



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

WRIT PETITION NO.8888 OF 2022

Dr. Hemlata Jayant Neve,
Age 56 years, Occu. Service,
R/o. 448/2, Plot No.5, Mohan Nagar,
Jalgaon, Taluka and District Jalgaon .. Petitioner

Versus

1. The State of Maharashtra
Through Secretary
Urban Development Department
Mantralaya, Mumbai
2. Jalgaon Municipal Corporation,
Jalgaon
Through its Commissioner .. Respondents

Mr. Parag V. Barde, Advocate for Petitioner;
Mr. S. S. Dande, A.G.P. for Respondent No.1;
Mr. L. V. Sangit, Advocate for Respondent No.2

**CORAM : S. G. MEHARE &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 08.01.2025

PRONOUNCED ON : 14.01.2025

JUDGMENT (PER: S.G.MEHARE, J.) :-

1. Rule. Rule made returnable forthwith. By consent, heard the learned counsels for the respective parties finally at the admission stage.
2. The petitioner, by way of forth round of litigation, is seeking the direction against respondent No.2 / Jalgaon Municipal

Corporation, Jalgaon, to advance permanency benefits to her with effect from 03.05.2013 and disburse the arrears of salary from the deemed date.

3. The petitioner's contention, in brief, is that on 01.11.1999, she was appointed as a Medical Officer on consolidated pay of Rs.3,000/- per month. In 2001, the consolidated pay was enhanced to Rs.5,000/- per month. Respondent No.2 abruptly stopped payment of the salary. Hence, she approached this Court by filing Writ Petition No.2386 of 2002. In that petition, a direction was issued to the petitioner, to approach the Collector, Jalgaon, as per the provisions of Section 308 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. She, accordingly, moved the Collector, Jalgaon. However, during pendency of her claim, Municipal Council, Jalgaon has been upgradated to Municipal Corporation. Hence, the Collector forwarded her representation along with all the papers for consideration as per Section 451 of the Maharashtra Municipal Corporations Act, 1949. However, the representation was not considered. Hence, she again filed Writ Petition No.5620 of 2005. This Court, by order dated 28.07.2006, directed the State Government to decide her claim within three months. Thereafter, respondent No.2 directed the petitioner to resume duties and draw consolidated salary of Rs.5,000/- per month. She, accordingly, resumed the duties on 23.02.2007.

4. The petitioner's contention is that, she was entitled to regularization of services as the work is perennially available and she was continuously rendering the services. The identically situated Co-Medical Officers have been granted benefit of permanency in 2013. Again, her consolidated pay was enhanced to Rs.10,000/- per month, however, it was not paid. She, therefore, again approached this Court by filing Writ Petition No.8279 of 2010. This Court, by order dated 25.06.2012, directed respondent to take necessary decision within eight weeks.

5. The above directions of this Court were not followed. Hence, she has filed Contempt Petition No.510 of 2012. During pendency of said Contempt Petition, respondent No.2 passed the appropriate orders.

6. The petitioner claimed that though she is entitled for regularization of her services and posts are vacant, respondent No.2, by avoiding her claim granted regularization to one Dr. Vinod Hiranman Patil, on 03.05.2013. She again approached to this Court, by Writ Petition No.1899 of 2014, seeking direction to implement resolution dated 15.04.2008 in pith and substance, salary in pay scale and challenged the order in favour of Dr. Neha Nitin Bharambe and Dr. Vinod Hiranman Patil.

7. This Court again by order dated 04.01.2018, directed respondent No.2, to take into consideration the qualification of

petitioner, length of service rendered by her, workload available for establishment and take a decision on advancing these benefits of pay scale. Thereafter, she made representations from time to time. However, she has not been granted benefits of regularization by not paying salary to her. Under these premises, she seeks the above relief.

8. The contesting respondent No.2 has filed affidavit-in-reply. As regards the last order of this Court dated 04.01.2018 passed in Writ Petition No.8199 of 2014, it has been submitted that the order was speaking that “as and when workload would be available on the establishment of the Municipal Corporation in future, the case of the petitioner shall be considered.” Except this, no relief was granted to the petitioner. Since no other relief was granted, she cannot restore the same relief by way of present writ petition. Since Dr.Vinod Patil was appointed on honorarium of Rs.5,000/- per month, he was appointed as “Vaidya” in the pay scale of Rs.9300-34800 Grade Pay Rs.4300/-. His services also come to an end by order dated 30.09.2016. In the nut-shell, the learned counsel for respondent No.2 submitted that other appointments were also on the consolidated pay and they were also not given any permanency benefits. The petitioner was getting honorarium of Rs.34,722/- per month in Class-III category. Now she has been retired. She was not entitled to regularization as the post of Medical Officer was not sanctioned. He prayed to dismiss the

petition.

9. The learned counsel for the petitioner has vehemently argued that the workload was available. However, respondent No.2 was not active and they have come with incorrect plea that there was no workload available. He submits that the petitioner was a Medical Officer and she was paid the salary less than Class-IV employee. He relied on the judgment in ***Jaggo vs Union of India and Ors. [Civil Appeal No.14831 of 2024 (Arising out of SLP (C) No.5580 of 2024) d/d. 20.12.2024]***.

10. In ***Jaggo (supra)***, the Hon'ble Supreme Court, based upon the facts of that case, held that refusing regularization simply because their original terms did not explicitly state so, or because outsourcing policy was belatedly introduced, would be contrary to the principles of fairness and equity. Finally, termination order of petitioner was quashed. The facts of this case are altogether different. Lastly, he would argue that at least the petitioner is entitled to gratuity.

11. The learned A.G.P. resisted the arguments of the learned counsel for the petitioner. He vehemently argued that since the workload was not available, the dispensaries of Ayurvedic hospitals were closed down, the relief of the petitioner as sought, cannot be restored, as it was not granted in her earlier writ petition No.8199 of 2014.

12. We have gone through the record with the able assistance of the respective counsels.

13. It appears that the petitioner was appointed on honorarium. No post, as such, was sanctioned on the establishment of Municipal Council or Municipal Corporation. For regularization of the services, the post must be sanctioned. From time to time, the honorarium of the petitioner was enhanced and, lastly, she was drawing honorarium of Rs.34,722/- per month. For want of sanction of the post, we are of the view that no relief of regularization can be granted. However, in such situation, the employee who were rendered services for long time even on honorarium, are entitled to gratuity and provident fund. The petitioner has already been superannuated. Therefore, at least, she may be entitled to gratuity as per the law applicable at the relevant time.

14. Hence, we allow the petition partly, directing respondent No.2 to calculate the gratuity and provident fund, if not paid earlier, of the petitioner within a month and disburse it within further one month thereafter.

15. Rule is made absolute in above terms.

[SHAILESH P. BRAHME]
JUDGE

[S. G. MEHARE]
JUDGE