the services of those employees to be transferred to the zilla parishad as per clause-4 and 8 of the settlement, are mentioned in the annexure annexed to the settlement.

3. While delivering the order dated 23.09.1998 referred to above, this Court noted a purshis filed by the learned AGP dated 01.09.1998 signed by the Assistant Secretary, Government of Maharashtra, Water Supply and Sanitation Department declaring that all those employees who were in the employment of the board and connected with the water supply schemes, would be transferred to the municipal council along with the posts and that would mean that the posts would stand automatically created in the municipal council. It was also agreed by the State Government that they would not take an objection with regard to whether posts are created in the municipal council. The present case stands on an identical footing with the only difference that, in place

of the municipal council, it is the respondent zilla parishad.

4. The learned advocate for the zilla parishad, on the basis of the affidavit, does not dispute the settlement and contends that all such employees stood transferred to the zilla parishad pursuant to the settlement dated 15.09.1998 and some of them have now superannuated. The petitioners are praying for a declaration of permanency with the zilla parishad.

5. In view of the above, we direct respondent no.1 to make a specific statement in these cases, akin to the statement made by the Assistant Secretary, Government of Maharashtra, Water Supply and Sanitation Department in Writ Petition No.947 of 1997 and connected matters, on the next date.

6. We are listing this petition on 07.10.2021 to be called out after the urgent admission board.

7. We expect respondent no.1, either to enter an affidavit or submit a purshis in proper form, on or before 01.10.2021 pursuant to our above directions.”

4. We had, thus, directed respondent No. 1 to make a specific submission in these matters, akin to the statement made by the Assistant Secretary, Government of Maharashtra, Water Supply and Sanitation Department, in Writ Petition No.947 of 1997 and connected matters. An affidavit dated 21.10.2021 was filed by the Deputy Commissioner (Establishment), office of the Divisional Commissioner, Aurangabad, Division Aurangabad, on behalf of the State. Paragraph Nos. 2,3,4,5,6,7,9,10 and 11, of the said affidavit read as under :

“2. With respect to contention made by the petitioner, I say and submit that, as per information received from Water Supply and Sanitation Department, Mantralaya that,

Maharashtra Jeevan Pradhikaran made an agreement with Latur Zilla Parishad by which the water supply scheme was transferred to Latur Zilla Parishad and according to the clause of this agreement, the employees of concerned water supply scheme were transferred to Latur Zilla Parishad. Therefore as per agreement, salary, allowances and pension of those employees working on water supply scheme was required to be paid by concerned Zilla Parishad and there is no such provision made to seek either Maharashtra Government or Water Supply Department of this Government liable to provide for the same.

3. I say and submit that, as per the Circular dated 15.09.1994 issued by Rural Development Department all the Zilla Parishad were instructed to transfer all the completed Water Supply Schemes to the concerned Zilla Parishad. Also it was made clear that no fund would be provided for these employees of water supply schemes.

4. I say and submit that, as per Circular dated 27.08.2008 issued by Water Supply Department of this Government, all Zilla Parishad were instructed to pay the salary, allowances and pensions of working employees on water supply scheme from collected water taxes. The copy of circular dated 27.08.2008 is annexed herewith and marked as Exhibit R-1.

5. I say and submit that, Rural Development Department had also issued instructions in this regards by the Circular dated 04.06.2012. Also as per the Notification of this Government dated 17.11.1986, all the Zilla Parishad are instructed to create a separate Fund for maintenance of work completed through water supply schemes and out of their own fund Zilla Parishad has to deposit Min. 20% into this fund. The copies Circular dated 04.06.2012 and 17.11.1986 are annexed herewith and marked as Exhibit R-2Colly.

6. I say and submit that Rural Development Department had delegated powers to the Zilla Parishad to take employees of Water supply schemes on CRTE by the letter issued on date 01.12.1995, so that all the responsibility to pay the

salary, allowances and pensions of these working employees on water supply scheme was conferred upon concerned Zilla Parishad. The copy of letter dated 01.12.1995 is annexed herewith and marked as Exhibit R-3.

7. I say and submit that Hon'ble High Court of Mumbai, Bench at Nagpur in Writ Petition No. 357/2021 has disposed of on date 26.08.2021, by which Hon. High Court has made it clear that liability to pay salary, allowances and pensions of these working employees on water supply scheme is upon concerned Zilla Parishad. The copy of order dated 26.08.2021 is annexed herewith and marked as Exhibit R-4.

9. I say and submit that, Water Supply and Sanitation Department has given fund for only to pay for regular employees of Maharashtra Jeevan Pradhikaran and expenses are incurred by the Pradhikaran on Water supply schemes run by this Pradhikaran.

10. I say and submit that, Latur zilla Parishad employees working upon water supply schemes are not regular employees of Zilla Parishad; but they are working upon water supply scheme on CRTE basis. Also as per agreement these employees are transferred to the Zilla Parishad and not on establishment of Maharashtra Jeevan Pradhikaran. And Hence the provisions of Government Resolution dated 23.03.2017 do not apply to these employees.

11. I therefore, say and submit that, as per the prevailing policy of Government it would be proper for Zilla Parishad to accept the responsibility of paying salary, allowances and pensions to concerned employees."

5. In the above backdrop, we deem it appropriate to refer to the order passed by this Court on 23rd September, 1998, in Writ Petition Nos. 947, 3659, 3660, 4030 and 4479 of 1996 at Aurangabad. An identical issue was brought before the Court for consideration, when

the employees of the Water Supply Scheme, working under the Maharashtra Water Supply and Sewerage Board, presently the Maharashtra Jeevan Pradhikaran (MJP), under the Municipal Council, were transferred along with the work of Water Supply Scheme to Dhule, Jalgaon, Yerandol and Amalner Municipal Councils. A statement was made on behalf of the Municipal Councils on the basis of a purshis dated "last September 1998" (The date seems to have been incorrectly typed and could be 01st September, 1998). By virtue of this purshis, the transferred employees of the Municipal Council were declared to be in service of the Municipal Council. The entire scheme on which they were working in the Board was transferred to the Municipal Council.

6. On 21st April 2019, an affidavit has been filed by Sanjay Suryakant Ashtagi, Sub Divisional Engineer, Rural Water Supply Sub Division, Ahmedpur, Zilla Parishad, Latur stating therein, from paragraph No. 3 onwards, that earlier the Maharashtra Jeevan Pradhikaran used to supply drinking water to the public at large at various villages. The State Government took a policy decision to transfer the scheme of Water Supply to the Zilla Parishads, along with the employees, who were appointed by the MJP. A tripartite agreement dated 15.09.1998 was signed between respondent Nos. 1, 2 and 3 and the petitioner association.

7. He further states on oath that the G.R. dated 23.03.1999, requires the Zilla Parishad to pay the salary and allowances of the

employees and the costs of maintenance and repair of the Regional Water Supply Scheme, from the recovery of the water taxes and 20% of the cess funds of the Zilla Parishad. It is then stated that the Zilla Parishad has requested the State Government to release some funds, to pay their salary and allowances. Financial crisis was a reason stated in the said affidavit.

8. In paragraph No. 7 of the affidavit, it is stated that some of the employees, out of the 66 employees transferred from MJP to the Zilla Parishad, are being given benefits after completion of 12 years. As and when the funds are available, the Zilla Parishad would pay the benefits to the remaining employees. The Zilla Parishad has approached the State Government with a proposal dated 17.10.2017 for seeking release of more funds. Such funds are yet to be received.

9. We have perused the agreement between respondent Nos. 1, 2 and 3 dated 15.09.1998. It is this very agreement, on the basis of which the petitioners are making their claims. This agreement has not been denied by any of the respondents. In fact, it is admitted that this agreement was signed and by virtue of the same, the Water Supply Project was transferred to the Zilla Parishad and the employees of MJP would be the employees of the Zilla Parishad. Section 25-FF of the Industrial Disputes Act, 1947, comes into play, in as much as, it is specifically mentioned in the said agreement that the said provision

would be applicable to the employees of the erstwhile MJP, who would now be inducted in the service of the Zilla Parishad. It needs mention that in the typed copy placed before us by the learned counsel for the petitioner, the Industrial Disputes Act, 1947 is typed as 1949 and Section 25-FF is typed as Section 23-FF. Section 25-FF reads as under :

“25-FF. - Compensation to workmen in case of transfer of undertakings.- Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if--

- (a) the service of the workman has not been interrupted by such transfer;
- (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and
- (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.”

10. It is, thus, apparent that Section 25-FF under Chapter V-A of the Industrial Dispute Act, 1947 permits the transfer of management. While transferring such management, the new management has an option of either dispensing with the services of the employees by

applying Section 25-F, which is the law of retrenchment or absorb such employees in the services of the new management. It is well settled that the workers do not have any say in the transfer of management agreement, between the management and the new management. It is only when the new management decides either to retrench the workers or decides to close down the undertaking, that the issue of discharge of compensation arises, which gives rise to the cause of action to the workers, since they are the aggrieved parties. The scheme of law is well settled, since the transfer of employees to a new management by maintaining their service conditions, is not considered to be adversarial to the workers. In the agreement between the parties before us, the union of the petitioners is also involved and they have also signed the said agreement. It is thus, an agreement between the MJP, through the Superintendent Engineer, the Executive Engineer and the Chief Executive Officer of the Zilla Parishad and the Union.

11. Section 242-C of the Maharashtra Zilla Parishads and Panchyat Samitis Act, 1961, reads as under :

“242C. 1) On and after the commencement of the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act. 1992, where on the transfer or entrustment, from time to time, of powers and functions of the State Government, the Maharashtra Water Supply and Sewerage Board (hereinafter, in this section, referred to as "the Board") or, as the case may be, District Rural Development Agency (hereinafter in this section referred to as "the Development Agency"), to Zilla Parishad or Panchayat Samitis by or under this Act, the State Government may notwithstanding anything contained in any of

the provisions of this Act, or in any other law for the time being in force, direct, from time to time, that the services of such of the existing officers and servants of the State Government, the Board or, as the case may be, the Development Agency, who its opinion, are rendered surplus to the requirements of the State Government, the Board or the Development Agency, shall stand terminated and their posts shall stand abolished, from such date as may be specified prospectively or retrospectively by the State Government (hereinafter in this section referred to as "the specified date") and shall on that date (which may be different for different officers and servants) become the officers or servants of the Zilla Parishad.

(2) Every permanent or temporary employee of the State Government, or the Board or the Development Agency in respect of whom a direction is issued under sub-section (1) shall, from the specified date, be a permanent or temporary employee of the Zilla Parishad, as the case may be, against a permanent or temporary post, which shall stand created in the establishment of the Zilla Parishad with effect from the specified date.

(3) Any officer or servant so transferred shall hold his office under the Zilla Parishad by the same tenure, at the same remuneration and upon the same other condition of service and with the same rights and privileges as to pension, gratuity, provident fund and other matter as he would have held on the specified date if this section had not come into force. Any service rendered by him under the State Government, the Board or, as the case may be, the Development Agency shall be deemed to be service rendered under the Zilla Parishad. He shall continue to serve under the Zilla Parishad until his employment under the Zilla Parishad is duly terminated or his remuneration or other conditions of service are duly revised or altered by the Zilla Parishad in pursuance of the law which for the time being governs his conditions of service:

Provided that, the conditions of service applicable immediately before the specified date to the case of any such officer or servant shall not be

varied to his disadvantage, except with the previous approval of the State Government.

(4) The sums standing to the credit of the employees referred to in sub-section (1) in any pension, provident fund, gratuity or other like funds constituted for them shall be transferred by the State Government or the Board or the Development Agency, as the case may be, to the Zilla Parishad along with any accumulated interest due till the specified date and with the accounts relating to such funds. On and after the specified date the Zilla Parishad shall, to the exclusion of the State Government, the Board or, as the case may be, the Development Agency be liable for payment of pension, provident fund, gratuity or other like sums as may be payable to such employees at the appropriate time in accordance with the conditions of their service.

(5) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of services of any employee to the Zilla Parishad under sub-section (1) shall not entitle any such employee to any compensation under that Act or such other law and no such claim shall be entertained by any court, tribunal or authority.

(6) Nothing contained in sub-section (1) shall apply to any employee who by notice in writing given to the State Government, the Board or, as the case may be, the Development Agency, within two months from the specified date or such extended time as the State Government may, by general or special order, specify, intimates his intention of not becoming or continuing as an employee of the Zilla Parishad. Where such notice is received from any employee-

(a) in case of permanent employee, he shall be allowed to retire giving him the benefit of pension, gratuity, provident fund and other benefits accrued to him had he retired from the Government service or from the service of the Board or, as the case may be, the Development Agency on the specified date;

(b) in case of a temporary employee, his services shall stand terminated after giving him notice or remuneration in lieu of notice as per the existing service rules of the State Government, the Board or, as the case may be, the Development Agency.

(7) Notwithstanding anything contained in the foregoing sub-sections if the service of any employee of the State Government, the Board or the Development Agency stand transferred under sub-section (1) to the Zilla Parishad, the Zilla Parishad shall be competent after such transfer to take such disciplinary or other action as it thinks fit against or in respect of such employee having regard to any act or omission or conduct or record of such employee while he was in service of the State Government, the Board or, as the case may be, the Development Agency.]”

12. Section 242 C (2) of the Maharashtra Zilla Parishads and Panchyat Samitis Act, would indicate that with the induction of the employees from the Maharashtra Water Supply and Sewerage Board, which nomenclature was changed to ‘The Environment Engineering Works’ and presently ‘MJP’, the posts are deemed to have been created with effect from such induction. However, the State Government has an important role to play in the creation of such posts and as such the directions to respondent No. 2, to send proposal to respondent No. 1, for creation of posts and absorption of these petitioners with deemed dates, would be more appropriate.

13. In the light of the above, it cannot be an issue for debate as to whether, these petitioners are the employees of the Zilla Parishad.

Considering Section 25-FF of the Industrial Disputes Act, the agreement between the parties and the affidavits filed before us, the services of these petitioners continue from the date of their joining the MJP till their services are transferred to the Zilla Parishad, Latur. The continuity is maintained and these employees would, therefore, be entitled for such monetary benefits, as part of their service conditions, as are available to the employees of the Zilla Parishad.

14. In view of the above, these petitions are partly allowed, with the following directions :-

- a) Considering the length of services of these petitioners, the Zilla Parishad shall issue orders of granting permanency to them, depending upon the vacancies available with the deemed dates as and when the vacancies arose, since the regularization cannot be made in the absence of permanent posts.
- b) In the event of any paucity of posts, the Zilla Parishad shall prepare a proposal for all such petitioners and similarly situated employees awaiting regularisation, and forward the same to the Principal Secretary, Rural Development, Mantralaya, Mumbai i.e. respondent No. 1, on or before 30th August, 2022. The proposal would contain entire service details of these petitioners.
- c) After receiving such proposal, respondent No. 1 shall issue appropriate orders for creation of posts, on or before 30th December, 2022.

d) Needless to state, after absorption, these petitioners would be entitled for all monetary benefits from the deemed dates of regularization.

e) As some of the petitioners have attained the age of superannuation, they would also be included in the proposal and from the deemed dates of absorption, they would be entitled for monetary benefits as they have crossed the age of superannuation.

15. Rule is made partly absolute in the above terms.

(ANIL L. PANSARE)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE