

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

**CONTEMPT PETITION NO.585 OF 2017
WITH
CONTEMPT PETITION NO. 700 OF 2019
WITH
CONTEMPT PETITION NO. 701 OF 2019
IN
WRIT PETITION NO. 12153 OF 2016**

**PRADIP BHIKA INGALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Mr. V.D. Sapkal, Senior Counsel i/b Mr. S.R. Sapkal,
Advocate for the petitioners.

Mr. B.V. Virdhe, A.G.P. for respondent – State.

Mr. Pradip Patil, Advocate for respondent No.2.

Mr. L.V. Sangeet, Advocate for respondent Nos.3 and 4.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 18th July 2023

ORDER:-

1. All these contempt petitions have filed by the respective petitioners to initiate proceeding under Contempt of Courts Act against respondent Nos.2 onwards in all these petitions, for having committed willful disobedience of the order dated 16.12.2016 passed by this Court in Writ Petition No. 12153 of 2016. According to all these petitioners, they are drivers working with Jalgaon Municipal Corporation on temporary basis, but terminated in the year 2000. They were constrained to approach the Labour Court by filing different

complaints and vide judgment and order dated 28.08.2001, the Labour Court declared the respondents being engaged in unfair labour practice and thus the services of the petitioners were continued under the said order. Thereafter all these petitioners moved Industrial Court, Jalgaon for regularization of their services. The Industrial Court, vide its judgment and order dated 27.04.2016 allowed the complaints of the petitioners and issued directions to absorb them on the vacant sanctioned posts phase-wise as per the seniority of the petitioners and availability of such posts in future. Aggrieved by Clause-3 of the aforesaid judgment, Writ Petition No. 12153 of 2016 was preferred by some of the petitioners and this Court, vide judgment and order dated 16.12.2016 in the said writ petition, modified Clause-3 of the impugned order by issuing the following directions :

[a] The Corporation shall regularize the services of these litigating drivers based on their seniority as set out in Exhibit X in so far as the 48 posts are concerned.

[b] The above regularization shall be from the dates on which each of these posts has fallen vacant and that shall be the deemed date of regularization of these drivers, who would then be entitled to all consequential monetary benefits from that deemed date.

[c] In so far as the remaining litigating drivers are concerned as well as those drivers, if any, who are not before the Court, the Corporation shall forward

a complete proposal of all such drivers to the Urban Development Department, State of Maharashtra within a period of 12 weeks from today for seeking creation of posts, if none are available and for grant of regularization as per their seniority.

[d] The proposals received by the concerned Department of the State Government shall be dealt with within a period of 16 weeks thereafter.

[e] Until these litigating drivers are not regularized, the Corporation shall be precluded from engaging fresh hands on vacant posts of Drivers.

[f] All these drivers on daily wages would be entitled for parity in pay scale on the basis of the minimum pay scale prescribed by the Pay Commissions considering the 6th and the 7th Pay Commission, if applicable or at par with the basic pay scale payable to the regular comparable drivers, keeping in view the conclusions of the Hon'ble Apex Court in the State of Punjab Case (supra)

[g] In the event of any grievance of these drivers as regards shortfall in payment, they are at liberty to voice their grievance before the appropriate forum for recovery of the said amount.

Since the respondents failed to comply with the aforesaid directions, these contempt petitions are filed.

2. Heard rival submissions. Also perused the documents on record.

3. After hearing the rival submissions, this Court vide order dated 06.12.2022, directed the learned Counsel for the Jalgaon Municipal Corporation to prepare a chart, showing that each and every clause i.e. from (a) to (g) of the order of

this Court dated 16.12.2016, is complied with by them. Accordingly, learned Counsel for the Municipal Corporation filed such chart annexed to the affidavit in reply dated 16.12.2022. Learned Counsel for the Jalgaon Municipal Corporation, by relying on the said reply, pointed out to this Court that they have complied the directions given by this Court under judgment dated 16.12.2016. However, learned Senior Counsel for the petitioners pointed out certain discrepancies in respect of non appointment of Suresh Dattatraya Patil who was at Sr. No.48 in the list at Exhibit-D of page No.150 of Contempt Petition No.585 of 2007 despite the direction of this Court. He also asked for submission of chart mentioning that all the persons from the aforesaid list Exhibit-D whether given pay at par to the pay being given to the regular drivers of the Corporation.

4. Accordingly, learned Counsel for the Corporation, relying upon communication dated 04.01.2023, pointed out that the aforesaid Suresh Dattatraya Patil was getting pay of Rs. 950/- + Rs. 1929 (DA) aggregating Rs. 2879/- per month. However, in the said communication it was not mentioned as to what salary was being paid to the regular driver of the Corporation. Therefore, the learned Counsel for the Corporation was directed to produce on record the salary

which was being paid to the regular drivers of the Corporation Likewise, the list produced by the Corporation at Page No. 441 in compliance affidavit was inclusive of retired temporary drivers at Sr. Nos.1 to 3 and 9. At that time it was noted that under order dated 16.12.2016 passed by this Court, the Corporation was under obligation to give appointments to 48 temporary drivers on the vacant posts of the same number at the relevant time, and therefore, it was pointed out by the learned Senior Counsel for the petitioners that the Corporation was to appoint the persons from list Exhibit-D from Sr. Nos.2 to 49 as one Hamjekhan had already retired. Accordingly, this Court again directed the Corporation to submit on record as to what salary was paid to those temporary employees from the date of their appointments and to state specifically as to whether the said salary was at par with the minimum salary excluding the other benefits which was being paid to the regular drivers.

5. Respondent Corporation then filed affidavit in reply on 15.02.2023 and thereafter on verification of affidavit in reply and all the other documents produced on record by the Jalgaon Municipal Corporation, it was found that all the persons from list Exhibit-D were paid same salary as that of regular drivers excluding HRA and increments. Further, it is

also observed that in the Writ Petition bearing No. 2237 of 2015 filed subsequently three more persons who were identically placed with the persons from list Exhibit-D were found and this Court had also asked to consider them for regular appointments. Therefore, it seems that those three persons and the persons at Sr. Nos.1 to 47 were considered for regular appointments on 50 vacant posts at the relevant time. Further, 42 persons from the said list were appointed on regular basis on creation of those 42 posts under Government Resolution dated 11th April 2017. The date of appointment of those 42 persons was considered as 11th April 2017 and the appointment letters also issued to them accordingly. It further appears that all such temporary drivers who were given regular appointments got all the benefits of 5th, 6th and 7th Pay Commissions whenever it became applicable to them. Thus, considering all these aspects, it appears that directions given by this Court vide order 16.12.2016 and the subsequent order dated 25.01.2017 appear to be duly complied with. In view of the same, all these petitions stand disposed of as duly complied with.

(SANDIPKUMAR C. MORE, J.)