

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

WRIT PETITION NO.11801 OF 2023

1. The State of Maharashtra
Through the Secretary,
Medical Education and Drugs
Department, Mantralaya,
9th Floor, GT Hospital,
Mumbai- 32.
2. The Director,
Medical Education and Research,
St. George's Hospital Compound,
Near C.S.T., Mumbai.
3. The Reader,
Health Training Squad, Paithan,
Dist. Aurangabad.

... **PETITIONERS**

V/s.

Arjun S/o Nivrutti Pache,
Age: 50 years, Occu: Service (as Peon),
R/o. At Post Avade Unchegaon,
Tq. Paithan, Dist. Aurangabad.

... **RESPONDENT**

...
Advocate for Petitioners / State : Mr. P.K. Lakhotiya
Advocate for Respondents :Ms. Preeti Wankhede
...

**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.**
DATE : 10th October, 2023

ORAL JUDGMENT (Per: Ravindra V. Ghuge, J.) :-

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

2. We have heard the learned advocate for the respective sides, extensively. The Petitioner is the State Authority which has challenged the judgment and order dated 26.08.2022 delivered by the learned Maharashtra Administrative Tribunal by which the O.A. No.335/2020 has been partly allowed with the following directions:

“(i) The respondents are directed to regularize the services of the applicant on the post of Peon in Class-IV category with effect from 27.07.2011 with all consequential service benefits as a regular employee in accordance with law.

(ii) The respondents are directed to comply with the said order within the period of three months from the date of this order.

(B) The present Original Application is rejected in respect of the impugned order dated 06.08.2019 issued by the respondent No.1.”

3. We are exercising our jurisdiction in the light of the judgments of this Court delivered in **Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade; 2016 (6) Mh.L.J.867, Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others; 2015 (5) Mh.L.J. 75** and

Municipal Council Tuljapur Vs. Baban Hussain Dhale; decided on 26.02.2015 in Writ Petition No.1843/2015.

For the sake of brevity, we are referring to the employee as 'Applicant' and the employer as 'Petitioner'.

4. The relevant facts and sequence of events can be advantageously adverted to as under:

a) The Applicant was appointed by the Petitioner at the Health Training squad at Paithan, which would fall under the Medical Education and Research Department, as a daily wager on 21.09.1996.

b) He was given 29 days appointments.

c) After every spell of appointment, a break of a day or two or a little more was introduced.

d) In 1997, the Applicant preferred O.A. No.507/1997 seeking employment in the Class 3 category. By judgment dated 25.08.2008, the Tribunal dismissed the O.A. concluding that he was not entitled to the Class 3 category.

e) The Applicant preferred Writ Petition No.7409/2008 which was dismissed as withdrawn by this Court vide order dated 26.07.2011 granting him liberty to approach the Courts under the Labour Laws in case his services are terminated.

f) The Applicant preferred Complaint (ULP) No.113/2011 seeking regularization in the Class 3 category. By judgment dated 02.01.2018, the ULP

Complaint was dismissed and the department was directed to forward a proposal of the Petitioner to the State.

g) The first proposal with regard to the Applicant is dated 02.02.2015 which is said to be still pending.

h) Pursuant to the order of the Industrial Court, a second proposal dated 11.04.2019, for considering the case of the Applicant for regularization in the Class 4 category, was submitted to the Government.

i) The Government rejected this proposal by order dated 06.08.2019.

j) The Applicant preferred O.A. No. 335/2020 before the learned Maharashtra Administrative Tribunal and by carrying out an amendment, the order of rejection of his second proposal dated 06.08.2019, was assailed.

k) The learned Tribunal, by the impugned judgment, partly allowed the O.A. in terms of the re-produced order, hereinabove. The O.A. was rejected to the extent of the order dated 06.08.2019 rejecting the proposal for regularization of the Applicant.

l) The Tribunal has concluded that the Applicant's temporary appointment on the post of Peon in the Class 4 category was protected by interim orders. After the disposal of the Writ Petition No.7409/2008 on 26.07.2011, there was no protective order of any Court or Tribunal. Hence, he was granted regularization from that date, without considering whether there is any vacancy and whether there are any similarly situated peons who may have a claim for regularisation on the basis of their seniority.

5. Considering the law laid down by this Court in **Municipal Council, Tirora** (supra) which is a judgment on reference to the larger bench, it is settled that employees who were working on daily wages or contractual basis in Government employment or state instrumentalities or departments of the Government, are not covered by Clause 4C of the Model Standing Orders, under the Industrial Employment (Standing Orders) Act, 1946. In short, completion of 240 days is not the criteria for granting regularization in such employments. Such daily wagers are to be regularized as and when permanent vacancies occur. A permanent vacant post has to be available and the seniority of the daily wagers is to be considered.

6. In **Secretary, State of Karnataka and Ors. V/s. Umadevi; 2006 4 SCC 1**, the Hon'ble Supreme Court has concluded that the State can introduce a one time scheme for regularization of such daily wagers who have been working for more than 10 years, in order to introduce a scheme by which such candidates can be considered for regularisation.

7. In **Sheo Narain Nagar and Ors. V/s. State of Uttar Pradesh and Ors.; AIR 2018 SC 233**, the Hon'ble Supreme Court has concluded in paragraph 8 as under:

“8. When we consider the prevailing scenario, it is painful to note that the decision in Uma Devi (Supra) has not been properly understood and rather wrongly applied by various State Governments.

We have called for the data in the instant case to enquire as to how many employees were working on contract basis or ad-hoc basis or daily wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per Rules but new device of making appointment on contract basis has been adopted, employment is offered on daily wage basis etc. in exploitative forms. This situation was not envisaged by Uma Devi (supra). The prime intent of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Uma Devi (supra) has been ignored and conveniently overlooked by various State Governments/authorities. We regretfully make the observation that Uma Devi (supra) has not been implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularizing the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Article 14, 16 read with Article 34(1) (d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara v. Union of India, MANU/SC/0237/1982: AIR 1983 SC 130 from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destitute, there being no provision for pension, retirement benefits etc. There is clear contravention of constitutional provisions and aspiration of down trodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Uma Devi (supra). Thus, the time has come to stop the situation where Uma Devi (supra) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Uma Devi (supra) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/adhoc basis or otherwise. This kind of action is not permissible, when we consider the pith and substance of true spirit in Uma Devi (supra)."

8. In **Umadevi** (supra), the Hon'ble Supreme Court has concluded in paragraph 44 as under:

“44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

9. There are peculiar facts before us which have a semblance of the original Applicant adopting shifting stands. After joining duties as a Peon in

1996 as a daily wager, he claimed appointment in the Class 3 category on the basis of his qualifications by filing O.A. No.507/1997. This was dismissed by the learned Tribunal by judgment dated 25.08.2008. This judgment was not interfered with by this Court when Writ Petition No.7409/2008 was dismissed as withdrawn by order dated 26.07.2011.

10. The fact situation has become a little complicated since the ULP Complaint No.113/2011 filed by the Applicant was dismissed by judgment dated 02.01.2018 by the Industrial Court, rightly recommending to the authorities to forward the proposal of the said complainant for being considered for regularization along with all similarly situated daily wagers. This direction was in tune with the law laid down in the **Municipal Council, Tirora** (supra). Unfortunately, the Government has rejected the said proposal dated 11.04.2019 by order dated 06.08.2019, keeping the earlier proposal dated 02.02.2015, pending.

11. The learned Tribunal has rejected the O.A. filed by the Applicant to the extent of his challenge to the said rejection dated 06.08.2019. While doing so, the learned Tribunal has located a date 27.07.2011 to grant regularization to the Petitioner from that specific date only because he had been working as a daily wager under the protective orders of the Court, till that date. In short, the learned Tribunal has applied the law of completion of 240 days in employment.

12. It is undisputed that when the Tribunal granted the relief that is impugned before us in this petition, the list of identically placed daily wagers as per their seniority, was not placed before it. The appropriate procedure could have been that the Tribunal could have verified as to which are the senior daily wagers vis-a-vis the Applicant, who have been granted regularization and if juniors have also been granted regularization, it would have indicated discrimination against him. The Applicant's position as per his seniority would have enabled the Tribunal to place him in between the senior daily wagers and the first daily wager junior to the Applicant, who have been regularised. Without following this course which is a crystallized position of law in view of **Municipal Council, Tirora** (supra), the learned Tribunal has proceeded to locate 27.07.2011 as the deemed date of regularisation.

13. In paragraph 17, the Tribunal has concluded that the Applicant's temporary appointment on the post of Peon in Class 4 category was protected by interim orders. After the disposal of the Writ Petition No.7409/2008 on 26.07.2011, there was no order of any Court or Tribunal protecting his temporary employment and, therefore, he was eligible for regularization from that date. This defies logic and reason.

14. We are afraid that the Tribunal has completely misdirected itself. At the same time, we need to record that the law laid down by this Court in **Municipal Council, Tirora** (supra) was never cited before the Tribunal.

15. In so far as the law laid down in **Sheo Narain Nagar** (supra) is concerned, the said ratio mandates employers to consider daily wagers for granting regularization by introducing a particular scheme. It is in tune with the said view taken by the Hon'ble Supreme Court, that we are modifying the impugned judgment. Considering the above facts and the law, we are convinced that this petition needs to be favourably considered. Nevertheless, the fact that the Applicant has been working for more than 2 decades, cannot be overlooked in view of Umadevi (supra) and Sheo Sharan (supra).

16. Hence, this **Writ Petition is partly allowed**. The impugned judgment is set aside to the extent of the directions in Clauses (i), (ii) and (b), re-produced above. The original Applicant is 52 years of age and has another 8 years to retire being in Class 4 category. We are, therefore, exercising our extra ordinary jurisdiction and we restore the proposal of the Applicant dated 11.04.2019 to be considered along with the pending proposal dated 02.02.2015, as per the following directions:

- a) All similarly situated daily wagers, as like the original Applicant, would be considered for regularization depending upon the number of vacancies available and as per the seniority list of such daily wagers, while considering the earliest proposal of the Applicant dated 02.02.2015.
- b) While considering the proposal of the Applicant, the Competent Authority / State shall call for an exhaustive proposal which would reflect all the Peons working on daily wages in the Class 4 category in the said department with their specific dates of joining.
- c) The Applicant would also be considered from the category of Project Affected Person since he has been appointed on the basis of the PAP certificate and if the policy of the State grants any preference to a Project Affected Person, such preference would be granted in favour of the original Applicant and he would be considered for regularization from the said category.
- d) The date on which a post is available for a Peon in the Class 4 category, as like the Applicant, the said date when the vacancy arose would be the deemed date for regularization of the concerned candidate.

For illustration, if the Applicant's turn as per the seniority list and / or from the PAP category, is to be considered as against an available vacancy, the date when the said vacancy arose which is being filled in by the Applicant, shall

be the deemed date for confirmation / regularization, notwithstanding any year in which the vacancy arose.

e) Let the above exercise be completed within a period of 150 days. In the event of shortage of vacancies, the pending proposals of similarly situated temporary employees shall not be rejected and shall be kept pending so as to be granted regularization as and when the vacancies arise.

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

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]