



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

909 WRIT PETITION NO. 5666 OF 2024

**THE COMMISSIONER LATUR MUNICIPAL CORPORATION
VERSUS
PRITAM BALAJI KAMBLE AND ANOTHER**

AND

WRIT PETITION NO. 5671 OF 2024

**THE COMMISSIONER LATUR MUNICIPAL CORPORATION
VERSUS
SOHEL ANWAR SHAIKH AND ANOTHER**

AND

WRIT PETITION NO. 5669 OF 2024

**THE COMMISSIONER LATUR MUNICIPAL CORPORATION
VERSUS
RAMESHWAR DHONDIRAM JADHAV AND ANOTHER**

AND

WRIT PETITION NO. 5670 OF 2024

**THE COMMISSIONER LATUR MUNICIPAL CORPORATION
VERSUS
RAVI TATYARAO BHOSLE AND ANOTHER**

AND

WRIT PETITION NO. 5667 OF 2024

**THE COMMISSIONER LATUR MUNICIPAL CORPORATION
VERSUS
YUVRAJ MAHADEO DEVDE AND ANOTHER**

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AND

WRIT PETITION NO. 5706 OF 2024

THE COMMISSIONER LATUR MUNICIPAL CORPORATION
VERSUS
KRUSHNA SATISHRAO DIVE AND ANOTHER

.....

AND

WRIT PETITION NO. 5707 OF 2024

THE COMMISSIONER LATUR MUNICIPAL CORPORATION
VERSUS
MAHEBOOB ABDUL SHAIKH AND ANOTHER

.....

AND

WRIT PETITION NO. 5708 OF 2024

THE COMMISSIONER LATUR MUNICIPAL CORPORATION
VERSUS
SANDIP HARIBHAU RANKHAMB AND ANOTHER

.....

AND

WRIT PETITION NO. 5710 OF 2024

THE COMMISSIONER LATUR MUNICIPAL CORPORATION
VERSUS
SATISH YUVRAJ KHATAL AND ANOTHER

.....

AND

WRIT PETITION NO. 5711 OF 2024

THE COMMISSIONER LATUR MUNICIPAL CORPORATION
VERSUS
MOHASIN HAKKANI SHAIKH AND ANOTHER

.....

AND

WRIT PETITION NO. 5712 OF 2024

THE COMMISSIONER LATUR MUNICIPAL CORPORATION
VERSUS
RADHAKRISHNA RAMAKANT KASLE AND ANOTHER

.....

AND

WRIT PETITION NO. 5713 OF 2024

THE COMMISSIONER LATUR MUNICIPAL CORPORATION
VERSUS
ANIKET VISHWANATH YEROLKAR AND ANOTHER

.....

Mr. S. P. Urgunde, Advocate for the petitioner
Mr. B. A. Shinde, AGP for the respondent/State
Mr. A. N. Irpatgire, Advocate for respondent

AND

WRIT PETITION NO. 6072 OF 2023

RADHAKISHAN RAMAKANT KASLE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY AND ANOTHER

Mr. A. N. Irpatgire, Advocate for the petitioners
Mr. B. A. Shinde, AGP for the respondent/State
Mr. S. P. Urgunde, Advocate for respondent No.2

AND

WRIT PETITION NO. 5668 OF 2024

THE COMMISSIONER LATUR MUNICIPAL CORPORATION LATUR
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

Mr. S. P. Urgunde, Advocate for the petitioner

Mr. B. A. Shinde, AGP for the respondent/State
Mr. V. P. Golewar, Advocate for respondent Nos. 2 to 5, 7 to 9.

CORAM : R. M. JOSHI, J.
DATE : 11th MARCH, 2025

PER COURT :-

1. Writ Petition Nos. 5668/2024, 5666/2024, 5667/2024, 5669/2024, 5670/2024, 5671/2024, 5706/2024, 5707/2024, 5708/2024, 5710/2024, 5711/2024, 5712/2024 and 5713/2024 are filed by Latur Municipal Corporation, Latur challenging order passed below Exhibit U-12 in Complaint (ULP) No. 139/2023 and Exhibit U-19 in 43/2023, dated 03/02/2024 and 19/01/2024 respectively, whereby the Corporation is prohibited from filling up the vacancies under the procedure of recruitment to the extent of posts held by complainants.
2. Whereas Writ Petition No. 6072 of 2024 takes exception to the order passed by the Industrial Court rejecting application Exhibit U-2 in Complaint (ULP) No. 43/2023, dated 28/04/2023, which was filed for seeking protection of the services of the complainants during the pendency of the complaint.
3. Parties are referred to as 'Corporation' and 'complainants' for the sake convenience.
4. It is the case of the complainants before the Industrial Court

that they have been appointed as Firemen and Drivers in the fire fighting and emergencies services department of Corporation. They claimed to have been entered into the service on 27/11/2018 through contractor, however, after the period of 11 months they are continued in the service of respondent No.2 and they are discharging the permanent nature of work. It is further their case that considering the services rendered by them the General Body of respondent-Corporation in meeting held on 02/03/2022 passed resolution deciding to absorb the petitioners in the services of the Corporation with approval of respondent No.1-State. On the basis of this resolution and by contending that the complainants have completed 240 days of continuous service and they claim regularization in the service. In view of these averments complaint came to be filed seeking relief of regularization in service and during the pendency of the complaint Exhibit U-2 was filed for seeking protection of their services.

5. In response, it is the case of the Corporation that the complainants are not employed by regular through procedure adopted for the recruitment. It is also contended that the complainants are contract employees and hence not entitled for grant of relief of regularization as well as protection from the termination of service was sought to be canvassed before the Industrial Court.

6. Record indicates that the Industrial Court initial granted ad-

interim order vide Exhibit U-2 restraining the Corporation from terminating the services of the complainants till next date of hearing. This order was continued till decision of Exhibit U-2. Though application Exhibit U-2 came to be dismissed by order dated 28/04/2023, the ad-interim order granted on 06/04/2023 was continued for a period of six weeks and thereafter the same is continued till date by the order passed by this Court.

7. Learned counsel for the complainants submit that the complainants are entitled for the regularization on the basis of the resolution passed by the geneal body of the Corporation. They drew attention of the Court to the provisions of the Municipal Corporation Act, more particularly Section 53(2) of the Act which according to them empowers the General Body to recruit / regularize the services of the employees. It is their further submission that there is no challenge to the resolution by Corporation or any party till date under the provisions of Section 451 of the Act. According to them the complainants were though initially appointed on contract basis, as per the evidence placed on record by the Corporation itself, the said contract was only for a period of 11 months and thereafter the complainants are performing the regular duties with the Corporation. To support said submission reliance is placed on the judgment of the Hon'ble Supreme Court in case of *Jaggo Versus*

Union of India and Ors. in SLP (C) No. 5580 of 2024. It is their contention that the Hon'ble Supreme Court after taking into consideration the judgment of *Secretary, State of Karnataka Vs. Uma Devi, (2006) 4 SCC 1* has held that the said judgment cannot be applied in all cases and that the Court is required to take into consideration the factum of long service rendered by the workman and the situation in which the services has sought to be terminated.

8. Learned counsel for the Corporation opposed the said contention by submitting that the contract employment is not permissible to be continued and except for the due process being undergone by the employees, they are not entitled to claim regular service. It is his submission that the appointment which is not following due procedure of recruitment cannot be confirmed by passing resolution, which is a back door entry. He on instructions submits that the resolution passed by General Body has already been challenged under the provisions of Municipal Corporation Act.

9. As far as the challenge the order passed below Exhibit 12 by the Industrial Court is concerned, it is the submission of the learned counsel for the Corporation that there cannot be any prohibition for the employment of any employee after following due procedure of law. It is his submission that the complainants have no right of permanency and

has observed by the Industrial court while passing order below Exhibit U-2 that there is no material on record placed by the complainants to indicate that they are employed by following regular process of recruitment. In this regard reference is made to the observations made by the Industrial Court in paragraph Nos.11 and 12 of the order passed below Exhibit U-2. According to him, in public employment, back door entry is not permitted as held in case of ***Secretary, State of Karnataka Vs. Uma Devi*** (supra). It is his submission that in spite of these observations being made in Exhibit U-2, solely relying upon the interim relief granted by this Court in Writ Petition No. 6072/2023 on 08/06/2023, order impugned came to be passed vide Exhibit 12 which is not sustainable in law.

10. This contention is vehemently opposed by the learned counsel for the complainants by contending that before the Industrial Court specific say was filed by the Corporation stating that they are 50 vacant posts of out which only 30 sought to be filled in. It is their contention that in such circumstances no fault could be found with the order passed by Industrial Court vide Exhibit U-2. In respect of challenge to the order passed below Exhibit 12 it is argued that since the complaint for regularization is pending, it would not be in the interest of justice that posts held by the complainants are allow to be filled in. This according

to them, would lead to deny permanency to the complaints.

11. As far as the order passed below Exhibit U-2 by the Industrial Court is concerned, perusal of the same clearly indicates that the Court has taken into consideration the averments made in the complaint so also the *prima facie* evidence placed on record before it. In the light of the averments and record before it, except for the resolution dated 02/03/2022 passed by the general body confirming permanency of the employees working in the Water Supply Department, there was no other material placed on record to show that the complainants herein are employed by following due procedure. This resolution otherwise is said to have been challenged under the Act. In any case this Court finds *prima facie* substance in the arguments of Corporation that the initial employment by not following procedure of recruitment would be ratified by passing of resolution. *Prima facie* the finding of the facts recorded by the Industrial Court in the light of the material placed before this Court cannot be faulted with.

12. In so far as the judgment of the Hon'ble Supreme Court in case of ***Jaggo Versus Union of India and Ors*** (supra) relied upon by the learned counsel for the complainants is concerned, in the said case the employee is concerned, were directly engaged by the department on part time/ ad-hoc basis. These employees had more than 10 years

continuously. The services of employees were terminated by the department, and after termination of the services of the employees the work done by them was sought to be undertaken by outsourcing. The Hon'ble Supreme Court therefore has held that such practice is not permissible. Even otherwise it is observed therein that there was a discrimination done between similarly placed employees i.e. employees from the same category that even those employees who had a short service duration than then terminated employees were made permanent. In the light of this fact, the Hon'ble Supreme Court has held that said practice is not justifiable to a Government department. As against this in the instant case, though it is sought to be contended that the Junior Engineers in Water Supply Department are made permanent on the basis of resolution passed by the General Body, there is nothing on record to indicate that as to the nature of engagement of their services by the Corporation. As far as present complainants are concerned, undisputedly they were employed through a contractor. Moreover, this is not the case that their services are being utilized for years together. In considered view of this Court the judgment of Hon'ble Supreme Court in case of ***Jaggo Versus Union of India and Ors*** (supra) would not come to their aid.

13. In the light of these facts, there is no fault can be found with the order passed below Exhibit U-2 by the Industrial Court. As a result of

which, the writ petition filed by the complainants stands dismissed.

14. There cannot be any two opinions with regard to the proposition laid down by the Hon'ble Supreme Court in case of ***Secretary, State of Karnataka Vs. Uma Devi*** (supra) which was aimed at curtailing the practice of back door entries and to ensuring the appointments by following constitutional principles in the Government employment and instrumentalities of the Government. As far as present case is concerned, it is admitted fact that the complainants herein appointed through a contractor. Though it is sought to be contended that now that after the expiry of period of 11 months they are performing regular work, there is *prima facie* nothing on record to show that they were so employed by following process of law. In this regard a communication is relied by the learned counsel for the complainants dated 14/01/2019. This communication is addressed to the Superintendent of Police for seeking the character certificate of complainants. It is necessary to take note that irrespective of whether the person is employed by direct recruitment or through contractor, the character certificate is essential as the employees are required to perform public duty. This isolated document therefore does not *prima facie* show that the complainants are recruited by following regular process in order to accept their claim.

15. The complaint filed before the Industrial Court indicates that

the complainants are seeking the regularization of their services on the ground that they have completed 240 days of service. In this regard reference can be made to the judgment of Division Bench of this Court in case of ***Municipal Council, Tirora and Ors. Vs. Tulsidas Baliram Bindhade and Ors.***, MANU/MH/1256/2016, wherein in paragraph Nos.19, 20 and 21 has held as under:

"19. In this reference, the position emerging before us is similar. There is no conflict between the provisions of M.S.O. 4-C and the provisions of the S. 76 of the 1965 Act. In the event of the appointment having been made validly, it may be possible to invoke the provisions Cl. 4-C of M.S.O. A view to the contrary would result in regularizing/validating a void act. Cl. 4-C neither permits nor contemplates the same. As held in the above judgments, if the appointment is not made in accordance with the constitutional scheme, it is void ab-initio and, therefore, there can be no claim to its regularization or for grant of permanency in any manner. This is all the more so as Cl. 32 of the M.S.O. clarifies that the Standing Orders are not to operate in derogation of any other law i.e. S. 76 of 1965 Act. Definitely any interpretation of Clause 4C conducive to defeating the Constitutional mandate is unwarranted. Violation of Clause 4C of the MSO may tantamount to an unfair labour practice under item 9 of Sch. IV of the 1971 Act but unless & until, other additional factors are proved on record, finding of indulgence in an unfair labour practice under item 6 of Sch. IV thereof can not be reached. As explained by the Hon. Apex Court in case of Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana, (supra), existence of a legal vacancy must be established & as discussed above, the power to recruit with the employer must also be demonstrated. In absence thereof, workman can not succeed in proving the commission of unfair labour practice under item 6 by the employer. These two ingredients, therefore, also must be established when benefit of Cl. 4-C is being claimed. Unless availability of a vacancy is shown or then power with the employer to create the post and to fill it is brought on record, mere continuation of 240 days can not and does not enable the workman to claim permanency

by taking recourse to Cl. 4C read with item 9 of Sch. IV of 1971 Act. Clause 4C does not employ word "regularisation" but then it is implicit in it as no "permanency" is possible without it. Conversely, it follows that when a statutory provision like S. 76 disables the employer either from creating or filling in the posts, such a claim can not be sustained. This also nullifies the reliance upon the judgment of learned Single Judge in case of *Maharashtra Lok Kamgar Sanghatana v. Ballarpur Industries Limited (supra)* where the employer was a private Company not subjected to such regulatory measures by any Statute and enjoyed full freedom to create the posts and to recruit. One of us (B.P. Dharmadhikari, J.) is party to the judgment of this Court in *Raymond UCO Denim Private Ltd. v. Praful Warade & Ors. (supra)* which again needs to be distinguished for the same reasons. The judgment of learned Single Judge in case of *Indian Tobacco Company Ltd. v. The Industrial Court and Ors. (supra)*, judgment of Hon'ble Apex Court affirming it or then judgment of Hon'ble Apex Court reported at *Western India Match Company Ltd. and Workmen* are all considered therein & are distinguishable as the same do not pertain to the province of public employment or consider inherent Constitutional restraints (the *suprema lex* – see *Mahendra L. Jain v. Indore Development Authority and others (supra)* and Cl. 32 of the MSO. For same reasons, law laid down by the Full Bench judgment of this Court in *MANU/MH/0888/2006 : 2007 (1) CLR 460 : 2007 (1) Mah. L.J. 754- Gangadhar Balgopal Nair v. Voltas Limited & Anr.* does not advance the cause of workmen. The Division Bench of this Court in *May & Baker Ltd. v. Kishore Jaikishandas Icchaporia (supra)* while construing Section 10-A(3) held that the expression "other law" would not refer to the model standing orders or the certified standing orders since they are laws made under the provisions of parent act itself and not under any other law. The Model Standing Orders and Certified Standing Orders, held the Division Bench, "are laws no doubt but they are laws made under the provisions of the Act". They were held not to be provisions under any other law. This discussion therefore shows how these words "in derogation of any law for the time being in force" in Cl. 32 of MSO need to be understood & does not help *Adv. Jaiswal* or *Adv. Khan*.

20. In *Vice-chancellor, Lucknow University v. Akhilesh Kumar Khare & Anr. (supra)* relied upon by *Adv. Parihar*, Hon. Apex Court follows its Constitution Bench in *Umadevi (III)* and while rejecting relief of regularization to the daily wagers who were

engaged in public employment without proper procedure, grants them compensation of Rs. 4 Lakh each by way of compassion. This judgment does not consider any welfare labour legislation and, therefore, can not provide direct answer to the reference made. Judgment of this Court taking similar view in the light of 1971 Act in the case of Punjabrao Krishi Vidyapeeth, Akola v. General Secretary, Krishi Vidyapeeth Kamgar Union & Anr. (supra) is already considered above. The Division Bench of this Court in State of Maharashtra and Anr. v. Pandurang Sitaram Jadhav (supra) finds that the respondents before it were employed as daily wagers in the establishment of the government milk dairy for a longer period of 12 to 20 years. There were no sanctioned posts and vacancies in existence in the concerned department. Respondents failed to demonstrate that their appointments were made in accordance with the procedure prescribed for selection. The Division Bench finds it wholly unjust to direct the appellant State Government to grant permanency to the respondents. It points out that the provisions of Model Standing Orders are subject to the Rules regulating selection and appointment so also subject to the constitutional scheme of public employment. Respondents - Daily wagers are declared to possess no legal right to claim permanency. Order passed by the learned Single Judge to the contrary have been quashed. State Government is held obliged to make appointments in adherence to the constitutional scheme of Public employment. Respondents -Daily Wagers appointed without following the prescribed procedure for selection by passing public participation did not acquire any legal right to claim permanency. It is apparent that no inconsistency exists and cannot be worked out in State of Maharashtra & Anr. v. Pandurang Sitaram Jadhav as also Pune Municipal Corporation v. Dhananjay Prabhakar Gokhale (supra) on one hand and Ballarpur Industries Limited v. Maharashtra Lok Kamgar Sanghatana (supra) on the other hand. Status of employer, nature of employment and inherent Constitutional limitation on public employer or absence of such fetters on any private employer or absolute freedom available to it to create post/s and recruit, are some of the distinguishing features which prohibit this exercise.

21. Thus, in the light of this discussion, it follows that in absence of vacant sanctioned posts with the Municipal Council,

a workman who has put in continuous service of 240 days or more in span of 12 months, can not invoke Clause 4C of the MSO to claim either permanency or regularization."

16. With regard to the challenge to order passed below Exhibit U-12, record indicate that, in reply to this application, Corporation had come out with a specific case before the Industrial Court that there are 50 posts vacant and out of which 30 posts are contemplated to be filled in by way of the recruitment process undertaken. In the light of the said fact the Industrial Court passed order directing the Corporation not to fill up the posts held by the complainants. Though this court finds *prima facie* substance in the case sought to be made out by Corporation, however, for the time being as per statement made before the Tribunal no process of filling all vacant posts is undertaken by the Corporation. In such circumstances, by permitting the Corporation to go ahead with current recruitment process, Industrial Tribunal can be directed to decide the complaint expeditiously. No prejudice, therefore would be caused to the Corporation if order passed below Exhibit U-12 is continued for the period till decision of complaint, as even if any advertisement is published, the time would certainly require for the completion of process. Thus, the Corporation is permitted to continue and complete present recruitment process, which shall be subject to outcome of complaint.

17. Having regard to the above situation, the Industrial Court is

directed to decide the complaint within a period of six months from today. All these observations are *prima facie* and the Industrial Court shall not be bound while deciding the complaint on merit.

18. In view of the above, all petitions stand disposed of in above terms.

19. At this stage learned counsel for the complainants seeks continuation of order dated 08/06/2023 passed in Writ Petition No. 6072/2023 for a period of six weeks. Learned counsel for the Corporation opposed the said request.

20. Since the order dated from 08/06/2023 is in force for more than 1 ½ years, to enable the complainants to approach the Hon'ble Supreme Court, the said order is continued for a period of four weeks from today.

(R. M. JOSHI, J.)

ssp