



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.5203 of 2012

MUNICIPAL COUNCIL, DARYAPUR, THR. ITS CHIEF OFFICER
VS
JAMIL SK. MEHBOOB AND ORS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.J. Kankale, Advocate for the Petitioner/s
Shri N.R. Saboo, Advocate for the Respondent Nos.1 to 6

CORAM : ANIL S. KILOR, J.
DATED : 15.01.2024

1. Heard.
2. The respondents are working with the petitioner Municipal Council, Daryapur and to claim the regularization of their services, they filed Complaint ULP No.154 of 1998 under Section 28 read with Item 5, 6, 9 and 10 of the Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (in short "the M.R.T.U and P.U.L.P Act").
3. The said prayer was opposed by the Municipal Council, Daryapur on the ground that the respondents were appointed on contract basis by the contractor from the year 1997 and therefore, they are not entitled for regularization in service.
4. The said complaint came to be allowed vide judgment and order dated 19.08.2011 passed by the learned Industrial Court, Amravati and thereby, the petitioner was directed to absorb the respondents and regularize their services vide resolution dated

26.06.2007 passed by the Municipal Council, the said judgment and order is under challenge in this writ petition.

5. It is the case of the respondents that, they are working with the petitioner as Safai Kamgar and their appointments were made as per the year shown in the chart herein below:

Sr No.	Names of the Employees	Year of Appointment
(1)	Jamil Sk. Mehboob	Since 1992 Safai Kamgar @ Rs.50/- per day
(2)	Jamiruddin Sk.Habib	Since 1992 Safai Kamgar @ Rs.50/- per day
(3)	Raju Sk. Shabbir	Since 1994 Safai Kamgar @ Rs.50/- per day
(4)	Sk. Majid Sk. Nazir	Since 1995 Safai Kamgar @ Rs.50/- per day
(5)	Smt. Wahidabee Sk. Sabir	Since 1995 Safai Kamgar @ Rs.50/- per day
(6)	Sau. Sujata Ramesh Sangile	Since 1995 Safai Kamgar @ Rs.50/- per day

6. It is further case of the respondents that, they are working as daily wages employees for years together and are getting meagre amount of wages whereas, the employees, working on regular establishments, are getting more wages and accordingly, they prayed for absorption as 'Safar Kamgar' on regular basis by filing the complaint before the Industrial Court.

7. The petitioner, by filing the reply, opposes the said prayer. It is case of the petitioner that, the complainants are working with the petitioner Municipal Council from 01.10.1997 on contract basis and accordingly, it is submitted that the complainants are not entitled for regularization in their services.

8. The learned Industrial Court, while allowing the complaint, has considered the cross examination of the Chief Officer of the petitioner Municipal Council, who has admitted that the staffing pattern is provided to every Municipal Council and the posts of Safai Kamgars are meant in that staffing pattern. He further admits that the Government has sanctioned the staffing pattern of the Municipal Council. He further states that the posts of 'Safai Kamgar' and 'Mile Coolies' come under the Class IV category. He states that the Municipal Council had passed the resolution to absorb the complainants as 'Safai Kamgar' and admits the document Exh.64 i.e. the resolution passed by the Municipal Council to regularize the services of the complainants. He further admits that the complainants are not getting all the benefits which are being given to the regular employees and further states that he has not produced on record any contract executed between the Municipal Council and the contractors regarding the contract to engage the 'Safai Kamgar'.

9. The learned Industrial Court, considering the above referred cross-examination, has recorded the findings as under:

"16. It is submitted on behalf of the respondent that the complainants were engaged on contract basis. But to substantiate this fact no any document is produced on record to show that the complainants were engaged on contract basis. The documents Ex. 47, 48, 49, 51 and 52 relating to the wages paid to the complainants. But if we peruse the testimony of the respondent's witness we will find that he gave vital admissions in the cross-examination in favour of the complainants. When he was asked as to whether the Municipal Council Daryapur had obtained a license under Contract Labour Act to engage the contract labours he replied that the Municipal Council Daryapur has not obtained it. They admits that the population of the Daryapur

town is more than 36,000. There are various Departments functioning in the same Municipal Council. Not only this but he further admits that the work of cleanliness in the municipal area is done with the help of Municipal Council Daryapur. The cleanliness of every ward is done day to day and the garbage collected from the town is shifted to a particular place demarcated by the Municipal Council. He also admits that the work of cleanliness is done through the Safai Kamgar. Not only this but he further admits that the Government has sanctioned the post of Safai Kamgar, Bit Jamadar, Health Inspector, Health Supervisor, and Coolies for the purpose of performing the work of cleanliness. So, also this witness admits that the staffing pattern is provided to every Municipal Council. The post of Safai Kamgar are meant in that staffing pattern. The Government has sanctioned the staffing pattern in this Municipal Council. The post of Safai Kamgar and Mile Coolies comes under the Class IV category. The pay scale of Rs.750 – 940 is meant for Class IV category as per old pay scale.

17. *The complainants have produced the copy of Resolution passed by the Municipal Council as per Ex. 64. If we go through the said Resolution we will find that the Municipal Council Daryapur has passed the Resolution and 28 employees of the Municipal Council are appointed on regular basis. So, also the said Ex. 64 shows that the person whose case is pending before this Court cannot be considered till the decision of this complaint. The letter also shows that the persons who were engaged prior to 1993 their proposal was sent to the Divisional Commissioner Amravati for regularization. If we go through the further cross examination of the respondent's witness we will find that he also plainly admitted that the complainants are not getting all the benefits which are given to the regular employees. He admits that he has not produced any contract executed between Municipal Council and the Contractors regarding the contract to engage Safai Kamgar, though he admits that papers relating to payment made to employees are permanently preserved. Even then the respondent has not produced the documents despite the order passed at Ex.31. On going through the Ex.33 we will find that the complainant had sought the directions to the respondent to produce the muster roll for the period from 1992 to 2000 and seniority list for the period from 1992 to 2000. Though, this Court had directed the respondent to produce those documents but*

respondent has not produced said documents therefore this is a fit case to draw an adverse inference against the respondent that the complainants were not engaged on contract basis. There is nothing on record to show that to whom the contract was given to engage these complainants. The documents shows that the wages were paid to the complainant from Health Department of the Municipal Council. The evidence produced on behalf of the respondent in the rebuttal is not sufficient to prove that the complainants were engaged on contract basis.”

10. The learned counsel for the petitioner failed to point out any contract to establish the case of the Municipal Council that the complainants were working under the contractor and they were engaged by the contractor.

11. In absence of any such evidence produced on record by the petitioner and further considering the admission given by the Chief Officer of the Municipal Council, Daryapur, the findings recorded by the learned Industrial Court cannot be termed as perverse and without evidence.

12. As far as the contention of the learned counsel for the petitioner that, the posts of the ‘Safai Kamgars’ have not been sanctioned and therefore, the respondents cannot be regularized, cannot be accepted in view of the admission given by the Chief Officer in his cross examination that, the Government has sanctioned the staffing pattern and there are posts of the ‘Safai Kamgars’.

13. Nothing has been brought on record to point out that there are no vacant posts or there are no sanction posts to regularize the respondents. On the contrary, there is the resolution passed by

the Municipal Council to absorb the services of the respondents. In the circumstances, as no illegality or perversity has been committed by the learned Industrial Court in allowing the complaint vide judgment and order, the writ petition is **dismissed.**

[ANIL S. KILOR, J.]