



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

WRIT PETITION NO. 6187/2023

The Chief Officer, Municipal Council, Patur .Vs. Shrikumar Narendra Gulalkari
(dead) thr. its Legal Heirs and Others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R. J. Mirza, Advocate for petitioner.

Mr. A. S. Deshpande, Advocate for respondent.

CORAM : ANIL L. PANSARE, J.

DATE : 24.07.2024

Heard Mr. R. J. Mirza, learned counsel for the petitioner and Mr. A. S. Deshpande, learned counsel for the respondent.

2. The petitioner – Municipal Council has assailed the award dated 20.12.2022 passed by Industrial Court, Akola in Complaint ULP No.16/2012. The Industrial Tribunal has directed the petitioner to grant monetary and consequential benefits to the legal representatives of the original complainant (employee), by granting him permanency from 22.07.2005.

3. According to original complainant, he was appointed on 06.09.1994 as Sanitary Inspector on a temporary post. He was not regularized despite continuous service for several years. Hence, he lodged complaint. The petitioner opposed the claim on the ground that he was never appointed on permanent post and further his appointment was never approved by the State Government and, therefore, the benefits of permanency, could not be extended.

4. The Industrial Tribunal noted that the sanctioned post of Sanitary Inspector was available with the petitioner with effect from 22.07.2005. In fact, the petitioner made a request to the Regional Director, Municipal Administration, Amravati Division, Amravati to extend the benefit of permanency in lieu of the vacant and sanctioned post. The Industrial Tribunal has further noted that the post of Sanitary Inspector was an approved post and was lying vacant from 22.07.2005 onwards. The employee was continued as Sanitary Inspector but on temporary basis. Ultimately, in the year 2022, the employee expired. Thus, pending complaint, the employee expired. His legal representatives, therefore, pursued the complaint.

5. The Industrial Court noted that the employee was working for a period from 1994 till the year 2022, despite the post of Sanitary Inspector being vacant. Accordingly, the Tribunal held that the legal representatives would be entitled for the monetary benefits for the period from 22.07.2005 onwards, if not prior thereto.

6. It is not the case of the petitioner that effort were ever made to fill in the vacant post of Sanitary Inspector. In that sense, despite the post having been available, the petitioner continued to engage services of the employee on temporary basis, that too without making any attempt to fill up the post. This would definitely amount to unfair labour practice. The petitioner has rendered services for about 30 years. His widow and minor son are now praying for monetary benefits.

7. The counsel for the petitioner submits that since the entry of the employee in the service was without following due

process, he will be not entitled for the benefit of permanency in terms of judgment of the Apex Court in **State of Karnataka and Ors. Vs. Umadevi, (2006) 4 SCC 1.**

8. As against, the counsel for the respondents submits that the case of the employee will fall in the exception carved out in the aforesaid case. In support, he has taken aid of the judgment passed by Coordinate Bench of this Court in **Chief Officer, Alibag Municipal Council Vs. Mamta N. Patil, AIR ONLINE 2024 BOM 244**, wherein the court observed thus:

“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. 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.”

9. As could be seen, the exception applies to the employees whose appointments were made in irregular manner against the duly sanctioned vacant post and where the employees have continued to work for 10 years or more but without intervention of the orders of the Court or of Tribunal.

The employer were directed to take steps to regularize their services as one time measure.

10. In the present case, though the appointment of the employee was not made against the vacant post, the approved vacant post was available with effect from 22.07.2005. The services of the employees were continued for years together without making any attempt to fill the vacant post. Ultimately, the employee expired and his dependents are before the Court.

11. Strictly speaking, this is not a case which falls under the exception carved out in *Umadevi's* case supra where irregular appointments were made against the duly sanctioned vacant posts. However, considering the fact that the sanctioned post was available with effect from 22.07.2005 and the employee was continued on temporary basis for years together despite the availability of sanctioned post and without making any attempt to fill up the said post, I am of the considered view that the instant case can be considered as an exception and the order of the Industrial Court can be upheld as a one time measure.

12. The writ petition is accordingly dismissed. No order as to costs.

(Anil L. Pansare, J.)