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

906 WRIT PETITION NO.837 OF 2015
WITH CA/12977/2015 IN WP/837/2015

MUNICIPAL COUNCIL, NANDURBAR
VERSUS
SHRI HIRAMAN FAKIRA TIJVIJ AND OTHERS

...
Mr G. D. Jain, Advocate for petitioner;
Mr S. S. Patil, Advocate for respondents

CORAM : RAVINDRA V. GHUGE, J

DATE : 10th March, 2022

PER COURT:

1. This is a petition filed by the Municipal Council, Taloda, District Nandurbar (erstwhile District Dhule), through the Chief Officer, Municipal Council, Taloda. By this petition, the petitioner seeks to challenge the Judgment and order dated 20/08/2014 delivered by the Industrial Court, Dhule, in Complaint (ULP) No.74/2013.

2. By the impugned Judgment, the Industrial Court has issued the following directions :-

“(2) It is hereby declared that, the Respondent has been indulged in unfair labour practice and is directed to cease and desist from such unfair labour practice.

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(3) The Respondent is hereby directed that the Complainants No.(1) and (2) shall be given benefits of permanency w.e.f. 20/08/2006 and the Complainants No.(3) to (7) shall be given benefits of permanency w.e.f. 13/07/2010 with all consequential monetary and other service benefits and they shall be given benefits of continuity of service.

(4) The above order shall be complied within the period of three months from the date of this order.

(5) No order as to costs.”

3. I have considered the submissions of the learned Advocates for the petitioner and on behalf of the respondents. With their assistance, I have gone through the petition paper book and the impugned order.

4. Having considered the submissions and perused the record, it is apparent that much water has flowed under the bridge during the pendency of this petition over a period of 7 years. There is no dispute as regards the services of these employees.

5. A Resolution dated 19/08/2004 was passed by the Standing Committee of the Municipal Council bearing No.165, appointing respondent Nos.1 and 2 on temporary posts. A Resolution No.402 was subsequently passed on 06/10/2008 by the Standing Committee to recruit respondent Nos.3 to 7. Since then, these 7

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employees are working as 'Safai Kamgar'. By an order dated 20/11/2010, the District Collector suspended both the Resolution Nos.165 and 402 and it is pursuant to such order, that these petitioners received a notice of disengagement.

6. When they were issued with a notice for disengagement, they had approached the Labour Court in Complaint (ULP) No.44/2010, at Dhule. By an interim order dated 05/02/2011, below Exh. U-2, the Labour Court directed the petitioner, not to terminate the services of the complainants without following due process of law. Subsequently, Complaint (ULP) No. 44/2010 was disposed off by an order of the Labour Court, dated 05/03/2011, though unusual, viz. the entire complaint having been disposed off in terms of the order below U-2, on a request from the complainants and without even a trial in the matter. It is also a part of the record that these respondents have been working with the petitioner as 'Safai Kamgar'.

7. A Resolution No.58 is said to have been passed on 02/09/2014 by the Special General Body, vide which, it has been resolved that the Judgment of the Industrial Court should be complied with and monetary benefits should be made available to these 7 respondents. Copy of the said Resolution (2 pages) is

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taken on record and marked 'X-1' for identification.

8. The Union of such workers representing 6 respondents had issued a letter on 29/12/2014 to the District Collector, requesting for extending benefits under the 6th Pay Commission. The said letter (2 pages) is taken on record and marked 'X-2' for identification. In pursuance to the said communication, the District Collector directed the Chief Officer, Taloda Municipal Council vide communication dated 16/01/2015, to initiate appropriate steps for granting such benefits under the Pay Commission to these respondents. The said communication is taken on record and marked 'X-3' for identification.

9. It is apparent from the record available before me that, there was no advertisement for recruitment and there was no Panel of selectors who have selected and appointed these respondents through public competition. By the Resolution of the Standing Committee, they have been inducted in service. Though this would amount to a back door entry, considering **Secretary, State of Karnataka and others Vs. Uma Devi (3) and others, (2006) 4 Supreme Court Cases 1**, the fact remains that these 7 employees have been working for almost 15 years and are still in employment. Naturally, the Municipal Council will have to

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forward their proposals to the competent authority for consideration along with similarly situated employees, as per their seniority, for their regularization.

10. It is well settled that, when a State instrumentality, like Municipal Council or Municipal Corporation does not have power to create posts and/or grant permanency at its local level, unfair labour practice alleged under Item 6 cannot be declared against the employer. Similarly, there is no question of declaration of unfair labour practice under item 5 and item 9 in the backdrop of the Municipal Council having no power to regularize the service of any employee. With this, there cannot be allegation of failure to implement a settlement or agreement or award under Item 9 of the Schedule IV.

11. In view of the above, this petition is partly allowed with the following directions :-

(a) The direction at Sr. Nos.2, 3 and 4 are quashed and set aside and are substituted by the following directions :-

(i) The petitioner shall forward the proposals of these respondents along with similarly situated comparable workman/Safai Kamgar, for

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regularization, to the Directorate of Municipal Administration, within a period of 3 months.

(ii) The Competent Authority would consider the proposals and the available vacancies and would grant regularization to such Safai Kamgars, strictly going by their seniority, within a further period of 4 months.

(iii) The Municipal Council shall ensure that the proposals to be sent for regularization would include all comparable Safai Kamgars and not the proposal of only these 7 workers because they had approached this Court.

(iv) These Safai Kamgars would not be disengaged only for the reason that, they are temporary or the daily wagers. This protection would not apply in cases of disciplinary action.

(v) If there are vacant posts available for Safai Kamgar and these respondents are granted regularization as per their seniority, then they would be granted the deemed date of regularization from the date on which the posts were vacant.

12. Pending civil application would not survive and stands disposed off.

13. The amount of Rs.25,000/-, withdrawn by each of these respondents as a part of monetary benefits, would be adjusted after they are regularized and their arrears of monetary benefits are paid. The remainder amount, which is lying in this Court shall be withdrawn by the Municipal Council with accrued interest.

(RAVINDRA V. GHUGE, J.)

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