

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8925 OF 2019**

The Chief Officer,
Kurduwai Municipal Council,
Having Office at : Nagar Parishad,
Kurduwadi, Tal. Madha, Dist. Solapur.

.. Petitioner

Versus

Ramesh Ramchandra Kapure
Age : 41 Year, Occu : Service
Address : Adarsh Nagar, Kurduwadi,
Tal. Madha, Dist. Solapur.

.. Respondent

WITH

CONTEMPT PETITION NO. 498 OF 2023

Ramesh Ramchandra Kapure
Age : 41 Year, Occu : Nill
Address : Adarsh Nagar, Kurduwadi

.. Petitioner

Versus

Laxman Rathod (Chief Officer)
Kurduwadi Municipal Council, Kurduwadi,
Tal : Madha, Dist : Solapur 413208.

.. Contemnor

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Mr. Milind Deshmukh, for the Petitioner in WP/8925/2019 and for
Respondent in CP/498/2023

Mr. M. V. Chougule, for Petitioner in CP/498/2023 and for
Respondent in WP/8925/2019.

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CORAM : SANDEEP V. MARNE J.

RESERVED ON : 7 FEBRUARY 2024.

PRONOUNCED ON : 14 FEBRUARY 2024.

JUDGMENT :-

1) Kurduwadi Municipal Council has filed the Writ Petition challenging the Judgment and Order dated 5 September 2015 passed by the Judge, Labour Court, Solapur directing it to reinstate the Respondent with continuity of service without backwages. Also challenged is the Judgment and Order dated 3 April 2019 passed by Industrial Court, Solapur dismissing Revision (ULP) No. 59 of 2015 filed by Petitioner. Writ Petition No. 8925 of 2019 thus arises out of challenge by Petitioner-Municipal Council to the decisions of the Labour Court and Industrial Court. Contempt Petition No. 498 of 2023 arises out of allegation by Respondent-employee of violation of interim order passed by this Court on 23 November 2022 by which direction was given to accommodate Respondent against any temporary/daily wage work available with Petitioner.

2) When the Contempt Petition came up for hearing on 7 February 2024, this Court felt that the Writ Petition needs to be taken up for final hearing. Accordingly, with consent of the learned counsel appearing for both parties, Writ Petition and Contempt Petition are taken up for hearing. For the sake of convenience, the description of parties in Writ Petition No. 8925 of 2019 is maintained in the present judgment.

3) Petitioner is a Municipal Council established under the provisions of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, having its office at Nagar Parishad, Kurduwadi, Tal. Madha District Solapur. Respondent filed Complaint

(ULP) No. 55 of 2012 against Petitioner stating that he was engaged on 1 November 1999 as an Apprentice in the Water Supply Department of the Petitioner-Municipal Council. That at the end of his apprenticeship period, he was engaged as a daily wage labourer on 4 August 2004 and continued to work as such upto 1 November 2008. He claims that his services were orally terminated on 2 November 2008. In his Complaint, he challenged oral termination dated 2 November 2008 and prayed for reinstatement with full backwages. The Complaint was resisted by Petitioner-Municipal Council by filing Written Statement raising various defences including the defence of participation by Respondent in the tender process for supply of labourers. By its Judgment and Order dated 5 September 2015, the Labour Court proceeded to allow the complaint filed by the Respondent and directed Petitioner to reinstate him in service with continuity of service but without backwages. The Revision filed by Petitioner before Industrial Court came to be rejected by Judgment and Order dated 3 April 2019. Aggrieved by the decisions of the Labour Court and the Industrial Court, the Petitioner-Municipal Council has filed Writ Petition No. 8925 of 2019.

4) Writ Petition came to be admitted by this Court by Order dated 23 November 2022, by which this Court stayed the Orders of the Labour Court and Industrial Court. This Court however directed Petitioner to accommodate Respondent against any temporary/daily wage work available with it. Respondent in the Petition has filed Contempt Petition No. 498 of 2023 complaining of violation of Interim Order dated 23 November 2022 alleging that despite availability of work, he is not being engaged.

5) Mr. Deshmukh, the learned counsel appearing on behalf of the Petitioner would submit that Respondent was never engaged on any vacant sanctioned post as per the sanctioned staffing pattern of the Municipal Council. That no appointment order was issued to Respondent and that therefore there is no employer-employee relationship. That mere engagement as trainee or daily wage labourer for some time does not create any right in favour of Respondent to continue in employment of Petitioner. Relying on Government Resolution dated 1 August 2006, Mr. Deshmukh would submit that there is a specific ban imposed by the State Government for engagement of any casual or daily wage labourers. He would therefore pray for dismissal of the Petition. So far as the Contempt Petition is concerned, he would submit that no daily wage labourers can be engaged by Municipal Council as per the GR and that Petitioner engages contractors as and when the exigencies arises.

6) *Per contra*, Mr. Chougule the learned counsel appearing for Respondent-employee would oppose the Writ Petition and support the Orders passed by the Labour Court and Industrial Court. He would submit that Respondent has completed more than 240 days of service every year during the period from 4 August 2004 to 1 November 2008 that therefore he could not have been terminated without following the due process of law. That termination of the Petitioner is in violation of Section 25-F of the Industrial Court Disputes Act, 1947. That Petitioner did not lead any evidence before the Labour Court and therefore the pleadings raised by the Respondent as well as evidence led by him must be accepted as correct. That the Judgment of the Apex Court in ***Secretary, State of***

Karnataka Vs. Umadevi¹ is not applicable in the present case as the case involves labour dispute. That the Apex Court has held in ***Maharashtra State Road Transport Corporation & Anr. V/s. Casteribe Rajya P Karmachari Sanghatana***², that the Judgment of the Apex Court in ***Umadevi*** would have no application cases decided by the Labour Court and Industrial Court. He would therefore pray for dismissal of the Writ Petition. So far as the Contempt Petition is concerned, Mr. Chougule would submit that the Petitioner is repeatedly issuing tenders for supply of labours which shows that there is availability of work. That therefore Respondent needs to be continued in service rather than engaging fresh labourers through contractors.

7) Rival contentions of the parties now fall for my consideration.

8) The short issue that arises for consideration in the Writ Petition is Respondent's right to continue in the services of Petitioner. Connected with that issue is also the issue about validity of alleged termination of Respondent. Perusal of the Complaint filed by Respondent before the Labour Court would indicate that he claims to have rendered two spells of services. His first spell of service is as trainee/apprentice with on 1 November 1999 to 30 October 2001. This factum is not disputed by the Petitioner-Municipal Council. He has vaguely stated that during the period of his apprenticeship he also worked during strike period. Thus Respondent worked as apprentice only for two years from 1 November 1999 to

¹ [2006 II LLJ 722 (SC)]

² 2009 III CLR 262

30 October 2001. His engagement as Apprentice does not mean employment with the Petitioner-Municipal Council. Therefore the period of apprenticeship spend by Respondent with Petitioner-Municipal Council does not confer any right on the Respondent. The period of apprenticeship from 1 November 1999 to 30 October 2001 is therefore not relevant for deciding the issue involved in the Petition.

9) The next spell of service claimed by the Respondent is from 4 August 2004 to 1 November 2008, during which time, he claims to have worked as daily wage labourer. However, Respondent did not place on record any appointment letter nor did he plead the method by which he came to be selected for engagement as daily wage labourer. Petitioner-Municipal Council has not admitted this spell of service from 4 August 2004 to 1 November 2008. Be that as it may. Even if it is assumed that the Respondent did work as daily wage labourer during 4 August 2004 to 1 November 2008, the issue is whether any right is conferred on account of such engagement. There appears to be some contradiction in the pleadings raised by Respondent in his Complaint. In the Complaint he averred that he rendered two spells of services from 1 November 1999 to 30 October 2001 as Apprentice and from 4 August 2004 to 1 November 2008 as daily wage labourer. However, he also produced a certificate dated 12 August 2008 along with his Affidavit-in-Reply, which is issued in respect of the period of service from 1 November 2001 to 12 August 2002 as daily wage labourer. There is no pleading in the complaint about this spell of service from 1 November 2001 to 12 August 2002. Also, if the certificate is issued in the year 2008, why

it did not cover the period upto 2008 (second spell of service from 4 August 2004 to 1 November 2008) is not explained in any manner. In respect of the period from 4 August 2004 to 1 November 2008, no documentary evidence is placed on record.

10) Petitioner pleaded in its Written Statement that Respondent participated in tender process for award of work of excavation and filing for laying down pipeline at Mhada Road and Temburni Road areas. However, the rates quoted by Respondent were higher than the lowest bidder and therefore the contract could not be awarded to Respondent. Thus, Respondent tried his luck to become contractor of the Municipal Council for award of work in Water Supply Department where he was allegedly working as daily wage worker. The Labour Court has taken into consideration that in the year 2011 and 2013 also, Respondent participated in tender process for supply of daily wage labourers to the Municipal Council. Thus far from seeking appointment as daily wage worker, Respondent attempted to change his status from a labourer to a contractor not only for award of work on turn-key basis but also for supply of other persons as labourers. If he was to be awarded the works, he would have employed daily wage workers to execute the contract. Having been unsuccessful in his endeavor to become an employer by bidding for tenders floated by the Municipal Council, he later thought of staking claim of illegal termination by filing a Complaint before the Labour Court in the year 2015. The Labour and Industrial Courts have not correctly appreciated this aspect while granting relief in Respondent's favour.

11) Even otherwise, no right was created in favour of Respondent to continue to remain in services of Petitioner-Municipal Council. The Labour Court and the Industrial Court have lost sight of the fact that Petitioner is a public body and cannot engage any employee in excess of sanctioned staffing pattern. State Government is empowered to sanction staffing pattern of Municipal Council. It is impermissible for a Municipal Council to engage any person on daily wage/casual basis for indefinite period of time. Respondent neither claims nor is granted the relief of regularization/permanency. The Order of the Labour Court envisages reinstatement of Respondent as daily wage labourer. If the Order of the Labour Court is implemented, the same would mean continuance of Respondent as daily wage worker for indefinite period of time. Such an arrangement would violate the statutory framework of under which it is impermissible for the Municipal Council to engage any staff in excess of the staffing pattern. Since the Respondent was not engaged on any sanctioned vacant post, his engagement as daily wage labourer cannot be permanent. No right existed in favour of the Respondent to demand daily wage employment from Petitioner. In my view therefore no case was made out by Respondent to continue to remain in service with the Municipal Council. The engagement of the Respondent was not after following due process of selection. It was not made against a sanctioned vacant post. No Appointment Order was issued in favour of the Respondent. Mere engagement as labourer as per requirement of the Municipal Council did not create any right in favour of the Respondent to continue to remain in service. The allegation of violation of provisions of Section 25-F of the Industrial Disputes Act ought to have been considered by the

Labour and Industrial Court in the light of attempts made by Respondent to his status from labourer to employer by bidding in tender processes floated by the Municipal Council.

12) Reference by Mr. Chougule to judgments of the Apex Court in *Umadevi* and *MSRTC* is not really relevant to the issue involved in the Petition. Neither Respondent prayed nor has the Labour Court granted the relief of regularization or permanency. The limited issue involved in the petition is about non-continuation of services of Respondent as daily wage labourer.

13) Another vital aspect ignored by the Labour and Industrial Court is about delay in filing the Complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**). Respondent claims that he was terminated on 2 November 2008. However, he filed the Complaint in the year 2015, that too after unsuccessful attempts to become a contractor of the Municipal Council. The Complaint filed by Respondent was thus barred under Section 28(2) of the MRTU & PULP Act. Apart from delay, the conduct of Respondent in participating in tender processes clearly debarred him from agitating his stale claim of alleged termination.

14) Considering the overall conspectus of the case, I find the Orders passed by the Labour Court and the Industrial Court to be indefensible. The Writ Petition must succeed. Since the Writ Petition is being dismissed, nothing would survive in Contempt Petition. I accordingly proceed to pass the following Order:

ORDER

- i) Judgment and Order dated 5 September 2015 passed by the Judge, Labour Court, Solapur in Complaint (ULP) No. 55 of 2012 as well as Judgment and Order dated 3 April 2019 passed by Industrial Court Solapur in Revision (ULP) No. 59 of 2015 are set aside.
- ii) Writ Petition is allowed in above terms.
- iii) Contempt Petition No. 498 of 2023 is dismissed.
- iv) Rule is made absolute in the Writ Petition. There shall be no orders as to costs.

[SANDEEP V. MARNE J.]