

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 6608/2017

- 1] Jayant s/o Shri Gajananrao Phating,
Aged about 54 years, Occupation-Service in Municipal Council,
R/o. Shitalwadi, near Eklava School, Ramtek,
District Nagpur.
- 2] Sau.Samta w/o Shri Ravindra Kamble,
Aged about 56 years, Occupation-Service in Municipal Council Ramtek,
R/o. Bhagwannagar, Nagpur.
- 3] Manish s/o Shri Gopalrao Rangari,
Aged about 45 years, Occupation - Service,
R/o. Ramadeswar Ward, Near S.B.I.,
Gandhi Chowk, Ramtek.
- 4] Smt. Leela Wd/o Shri Madhukar Godde,
Aged about 63 years, Occupation-Retired Employee of Respondent no.1,
R/o. Flat No.414, Anand Millenium Tower,
Hudkeshwar Road, New Narsala,
Nagpur.

..... **PETITIONERS**

...V E R S U S...

- 1] Municipal Council, Ramtek through
Chief Officer, Ramtek,
District Nagpur.
- 2] State of Maharashtra through
Secretary, Public Health Department,
Mantralaya, Mumbai-400 032.
- 3] Director of Municipal Administration,
3rd Floor, State Transport Building,
Sarpoach Khanwala Marg, Worli,
Mumbai – 400 030.

..... **RESPONDENTS**

 Shri A.Shelat, Advocate for petitioners.

Shri M.I.Dhatrak, Advocate for respondent no.1.

Mrs. K.R.Deshpande, Assistant Government Pleader for respondent nos. 2 & 3.

CORAM : A.S.CHANDURKAR and SMT. M.S. JAWALKAR, JJ.

ARGUMENTS WERE HEARD ON : 03.02.2022

JUDGMENT IS PRONOUNCED ON : 08.03.2022

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard learned counsel for the parties.

2. The petitioners who are engaged with Municipal Council, Ramtek - respondent no.1 on various posts seek a direction to be issued to the Director of Municipal Administration - respondent no.3 to create and sanction the posts held by the petitioners and thereafter to hold them entitled to all benefits flowing from their appointment in terms of Government Resolution dated 21.08.1985. In addition, the order dated 15.05.2017 passed by the Director refusing to sanction the posts held by them is also under challenge.

3. Relevant facts giving rise to present proceedings are that the Public Health Department of the State Government on 21.08.1985 passed a resolution to facilitate implementation of the Family Welfare Programme. It noted that the Central Government had sanctioned a Post Partum Centre at the Municipal Maternity Home, Ramtek by its letter dated 30.01.1985. The State Government accordingly sanctioned establishment of a Post Partum Centre at the Municipal Council by sanctioning ten posts of various categories including Operation Theatre Nurse, Operation Theatre Attendant, Laboratory Technician, Auxiliary Nurse Midwife and Driver amongst others. Sanction was also granted for incurring various recurring and non-recurring expenses in that regard. It is the case of the petitioners that the petitioner no.4 was appointed on the post of 'Auxiliary Nurse Midwife' in the year 1981 and her services

were confirmed by the Municipal Council on 14.11.1996. After the establishment of the said Centre, the petitioner no.4 discharged duties therein. The petitioner no.4 has since retired from service in the year 2010 on attaining the age of superannuation. The petitioner no.1 was appointed on the post of 'Laboratory Technician' on 24.11.1986 and his services were also confirmed by the Municipal Council on 14.11.1996. The petitioner no.2 was appointed on the post of 'Operation Theatre Nurse' on 31.07.1987 and her services were confirmed by the Municipal Council on 14.11.1996. The petitioner no.3 was appointed as 'Driver' and on completion of probation period of two years, his services were regularized by the Municipal Council by an order dated 28.06.2001.

4. The Central Government discontinued release of funds/grants for three schemes which included the Scheme with regard to the Maternity Home with effect from 01.04.2002. As a result, the State Government by an order dated 20.11.2002 decided to discontinue the said Scheme from 01.08.2002. According to the petitioners, on closure of the said Centre they continued working at the Maternity Home that was then being run by the Municipal Council. The pay-scales of employees of the Municipal Council were revised as per recommendations of Fifth and Sixth Pay Commissions. As the petitioners were not granted benefit of those recommendations, they approached the Industrial Court by filing Complaint (ULPN) No.225/2003 under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Municipal Council was arrayed as the opponent in the said proceedings and in its written submissions it took the stand that the petitioners were not the employees of the Municipal Council since they were

appointed under the Scheme framed by the Central Government. That Scheme was sponsored by the Central Government and it was stated that the Municipal Council was merely implementing that Scheme and disbursing salary as agent of the Central Government. It was specifically pleaded that there was no employer-employee relationship between the petitioners and the Municipal Council. Various documents were filed on record and the learned Judge of the Industrial Court after considering the entire material recorded a clear finding that the petitioners had been appointed by the Municipal Council. Their appointment orders did not indicate any condition relating to their engagement on the basis of the Scheme of the Central/State Government. It was noted that the Municipal Council had made the petitioners permanent in service as per document at Exhibit 76 dated 14.11.1996. It then noted that another employee Dr. Jaiswal who was also engaged under the Post Partum Centre had been receiving pensionary benefits as per Exhibit 79 and therefore, the claim of the Municipal Council was not acceptable. A finding was also recorded that the petitioners had been made permanent in the employment of the Municipal Council and that there was relationship of master and servant between them. The Complaint was accordingly allowed and the Municipal Council was directed to extend benefits as admissible as per recommendations of the fifth Pay Commission to the petitioners and also to grant them higher pay-scale on completion of twelve years of service. Another direction issued was of restraining the Municipal Council from changing the employer of the petitioners.

5. The Municipal Council challenged the aforesaid judgment in Writ Petition No. 4174/2006. By an order dated 19.06.2007 the writ petition was admitted and

leave was granted to add the State of Maharashtra through the Public Health Department as a respondent. On 16.07.2007 the Court passed a conditional order directing the petitioners to remove office objections within a period of four weeks by observing that on failure to do so, the writ petition would stand dismissed without reference to the Court. It appears that the writ petition was thereafter dismissed in default for failure to remove the office objections. The Municipal Council thereafter filed an application for restoration of the writ petition alongwith an application for condoning delay in filing such application. On 24.07.2013, this Court did not condone the delay in seeking restoration of the writ petition on the ground that the explanation furnished was not satisfactory. As a result of this order the challenge to the judgment of the Industrial Court came to an end and that judgment attained finality.

6. The petitioners continued in employment with the Municipal Council and hence on 07.04.2003 the Chief Officer of the Municipal Council issued a communication to the Director stating therein that though grants for the Maternity Home pursuant to the Scheme of the Central Government had been discontinued, the employees concerned were working at the Maternity Home. Request was made to take a decision with regard to release of the grants as well as to guide the Municipal Council as to the steps to be taken with regard to the service of the petitioners. On 30.11.2004 the Director informed the Chief Officer of the Municipal Council that the services of the excess employees of the Municipal Council could be absorbed as per Standing Direction No.23 of the Urban Development Department. The Chief Officer was informed that, if necessary, proposal for sanction of the posts in question be sent

under Section 76(2) of the Maharashtra Municipal Councils, Nagar Parishads and Industrial Townships Act, 1965 (for short, 'the Act of 1965') and a decision would be taken thereon. Thereafter on 10.09.2007 the Municipal Council passed Resolution No.83 resolving to send such proposal under Section 76(2) of the Act of 1965 for sanctioning the posts held by the petitioners and to pay them salaries as per prevailing pay-scales. Another communication in that regard was also sent on 03.06.2014 alongwith the judgment passed by the Industrial Court in the complaint preferred by the petitioners. The Municipal Council passed further resolution on the same lines on 31.07.2014. The Collector, Nagpur after considering the aforesaid facts and the resolutions passed by the Municipal Council recommended absorption of the petitioners with the Municipal Council by his communication dated 16.12.2014. As no steps were taken by the Director to consider the request as made, the petitioners approached this Court in Writ Petition No.5984/2017 praying that the Director be directed to decide the proposal in question. On 08.12.2016 the said writ petition was disposed of by directing the Director to decide the proposal for grant of sanction to the absorption of the petitioners within a period of four months.

Pursuant to the aforesaid order, the Director on 15.05.2017 considered the aforesaid proposal and held that ten posts were created pursuant to the order of the State Government dated 21.08.1985 and salaries to those holding the said posts were being paid from the grants of the Health Department of the State Government. However, as the Central Government had discontinued the said Scheme, the State Government had closed down the said Centre from 01.08.2002. Since the petitioners were employees under the said Scheme, it was not permissible to sanction the posts held by them or to absorb their services. Thus, on the ground that the petitioners

were employed under the Scheme of the Central Government and there being no policy of the Urban Development Department of the State Government to either create posts or to absorb services of the employees on those posts, it was not possible to accept the proposal in question. It is this order that is the subject matter of challenge in the present writ petition.

7. The Municipal Council in its reply has not disputed the various facts referred to hereinabove but has submitted that it was bound by the adjudication of the proposal by the Director since the matter was within the jurisdiction of the Director under Section 76 of the Act of 1965. In the affidavit filed on behalf of the Director it has been stated that after closure of the Post Partum Centre, it was not possible for the Directorate to sanction any post on the establishment of the Municipal Council in that regard. The instances quoted by the petitioners pertaining to Solapur and Ichalkaranji Municipal Council as well as the Family Welfare Centre of Jawahar Medical Foundation were sought to be distinguished. It was thus reiterated that the proposal had been rightly rejected.

The petitioners have subsequently filed Civil Application No.2429/2019 alongwith an additional affidavit wherein reference has been made to a subsequent Government Resolution dated 05.02.2019 in the matter of creation of posts for absorption of daily wagers who were appointed between 11.03.1993 and 27.03.2000 by various Municipal Corporations and Municipal Councils in the State. In that Government Resolution reference is made to an earlier resolution dated 20.04.2001 which pertains to absorption of such daily wagers appointed prior to 10.03.1993.

8. We have heard the learned counsel for the parties at length and with their assistance, we have perused the material on record. At the outset, it is necessary to refer to certain aspects that are not in dispute and the adjudication made therein that has attained finality. All the petitioners were the complainants in Complaint(ULPN) No.225/2003 in which they had prayed for a declaration that they were entitled to the benefit of their continuous engagement with the Municipal Council and service benefits flowing from such continuous service. A declaration that the Municipal Council could not deny the fact that it was the employer of the petitioners was also sought. The learned Member of the Industrial Court by the judgment dated 10.01.2006 after considering the evidence on record found that there was relationship of master and servant between the Municipal Council and the petitioners. The petitioners had been appointed by the Municipal Council and they had been subsequently made permanent in service. There was no evidence to indicate that the Central Government had any role to play in the matter pertaining to the service conditions of the petitioners. After noting that the petitioners were permanent employees of the Municipal Council, the complaint was allowed and the Municipal Council was directed to extend all benefits to the petitioners as per the recommendations of the Fifth Pay Commission and also to grant higher pay-scale on completion of twelve years service. The Municipal Council was restrained from changing the employer of the petitioners. This adjudication by the Industrial Court attained finality in view of dismissal of Writ Petition No.4174/2006 that was preferred by the Municipal Council as well as the order dated 24.07.2013 by which the application for restoration of the writ petition was dismissed. There is no

justifiable reason to deny the petitioners the benefit of the aforesaid adjudication. Another relevant fact that cannot be ignored is that the Municipal Council is in need of the services of the petitioners and the same is clear from Resolution No.83 dated 10.09.2007 and Resolution No.270/1 passed by the Municipal Council. This is followed by the recommendation made by the Collector on 16.12.2014 to the Director for the absorption for the services of the petitioners on the rolls of the Municipal Council. These relevant aspects are required to be kept in mind while considering the prayers as made by the petitioners.

9. Pursuant to the directions issued by this Court in Writ Petition No.5984/2017 the Regional Director of Municipal Administration has considered the matter under the provisions of Section 76 of the Act of 1965. It has been observed in the impugned order that the Maternity Home and Post Partum Centre was being run pursuant to the Scheme floated by the Central Government and the fact that the said Scheme had been discontinued from 01.08.2002. The impugned order proceeds on the basis that since the petitioners were engaged under that Scheme which was subsequently discontinued, the petitioners were not entitled to be absorbed by the Municipal Council. It is seen that the order passed by the Industrial Court in the complaint filed by the petitioners, the resolutions passed by the Municipal Council expressing the need for continuing with the services of the petitioners and the recommendation by the Collector have not been taken into consideration at all. The only reason given is the discontinuation of the Scheme floated by the Central Government.

10. As stated above, the petitioners have filed Civil Application (W) No.2429/2019 seeking permission to place on record additional documents. Reference is made to the Government Resolution dated 05.02.2019 by which the State Government had decided to absorb daily wage employees working with the Municipal Council between 11.03.1993 and 27.03.2020. This was in the context of earlier Government Resolution dated 20.04.2001 wherein the services of those employees engaged prior to 10.03.21993 were considered. The petitioners have also relied upon Circular dated 17.01.2018 granting sanction to the absorption of about 53 employees engaged by Ichalkaranji Municipal Council. Similar such absorption undertaken by Solapur Municipal Council on 05.06.1985 has also been referred to.

11. We find that the Director while passing the impugned order has failed to take into consideration various relevant aspects having material bearing on the request for absorption of the petitioners on the rolls of the Municipal Council. The order dated 15.05.2017 ignores the effect of the order passed by the Industrial Court on 10.01.2006. For failure to consider relevant aspect before adjudicating the matter under Section 76 of the Act of 1965 would render the order dated 15.05.2017 liable to be set aside on this count. In view of the fact that the jurisdiction to grant sanction under Section 76 of the Act of 1965 lies with the Director and as the impugned decision has been taken without considering the relevant material facts, the following order would serve the ends of justice.

12. Accordingly, the following order is passed :

(i) The order dated 15.05.2017 passed by the Director of Municipal Administration is set aside.

(ii) The Director of Municipal Administration shall re-consider the proposal for grant of sanction to the absorption of the petitioners on the posts on which they have been working for all these years afresh. While doing so, amongst all relevant aspects, the Director of Municipal Administration shall also take into consideration the effect of **(a)** the judgment of the Industrial in Complaint (ULPN) No.225/2003 dated 10.01.2006; **(b)** Resolution No.83 dated 10.09.2007 & Resolution No.270/1 passed by the Municipal Council and **(c)** the recommendation of the Collector dated 16.12.2014.

(iii) The said proposal shall not be rejected on the ground that the petitioners are not the employees of the Municipal Council since this issue has already been decided by the Industrial Court.

(iv) The Director of Municipal Administration shall within a period of eight weeks from the receipt of this judgment take a decision on the aforesaid proposal in accordance with law keeping in mind the observations made hereinabove.

(v) The petitioners as well as the Municipal Council are at liberty to place before the Director of Municipal Administration additional documents in support of their respective stands.

(vi) The decision taken by the Director of Municipal Administration shall be communicated to the petitioners.

Rule is made absolute in aforesaid terms with no order as to costs.

(SMT. M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)