

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

WRIT PETITION NO.11416 OF 2024

Nashik Municipal Corporation & Ors.

...Petitioners

vs.

Harshal Vijay Jagtap & Anr.

...Respondents

....

Mr. Kunal Damu a/w Ms. Shraddha Dubepatil i/b M/s. Jay & Co. , for the Petitioners.

Mr. Vyom D. Shah for Respondent No.1.

....

CORAM : SANDEEP V. MARNE, J.

DATE : 6 SEPTEMBER 2024

P.C. :

1 The Nashik Municipal Corporation alongwith the Commissioner of Health Services and Mission Director of National Health Mission have filed this Petition setting up a challenge to the Award dated 6 October 2023 passed by the Presiding Officer, First Labour Court, Nashik in Reference (IDA) No.37(D) of 2021 by which the Labour Court has answered the Reference partly in the affirmative and has directed reinstatement of the Respondent with continuity of service from 5 January 2020 without any back-wages.

2 I have heard Mr. Damu, the learned counsel appearing for Petitioners and Mr. Shah, the learned counsel appearing for Respondent No.1.

3 After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that a selection process was initiated

for filling of various posts including the post of Data Entry Operator cum Accountant in the National Urban Health Mission, Nashik (**NUHM**) implemented in respect of Nashik Municipal Corporation. Respondent participated in the selection process and came to be selected and appointed by order dated 8 December 2016 issued by Petitioner No.3 as Data Entry Operator cum Accountant on monthly consolidated honorarium of Rs.9,600/- for the period from 7 December 2016 to 31 March 2017. Upon expiry of the initial tenure of appointment, further orders were issued on 17 July 2017, 5 July 2018, 19 September 2019 and 18 March 2020 extending the tenure of appointment of the Respondent from time to time. By the last order dated 18 March 2020 the tenure of appointment of the Respondent was extended to 5 January 2020. It appears that the Petitioners were not happy with the attendance of certain individuals working in the NUHM Nashik and show-cause notice was issued on 7 October 2019 to four individuals including the Respondent. It is unknown as to what further action was taken in pursuance of the said show-cause notice after submission of reply by the Respondent on 14 October 2019. However before expiry of the tenure of the last appointment of Respondent on 5 January 2020, the Medical Health Officer of Nashik Municipal Corporation issued order dated 30 December 2019 directing that the contractual appointment of the Petitioner would come to an end on 5 January 2020.

4 Respondent treated the order dated 30 December 2019 as termination of his services and Reference (IDA) No.37-D of 2021 was made at his instance to Labour Court, Nashik.

5 In the light of the above factual position the issue that arose for consideration before the Labour Court was whether services of the Respondent were discontinued innocuously on account of completion of his last tenure on 5 January 2020 or whether the discontinuation was founded on the misconduct of late attendance highlighted in the show-cause notice dated 7 October 2019. It appears that in the Written Statement filed before the Labour Court the Petitioners took a specific stand that the services of Respondent were terminated on account of receipt of Complaint against him on 26 September 2019 and issuance of warning letter to him relating to his absence and late attendance. It is thus clear that the discontinuation order dated 30 December 2019 is directly attributed to the alleged conduct of the Respondent sought to be highlighted in the show-cause notice dated 7 October 2019. If that was the position, it was incumbent for the Petitioners to conduct enquiry against the Respondent before discontinuing the services. If Petitioners were not to rely upon the alleged conduct of the Respondent they could have discontinued his services on innocuous reason completion of tenure of appointment on 5 January 2020 but for doing so it would have been then necessary for Petitioner to demonstrate that the work in respect of the post occupied by Respondent had come to an end.

6 In fact from the Affidavit-in-Reply filed by Respondent No.1 it appears that the Government of Maharashtra has issued Government Resolution dated 14 March 2024 for absorbing services of contract employees engaged in NUHM and for that purpose the incumbent Data Entry Operators cum Accountants were directed to submit their particulars for preparation of seniority list vide letter dated 16 August 2024. It appears that in the seniority list so prepared, the name of the Respondent figures at serial no.5. However a

remark is made against his name that inclusion of his name is subject to the outcome of the legal proceedings. The above documents would undoubtedly indicate that the project not only continues but the other similarly placed Data Entry Operators cum Accountants are continued in service. Therefore mere completion of tenure of contract appointment could not have been a reason for Petitioners to discontinue the services of the Respondent. It is well settled law that services of one *adhoc* or contract employee cannot be replaced another *adhoc* or contract employee.

7 Considering the overall conspectus of the case, I am of the view that no patent error is committed by the learned Presiding Officer of the Labour Court in granting the relief reinstatement with continuity in favour of Respondent. The Labour Court has not put any financial burden on the Petitioners by denying the relief of backwages to the Respondent. The Award passed by the Labour Court is thus unexceptionable not warranting any interference in exercise of jurisdiction by this Court under Article 227 of the Constitution of India. Writ Petition is accordingly **dismissed**. There shall be no orders as to costs.

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by
SUDARSHAN
RAJALINGAM
KATKAM
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2024.09.10
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(SANDEEP V. MARNE, J.)