

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 3983 OF 2007**

1. The Chief Officer, Alibag  
Municipal Council

2. Alibag Municipal Council

**V/S.**

Smt. Mamta N. Patil

**...PETITIONERS**

**...RESPONDENT**

**ALONGWITH****WRIT PETITION NO. 1340 OF 2005**

1. The Chief Officer, Alibag  
Municipal Council

2. Alibag Municipal Council

**V/S.**

Shri. Darshan Atmaram Mhatre  
since deceased, through his legal heirs

1A. Sulbha Darshan Mhatre

1B. Pratiksha Darsha Mhatre

1C. Prasad Darshan Mhatre

**...PETITIONERS**

**..RESPONDENTS**

**ALONGWITH****WRIT PETITION NO. 1366 OF 2005**

1. The Chief Officer, Alibag  
Municipal Council

2. Alibag Municipal Council

**V/S.**

**...PETITIONERS**

1. Hareshwar Krishna Patil, (since  
deceased), through his Legal Heirs

1A. Sunita Hareshwar Patil

1B. Namrata Hareshwar Patil

1C. Harshada Hareshwar Patil  
1D. Suraj Hareshwar Patil

**..RESPONDENTS**

---

***Mr. C.G. Gavnekar*** with *Mr. Ashutosh Gavnekar* and *Mr. Rohit Parab*, for Petitioners.

***Mr. Suresh Pakale***, Senior Advocate with *Mr. Nilesh Desai*, for the Respondents.

---

**CORAM : SANDEEP V. MARNE, J.**

Judg.Reserved on : 14 February 2024.

Judg. Pronounced on : 20 February 2024.

**JUDGMENT :**

1. These three petitions challenge the Judgments and Orders dated 11 January 2005 and 16 October 2006 passed by the Industrial Court in Complaint (ULP) Nos. 135/137 of 2001 and Complaint (ULP) No. 136 of 2001 respectively. The Industrial Court has directed the Petitioner-Municipal Council to confer the status and privileges of permanent employees on the Complainants before it on the post of Safai Kamgar w.e.f. 1 February 2001 and to pay them all the consequential benefits. Unfortunately, all the Complainants before the Industrial Court have expired and the present petitions are being defended by their legal heirs.

2. Petitioner is a Municipal Council established under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Three employees viz. Shri.

Nandkumar Eknath Patil, Shri. Hareshwar Krushna Patil and Shri. Darshan Atmaram Mhatre (**employees**) were initially engaged in the Municipal Council as Badli Safai Kamgars on daily wages w.e.f. 25 May 1993. They continued to work uninterruptedly as daily wage workers upto 31 March 1997. It appears that some regular posts were created in the Municipal Council including 4 posts Safai Kamgars in the year 1997. The Standing Committee of the Municipal Corporation therefore adopted a resolution to regularize the services of the employees w.e.f. 1<sup>st</sup> April 1997. Accordingly orders were issued on 21 March 1997 granting temporary appointments to the employees in the pay scales w.e.f. 1 April 1997. It appears that a proposal was sent by the Chief Officer of the Municipal Council to the Director of Municipal Administration for regularizing appointments of various employees on 13 sanctioned posts. The Director however rejected the proposal vide Order dated 18 January 2001. The Municipal Council therefore terminated the services of the employees on 30 January 2001. However, on 1 February 2001, they were reinstated. However, their reinstatement was made on daily wage basis at the rate of Rs.78/- per day by withdrawing the pay scales granted to them vide Order dated 21 March 1997.

3. The employees approached the Industrial Court by filing Complaint (ULP) Nos. 135 to 137 of 2001. By Order dated 9 July 2001, the Industrial Court granted interim relief in favour of employees restraining the Petitioner from terminating their services without following due process of law. The Industrial Court further directed payment of salaries as per the Order dated 21 March 1997 by way of interim order. Petitioner challenged the interim order dated 9 July 2001 by filing Writ Petitions before this Court, which

were disposed of without grant of any relief in favour of the Petitioner.

4. The Industrial Court thereafter proceeded to allow the Complaints filed by the employees. By judgment and order delivered on 11 January 2005 in Complaint (ULP) No. 135 and 137 of 2001, the Industrial Court directed Petitioner to confer status and privileges of permanency to Shri. Hareshwar Krushna Patil and Shri. Darshan Atmaram Mhatre on the post of Safai Kamgar w.e.f 1 February 2001 and to pay them all consequential benefits. The decision of Complaint (ULP) No. 136 of 2001 was delayed on account of death of employee-Nandkumar Eknath Patil during pendency of his Complaint, which was later prosecuted by his wife. In Complaint (ULP) No. 136 of 2001, by Judgment and Order dated 16 October 2006, the Industrial Court directed payment of monetary benefits to the widow of the employee-Nandkumar Eknath Patil by conferring status and privilege of permanent employee on the deceased complainant on the post of Safai Kamgar w.e.f. 31 January 2001. The Petitioner-Municipal Council is aggrieved by Judgments and Orders dated 11 January 2005 and 16 October 2006 of the Industrial Court and have filed the present petitions.

5. This Court admitted Writ Petitions Nos. 1340 of 2005 and 1366 of 2005 pertaining to Shri. Hareshwar Krushna Patil and Shri. Darshan Atmaram Mhatre by Order dated 26 April 2006. This Court took on record Affidavit filed by the Chief Officer of the Municipal Council undertaking not to terminate the services of the duo till disposal of Writ Petitions. It was further undertaken that in the event of Director of Municipal Administration permitting to absorb the employees in permanent post, the Municipal Corporation would

absorb them. The Chief Officer further undertook to take steps to implement the directions contained in the Order dated 18 January 2001 issued by the Director of Municipal Administration. He further undertook to follow the procedure prescribed under the Act and Rules before filling up any permanent posts and after obtaining the sanction of Director of Municipal Administration. This is how services of employees in Writ Petitions No. 1340 of 2005 and 1366 of 2005 were continued after admission of the petitions.

6. When Writ Petition No. 3983 of 2007 in respect of the deceased employee-Nandkumar Eknath Patil came up on 31 July 2007, this Court admitted the same and stayed the judgment on the condition of Petitioner depositing amount of Rs.22,000/- in this Court. Accordingly, the amount is deposited by the Petitioner-Municipal Council on 10 September 2007 which appears to have been invested by the Registry.

7. It appears that during pendency of this petition, the other two employees in Writ Petition No. 1340 of 2005 and 1366 of 2005 (Hareshwar Krushna Patil and Darshan Atmaram Mhatre) have also expired. Their legal heirs have been brought on record.

8. Mr. Gavnekar, the learned counsel appearing for the Petitioner-Municipal Council would submit that the Industrial Court has erred in granting the relief of permanency to the employees. That appointments of the employees were not against regular sanctioned posts. That the proposal for their regularisation was rejected by the Director of Municipal Administration and that therefore they had no right to get permanency in the municipal service. Mr. Gavnekar would further submit that the Standing Order

No.4C of the Model Standing Orders framed under the Industrial Employment (Model Standing Orders) Act, 1946 cannot be invoked in respect of the State Instrumentalities or local bodies who do not have power to create posts. That direction to regularise the employees in the present petitions would involve the issue of creation of posts, which power the Industrial Court does not possess. In support of his contention, Mr. Gavnekar would place reliance on the Order of Single Judge of this Court dated 5 January 2022 passed in Writ Petition No. 4307 of 2018 (**Raigad Zilla Parishad & Ors. V/s. Kailash Balu Mhatre & Ors.**).

9. Mr. Gavnekar would submit that even otherwise since appointments of the employees were made without following the due process of selection and in absence of existence of any vacant posts, they do not have right of regularisation. That the Municipal Corporation cannot fill up any posts in excess of staffing pattern. That as of 2008, the staffing pattern of Alibag Municipal Council includes 20 posts of Safai Kamgars and 21 posts of Badli Kamgars and that as of today, the working strength is 24 permanent Safai Kamgars and 14 Badli Kamgars. That no posts were/are available for accommodation of the employees. He would accordingly submit that the relief of permanency cannot be granted to the employees. Without prejudice, Mr. Gavnekar would submit that at the highest, the Municipal Council can consider sending proposal to the Municipal Administration for award of lumpsum compensation to the heirs of deceased employees and in case the proposal is sanctioned, the compensation can be paid to them.

10. Mr. Pakale, the learned senior advocate appearing for the employees would oppose the petitions and

support the orders passed by the Industrial Court. He would submit that the employees worked against sanctioned vacant posts atleast since 21 March 1997. That they were placed in regular pay scales from 1 April 1997. That they were erroneously terminated on the basis of illegal directives issued by the Director of Municipal Administration. That the termination was merely effected on paper as they were immediately re-employed on the next day and were illegally paid daily wages by withdrawing the pay scales granted to them. That the Industrial Court has correctly appreciated arbitrary action on the part of the Municipal Council in illegally converting employees into daily wage appointments who were earlier granted regularisation. That each of them has completed more than 240 days of service every year and are entitled to grant of permanency.

11. Mr. Pakale would submit that the judgment delivered by this Court in ***Raigad Zilla Parishad*** (supra) has no application to the facts of the present case. In the present case, there is no necessity of creation of posts for absorption of the employees. That the posts already existed and a proposal was sent for regularising their services, which was illegally turned down by the Director of Municipal Administration. Inviting my attention to the reply filed by the Municipal Council before the Industrial Court, Mr. Pakale would submit that the Municipal Council itself felt that the directives issued by the Director of Municipal Administration for non-regularisation of employees and their discontinuance was clearly erroneous. He would submit that no interference is warranted in exercise of jurisdiction by this Court under Article 227 of the Constitution of India in a well-reasoned order passed by the Industrial Court. Lastly, Mr. Pakale would submit that all the three employees have expired during pendency of litigation and their

widows and family members deserve to be granted the benefit of pension and pensionary benefits arising out of regularisation of their services. That pension scheme is applicable in Municipal Council and therefore the orders passed by the Industrial Court would enable the widows to receive family pension after the death of the employees. He would pray for dismissal of the petitions.

**12.** Rival contentions of the parties now fall for my consideration.

**13.** The issue involved in the petition is about entitlement of the three employees for regularisation of their services on the strength of past daily wage/temporary services rendered by them. The past services of the three employees are not in dispute. They were initially engaged as Badli Safai Kamgars on 25 May 1993. They continued to work on daily wages upto 31 March 1997. The reply filed by the Municipal Council before the Industrial Court would indicate that various regular posts of Clerk, Labourer, Peon, Mukadam and Safai Kamgar became available with the Municipal Council w.e.f. 1 April 1997. The Standing Committee of the Municipal Council adopted a Resolution on 21 March 1997 resolving to grant regular appointments to total 14 employees on the said available posts. The Resolution proposed regularisation of total 4 Safai Kamgars w.e.f. 1 April 1997 including the three employees involved in the present petitions viz. Hareshwar Krishna Patil, Nandkumar Eknath Patil and Darshan Atmaram Mhatre. This is how the three employees were regularised in service from 1 April 1997. They were paid in pay scales of Safai Kamgar, post their regularisation w.e.f. 1 April 1997. It appears that the Chief Officer of Municipal Council sent a proposal to the Director of Municipal

Administration on 25 May 2000 in respect of the Resolution adopted by the Standing Committee. The Director however passed Order dated 18 January 2001 holding that the appointments of 14 employees were in violation of Rules and directed the Municipal Council to terminate their appointments. Reference was made to a decision of this Court, Bench at Nagpur in Writ Petition No. 640 of 1997 in the case of Malkapur Nagar Parishad. The Director of Municipal Administration further directed that daily wage workers engaged prior to 10 March 1993 whose names were included in the Annexure to the order, should be regularised against 16 vacant posts (possibly the sanctioned vacant posts increased from 14 to 16 by then) with effect from the date of Order dated 18 January 2001 by granting them age relaxation. The Annexure to the Order dated 18 January 2001 did not include the names of the three employees involved in the petition.

**14.** On account of cancellation of appointments of the three employees vide Order dated 18 January 2001 passed by the Director of Municipal Administration, the Municipal Council was left with no alternative but to terminate their services w.e.f. 30 January 2001. It however appears that they were re-engaged as Safai Kamgars w.e.f. 1 February 2001, *albeit* on daily wages @ Rs. 78 per day. The Affidavit -in-reply filed by the Municipal Council before the Industrial Court indicates that it did not agree with the reasoning of the Director and that it felt that the judgment of this Court, Bench at Nagpur in Writ Petition No. 640 of 1997 was not applicable to the facts of the present case. In this regard, the relevant pleadings of the Municipal Council in para-5 of their reply reads thus:

5. .... The Respondents state that as per the policy decision of the Director of Municipal Administration, Mumbai and by his order No.NPSE -1020/Pra-Kra184/2000/7 dated 18-1-2001, and appointment made of the five employees of Class III and Ten employees of class IV who were appointed on the vacant post in the Respondents administration by the Resolution No.24 dated 21-3-97, belatedly declared the same as illegal, being without prior sanction. The said Resolution was terminated by the Director of Municipal Administration by his order dated 18-1-2001. The reason given by the said Director is that the appointments were made, without a proper permission and by considering the action taken by the Respondents had no prior approval. It is also stated that the action of appointment of the complainant from 1-4-97 is illegal and in breach of the rules and orders of the State. The said action of the above officer is based edue on judgment in Writ Petition No.640 of 1997 of Hight Court of Judicature of Bombay, Nagpur Branch however the ratioi of the said judgment is not applicable in this case as the facts are different, however these Respondents are bound by the order issued on 18-1-2001. Further the said Director has directed to recover the expenses Incurred on pay and allowances of the Municipal officials /Chief Executive Officers, officer and employees who are responsible for the above illegal action. The further the Director has directed to pay the amounts which were not permissible, if taken by the Nagar-Parishad, the same should be reimbursed by the Nagar-Parishad. The said order also states that the appointment of the complainant who were earlier working on daily wages basis was done illegally and without the permission of the Director of Municipal Administration, and as the said action of appointment being illegal, the employees will not be entitled to any benefits of service during the above service period. There are other directions of the said Director which this Respondents are bound to abide by. These Respondents state that it was on account of the above orders, these Respondents were compelled to take the action in dispute. In this particular case the Complainant was removed from his present post but was reemployed as a daily wages worker so that he should not be put to any loss. This Responsdents however say that since they have accepted the conditional order of appointment this Respondents should not be held Responsible for any loss caused. It is ultimately his acceptance of the conditional appintment dated 21-3- 97 and the unconditional acceptance

of the same, by the complainant has to be considered as "deciding factor" in this case.

**15.** Be that as it may. Though the Municipal Council did not agree with the reasonings of the Director of the Municipal Administration, it felt bound by its directives and proceeded to terminate the services of the three employees and converted the nature of their service from regular to daily wage. The employees approached Industrial Court and continued to work during pendency of their Complaints. As stated above, one of the employees-Nandkumar Eknath Patil expired during pendency of his complaint on 3 July 2003. The other two employees Hareshwar Krushna Patil and Darshan Atmaram Mhatre continued to work till decision of their Complaints.

**16.** When Writ Petitions No. 1340 and 1366 of 2005 pertaining to Hareshwar Krushna Patil and Darshan Atmaram Mhatre were admitted by this Court on 26 April 2006, following Order was passed:

Rule, returnable early.

The affidavit duly affirmed by Shri. Umesh B. Kothikar, Chief Officer, Alibag Municipal Council dated 26<sup>th</sup> April, 2006 is taken on record and marked 'X' for identification. Interim stay in terms of prayer clause (c), subject to the undertaking incorporated in the affidavit dated 26<sup>th</sup> April, 2006.

In view of the undertaking given by the Chief Executive Officer, he is expected to place on record report pursuant to clause-4 of the affidavit/undertaking on or before 15<sup>th</sup> July, 2006 before this Court.

Stand over to 15<sup>th</sup> July 2006.

**17.** The relevant portion of Affidavit filed by the Chief Officer, Alibag Municipal Council on 26 April 2006 reads thus:

3. I state and undertake that the services of the respondents in both the petitions shall not be terminated till the disposal of the abovesaid Writ Petitions. I further undertake that in the event the Director of Municipal Administration permits to absorb the respondents in the permanent post, the respondents shall be accordingly absorbed.

4. I state and undertake to take steps to implement the directions contained in the order dated 18-1-2001 issued by Director of Municipal Administration and annexed at Exhibit-D to the petition.

5. I further undertake that the Municipal Council shall follow the procedure as prescribed under the Act and Rules before filling the permanent posts and after obtaining the sanction of the Director of Municipal Administration.

**18.** It appears that in pursuance of the Affidavit so filed on 26 April 2006, the Chief Officer of the Municipal Council sent a proposal to the Director of Municipal Administration on 29 May 2006 requesting for permission to regularise the services of Hareshwar Krushna Patil and Darshan Atmaram Mhatre. However, the outcome of the said proposal is not known. It however appears that the Municipal Council was always ready and willing to regularise the services of three employees but could not do so on account of Orders passed by the Director of Municipal Administration. Unfortunately, even the remaining two employees-Hareshwar Krushna Patil and Darshan Atmaram Mhatre have expired during the pendency of the present petitions.

19. No discussion on the issue of regularisation of services of employees in government service can be completed without reference to the landmark judgment of the Apex Court in ***Secretary, State of Karnataka & Ors. V/s. Umadevi***, (2006) 4 SCC 1. The Constitution Bench held that mere continuance of an employee for a long period does not create any right of regularisation in the service. The Apex Court however carved out an exception in respect of only those the employees whose appointments were made in an irregular manner against duly sanctioned vacant posts and where the employees have continued to work for ten years or more, but without the intervention of orders of the courts or of tribunals, the Union of India, the State Governments and their instrumentalities were directed to take steps to regularise their services as a one-time measure.

20. Since Petitions arises out of Orders passed by the Industrial Court, a brief reference to the powers and jurisdiction of an industrial adjudicator to grant regularisation *de horse* the judgment of Constitution Bench in ***Umadevi*** would be necessary. The issue arose before the Apex Court in ***MSRTC Vs. Casteribe Rajya Parivahan Karmachari Sanghatana***, (2009) 8 SCC 556. In ***MSRTC***, the Apex Court held that ***Umadevi*** does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer where the posts on which they have been working exist. It further held that the provisions of MRTU and PULP Act enables an industrial adjudicator to give preventive as

well as positive direction to an erring employer. In **MSRTC** the Apex Court has held in paragraph 32, 33 and 36 as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

33. **The provisions of the MRTU and PULP Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi (3).** As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred to, considered or decided in Umadevi (3). Unfair labour practice on the part of the employer in engaging employees as badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of the Industrial and Labour Courts under Section 30 of the Act did not fall for adjudication or consideration before the Constitution Bench.

36. **Umadevi (3) does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the**

**MRTU and the PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established.”**

*(emphasis supplied)*

21. In ***Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India and another***, (2014) 7 SCC 190, the Apex Court took note of its judgments in ***UP Power Corporation*** 2007 5 SCC 755 and ***MSRTC*** and held that in absence of post, regularization cannot be directed. The Apex Court however has carved out certain exceptions to this general principle. The Apex Court in ***Hari Nandan Prasad*** proceeded hold in paragraph 34, 35, 39 and 40 as under :-

34 A close scrutiny of the two cases, thus, would reveal that the law laid down in those cases is not contradictory to each other. In U.P. Power Corpn.<sup>8</sup>, this Court has recognised the powers of the Labour Court and at the same time emphasised that the Labour Court is to keep in mind that there should not be any direction of regularisation if this offends the provisions of Article 14 of the Constitution on which the judgment in Umadevi (3) is primarily founded. On the other hand, in Bhonde case the Court has recognised the principle that having regard to the statutory powers conferred upon the Labour Court/Industrial Court to grant certain reliefs to the workmen, which includes the relief of giving the status of permanency to the contract employees, such statutory power does not get denuded by the judgment in Umadevi (3) case. It is clear from the reading of this judgment that such a power is to be exercised when the employer has indulged in unfair labour practice by not filling up permanent posts even when available and continuing to employ workers on temporary/daily-wage basis and taking the same work from them and making them do some purpose which was being performed by the regular workers but paying them much less wages. It is only when a particular practice is found to be unfair labour practice, as enumerated in Schedule IV of the

MRTTP and PULP Act, and it necessitates giving direction under Section 30 of the said Act, that the court would give such a direction.

35. We are conscious of the fact that the aforesaid judgment is rendered under the MRTTP and PULP Act and the specific provisions of that Act were considered to ascertain the powers conferred upon the Industrial Tribunal/ Labour Court by the said Act. At the same time, **it also hardly needs to be emphasised that the powers of the industrial adjudicator under the Industrial Disputes Act are equally wide.** The Act deals with industrial disputes, provides for conciliation, adjudication and settlements, and regulates the rights of the parties and the enforcement of the awards and settlements. Thus, by empowering the adjudicator authorities under the Act to give reliefs such as reinstatement of wrongfully dismissed or discharged workmen, which may not be permissible in common law or justified under the terms of the contract between the employer and such workmen, the legislature has attempted to frustrate the unfair labour practices and secure the policy of collective bargaining as a road to industrial peace.

39. **On a harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily-wage worker/ad hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible.** In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily-wager, etc. may amount to back door entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the worker concerned does not meet the eligibility requirement of the post in question as per the recruitment rules. **However,**

**wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified**, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.

**40. The aforesaid examples are only illustrative. It would depend on the facts of each case as to whether the order of regularisation is necessitated to advance justice or it has to be denied if giving of such a direction infringes upon the employer's rights.**

**22.** Thus, in ***Hari Nandan Prasad***, the Apex Court ruled that if posts are not available, issuance of directions for regularisation would be impermissible and that such directions cannot be issued only on the basis of number of years put in by a daily wager. However the Apex Court did carve out some exceptions i. e. where similarly situated workmen are regularised in terms of a scheme. It thus held that by ordering regularization of similarly placed employee the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision. Thus once an employer formulates a scheme for regularization and regularizes similarly placed employees in accordance with that Scheme, it is permissible for an industrial adjudicator to direct regularization of casual/daily wage worker who fulfills the criteria prescribed in the Scheme. However

since the right to claim regularization, in such case, flows purely out of the Scheme, it is mandatory that the concerned worker fulfills all the criteria prescribed under the Scheme to the hilt.

**23.** Having considered the law expounded by the Apex Court on the issue of regularization of services, it is time to revert to the factual position in the present case. The Industrial Court has directed regularisation of the three employees on the basis of Model Standing Order 4C formulated under the provisions of Industrial Employment (Model Standing Orders) Act, 1946. Clause 4C of the Model Standing Order deals with grant of permanency to a badli worker and provides as under:

**4.C.** A *badli* or temporary workman who has put in 190 days' uninterrupted service in the aggregate in any establishment of seasonal nature or 240 days "uninterrupted service" in the aggregate in any other establishment, during a period of preceding twelve calendar months, shall be made permanent in that establishment by order in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of the said twelve calendar months.

*Explanation.*-For purpose of this clause any period of interrupted service, caused by cessation of work which is not due to any fault of the workman concerned shall not be counted for the purpose of computing 190 days or 240 days, or, as the case may be, for making a *badli* or temporary workman permanent.

**24.** In ***Raigad Zilla Parishad*** (supra), Mr. Justice Ravindra Ghuge, J. had an occasion to deal with the issue of permissibility of regularization of badli workers in State instrumentalities under

Model Standing Order 4C. Justice Ghuge considered the judgments in ***Mukhyadhikar Nagar Parishad, Tuljapur Vs. Vijabai Vijay Amrutrao and Ors.*** [2016(3) ALL MR 113] and ***Municipal Council, Tuljapur Vs. Baban Hussain Dhale*** [WP No. 1843/2015 and connected matters decided on 26 February 2015] in which it is held that Model Standing Order 4C cannot be invoked in respect of the State Instrumentalities or local authorities who do not have power to create posts. It appears that in 2016, a contradictory order was passed by the learned Single Judge of this Court in Writ Petition No. 1209 of 2002 upholding the power of industrial adjudicator to grant regularisation as per Model Standing Order 4C even in respect of employees of State instrumentalities. A larger Bench was constituted in ***Municipal Council, Tirora V/s. Tulsidas Baliram Bindhade*** [2016(6) MH.L.J. 867] in which the law was finally settled that in service matters concerning State Instrumentalities, the Industrial Court cannot grant regularisation by invoking Model Standing Order 4C for granting the benefit of permanency or regularisation. Justice Ravindra Ghuge held in ***Raigad Zilla Parishad*** in paras-7, 8, 13 and 14 as under :

7. This issue of invoking Standing Order 4C of the Model Standing Orders for granting permanency was considered by me at the Aurangabad Bench in the matters of ***Mukhladhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijal Amrutrao and others [2016(3) ALL MR 113] and Municipal Council, Tuljapur Vs. Baban Hussain Dhale [WP No.1843/2015 and connected matters, decided on 26/02/2015]***. I had concluded that Standing Order 4C cannot be invoked with reference to State Instrumentalities or such local authorities, which do not have the power of creating posts. When an establishment cannot create posts, the declaration of ULP under Item 6 cannot be made against

such establishment since temporary workers cannot be regularized, in the absence of sanctioned permanent posts.

8. In 2016, there were contradictory orders passed by the learned Single Bench at Nagpur in Writ Petition Nos.1209 of 2002, 1207 of 2002, 3087 of 2001 and 3436 of 2001. As such, a learned Single Judge Bench passed an order on 22/01/2015 in Writ Petition Nos.5191, 5199 to 5205, 5207 and 5520 of 2004 requesting The Hon'ble The Chief Justice of the Bombay High Court to constitute a Larger Bench. Consequentially, the Larger Bench decided the issue in **Municipal Council Tirora Vs. Tulsidas Baliram Bindhade [ 2016 (16) Mh.L.J. 867 ]**. It was concluded that in service matters concerning State Instrumentalities, the Industrial Court cannot grant regularization by invoking Standing Order 4C of the MSC for granting permanency or regularization.

13. Considering the law crystallized in **Mukhyadhikari, Nagar Parishad, Tuljapur** (supra), **Municipal Council, Tuljapur** (supra) and **Municipal Council, Tirora** (supra), the Zilla Parishad has to forward the proposals of such daily wagers to the Rural Development Department/Directorate of Municipal Administration, as the case may be, and such Department of the State Government then has to take a call arriving at a decision. It requires to debate that such employees discharging their duties, be it in the Water Supply Department or Sanitation department etc., are indispensable. They shoulder responsibilities of the Zilla Parishad/Municipal Councils. These workers are a part of the Departments discharging civic functions and extending civic amenities to the citizens.

14. It is inhuman to make such workers work for 30 years and the Zilla Parishad being helpless, continues to request the State Government and the State Government rejects the proposal contending that, it has no funds. If this be the situation, the rule of law in a welfare state society would only be a paper arrangement. Employees who have dedicated 30 years of their lives in serving such State Instrumentalities/Local Authorities, would be without any job, security and retiral benefits. The Kalelkar Award, the Shastri Award, the Lad and Page Committee Recommendations, commonly known as 'Vashila Paddhat' etc., had ensured the regularization of daily wagers. The state Government, therefore,

needs to take a decision as regards the water supply workers, who are working in such a Department which has to supply water to the citizens. If workers in such Departments are made to work as temporaries or daily wagers, it would not be inappropriate to state that the State Government has failed in taking care of such employees. Every employee has a right to job security and retiral benefit, save and except in case of illegal appointments or back door entries, in the light of the law laid down by the Hon'ble Apex Court in the case of **Secretary, State of Karnataka & Ors. Vs. Umadevi (3) & Ors. [(2006) 4 SCC 1]**

**25.** In ***Raigad Zilla Parishad*** (supra), this Court set aside the directions issued by the Industrial Court for regularisation of employees as per Model Standing Order but instead directed sending of proposal by Zilla Parishad for regularisation of services of daily wage workers.

**26.** Mr. Gavnekar would submit that the order of the Industrial Court deserves to be set aside as the same grants regularisation as per the Model Standing Order 4C, which is impermissible in law. I respectfully agree with the view expressed by Justice Ghuge in ***Raigad Zilla Parishad*** that regularisation cannot be ordered by an industrial adjudicator in respect of the employees of State Instrumentalities involving creation of posts by taking recourse to Model Standing Order 4C. In respect of the State Instrumentalities, mere completion of 240 days of service does not mean automatic regularization, especially in absence of a sanctioned vacant post. In local bodies like Municipal Corporations, Municipal Councils or Zilla Parishads etc. staffing pattern is sanctioned by the State Government. The local bodies which are governed by elected representatives sometimes employ employees in excess of staffing pattern thereby bleeding its resources.

Therefore, a provision is made for approval of staffing pattern by the State Government which sanctions the same by taking various factors into consideration such as need for posts, financial capacity of the local body to pay them salaries, percentage of expenditure on employees' salaries, etc. There are known examples where local bodies spend more than 50% of their revenues on payment of salaries and pension to its employees, leaving no funds for carrying out development activities. It is for this reason that the local bodies are prevented from making appointments in excess of staffing pattern sanctioned by the State Government. It is therefore necessary that no appointment is made by local authorities in excess of staffing pattern since they do not have power to create posts. An industrial adjudicator cannot resort to the provisions of Model Standing Order and direct regularisation of a *badli* worker which ultimately results in employment in excess of sanctioned staffing pattern. In my view, therefore the Court has correctly held in ***Raigad Zilla Parishad*** that Model Standing Orders cannot be relied upon for directing regularisation of services of State Instrumentalities.

**27.** The question here is whether regularisation could have been directed by the Industrial Court *dehors* the Model Standing Orders. In the present case, the sanctioned vacant posts became available for regular appointments of the three employees in March 1997. The Standing Committee of the Municipal Council adopted Resolution on 21 March 1997 regularising services of the three employees. Accordingly, the Orders were issued on 21 March 1997 by the Chief Officer of the Municipal Council appointing the three employees w.e.f. 1 April 1997 on temporary basis. The word

'temporary' was used essentially in the nature of probation. The services were placed in pay scale of Rs.750-940. The appointments were made subject to the sanction by the State Government. Thus atleast from 1 April 1997, the appointments of the three employees continued against sanctioned vacant posts. There is nothing on record to indicate that the said posts were subsequently filled up by appointing any other employee or that the post ceased to exist as on the date of passing of orders by the Industrial Court. In my view therefore, it is safe to conclude that the three employees rendered services against sanctioned vacant posts. They have rendered services in excess of 10 years. Nandkumar Eknath Patil was initially engaged on 25 May 1993 and continued to work till 3 July 2003 when he unfortunately expired. He thus rendered more than 10 years of service. There is no dispute to the position about the other two employees, Hareshwar Krushna Patil and Darshan Atmaram Mhatre, have rendered much longer service than ten years with the Municipal Council. Therefore, even going by the one-time exception as per the Constitution Bench judgment of **Umadevi** (supra), the three employees became entitled to have their services regularised.

28. Considering the overall conspectus of the case, I find that though Industrial Court could not have ordered regularization by taking recourse of clause 4C of the Model Standing Orders, the relief of regularization was otherwise grantable to the three employees in view of mandate of Constitution Bench decision in **Umadevi** as irregular appointments initially made in 1993 (without following the selection process) continued on sanctioned vacant posts for more than 10 years. Therefore in the peculiar facts of the case, the orders passed by the Industrial Court directing

regularisation of services of the employees w.e.f. 1 February 2001 need not be disturbed. Such regularisation would enable their widows to receive family pension after death of the employees. All the three employees therefore should be treated as having been in regular service of the Municipal Council from 1 February 2001.

**29.** I therefore do not find any reason to interfere in the order passed by the Industrial Court. The Writ Petitions being devoid of merits are **dismissed** without any orders as to costs. Rule is discharged. The amount deposited in this Court in Writ Petition No. 3983 of 2007 alongwith with accrued interest shall be permitted to be withdrawn by the Respondent therein.

**SANDEEP V. MARNE, J.**