

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***WRIT PETITION NO. 13345 OF 2022
with
INTERIM APPLICATION NO. 18318 OF 2023***

Lingraj Bhimashankar Guttargi and Ors. ... Petitioners

V/s.

The Municipal Commissioner,
Solapur Municipal Corporation,
Solapur and Anr. ... Respondents

Mr. S.G. Kudle for the Petitioners
Mr. Vishwanath Patil for the Respondent No.1
Mr. M.M. Pabale, AGP for Respondent No.2

***CORAM : NITIN JAMDAR &
M.M. SATHAYE, JJ.***

DATE : 08 JANUARY 2024

P.C. :-

Heard the learned Counsel for the parties.

2. The Petitioners, nine in number have filed this Petition for a direction to the Respondent – Municipal Corporation to

regularize the Petitioners' services taking into consideration their initial appointment and to release the arrears of salary due and payable to them in the regular pay scale for the post held by them.

3. The Petitioners contend that they were working for eight to ten years as heavy machinery operators and vehicle drivers for various works of the Municipal Corporation such as demolition activities. It is their contentions that in the year 2014 a report was submitted that there is a need for appointment of heavy vehicle drivers and mechanics for carrying out essential activities of the Municipal Corporation. The Petitioners contend that inspite of there being work available which is of continuous nature and also there are posts available, the Petitioners are not being regularized and they are not being paid their regular salary.

4. Reply affidavit is filed by the Municipal Corporation contending that the Petitioners have suppressed various facts such as the Petitioners are not the employees of the Municipal Corporation and the Petitioners' services have come to an end on 31 March 2021. The Respondent – Corporation has contended that though it is correct that there was a proposal for appointment of machine operators those who are appointed had filed affidavit that they do not claim any permanent right. It is contended that the Petitioners were appointed temporary for a limited period of time and for some time the extension was granted not exceeding six months. The

learned Counsel for the Corporation contends that the Petitioners are employed through a contractor and there is no privity of contract between the Petitioners and the Corporation. On this ground the Municipal Corporation has resisted the Petition.

5. The Petitioner seeks regularization in the services of the Municipal Corporation which are public posts. The legal position is settled by various decisions of the Hon'ble Supreme Court including that of *State of Karnataka v/s. Uma Devi*¹ where the Hon'ble Supreme Court has laid down the parameters for exercise of the writ jurisdiction to issue the orders of regularization in public posts bypassing the basic principle of open participation in the appointments on public post. There is also a serious dispute as to the extent of time the Petitioners have worked. According to the Municipal Corporation, the Petitioners are employees of a contractor and not of the Municipal Corporation. The Petitioners on the other had contend that the contract is sham and bogus and the Petitioners are the employees of the Municipal Corporation.

6. The industrial adjudicator has powers in the given case if the necessary parameters are satisfied to pass orders of granting regularization, including that of a declaration that a particular contract is sham and bogus. The learned Single Judge in the case of *Sandip Baliram Sandbhor v/s. Pimpri Chinchwad Municipal*

1 (2006) 4 SCC 1

*Corporation*², after examining various decisions of the Hon'ble Supreme Court has observed that the powers of the Industrial Court are wider and include power to create contracts.

7. In our opinion therefore, the relief sought for by the Petitioners and the grounds on which they are sought can be more appropriately decided by the industrial adjudicator. Therefore, keeping all contentions of the parties open in case the Petitioners approach the industrial adjudicator, we dispose of the Writ Petition.

8. We make it clear that in case the Petitioners approach the said forum, the proceedings will be decided on their own merits without being influenced by any observation made in this order. As regard the protection of services are concerned, it is open to the Petitioners to apply to the industrial adjudicator for necessary interim orders on its own merits.

9. The Writ Petition is disposed of.

10. In view of disposal of Writ Petition, the Interim Application does not survive and the same is also disposed of.

M.M. SATHAYE, J.

NITIN JAMDAR, J.

² WP 109/2009 decided on 17/02/2016