

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2441 OF 2010

Kunda Shantaram Parab and Ors. **...Petitioners**

V/s.

Sindhudurg Zilla Parishad and Anr. **...Respondents**

Mr. Sandeep B. Naik *for the Petitioners.*

Mr. S.R. Nargolkar, *with Ms. Neeta Patil for Respondent No.1-Zilla Parishad.*

Ms. S.A. Prabhune, *AGP for Respondent No.2-State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 16 January 2025.

P.C. :

1) The Petition challenges judgment and order dated 10 June 2009 passed by the learned Member, Industrial Court, Maharashtra, Kolhapur, partly allowing the complaints filed by the Petitioners and directing grant of permanency to them w.e.f. 1 October 2003 alongwith all consequential benefits. Petition is filed to the limited extent of denial of permanency from the dates of completion of 240 days of service by Petitioners.

2) I have heard Mr. Sandeep Naik, the learned counsel appearing for the Petitioners, Mr. Nargolkar, the learned

appearing for the Respondent-Zilla Parishad and Ms. S.A. Prabhune, the learned AGP for Respondent No.2-State.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that Petitioners were initially engaged as Auxiliary Nurse Midwife on account of non-availability of candidates from reserved category. Their engagements were made on a temporary basis. Since they secured restraint orders on termination, they continued in services and filed complaints for grant of permanency in the year 2003.

4) The law relating to application of Clause 4-C of the Model Standing Order (**MSO**) under the Industrial Employment (Standing Orders) Act, 1946 to the employees on establishment of State Instrumentalities is well settled by judgment of the Division Bench of this Court (Nagpur Bench) in ***Municipal Council Tirora and Anr. V/s. Tulsidas Baliram Bindhade¹***. The Division Bench has held that mere completion of 240 days of services does not create any right in favour of temporary employees to claim the benefit of permanency. The Division Bench has held that grant of permanency in services of State Instrumentality involves creation of posts and the posts cannot be created on such establishment without seeking previous sanction of the State Government. In short, the law enunciated is that creation of posts cannot be indirectly directed by an

¹ 2016 (6) Mh.L.J. 867

industrial adjudicator under the garb of benefit of permanency on completion of 240 days by invoking the provisions of Clause 4-C of the MSO. The law enunciated by the Division Bench in ***Municipal Council Tirora*** (supra) has been followed by the learned Single Judge of this Court, (Justice Ravindra V. Ghuge) in ***Raigad Zilla Parishad and Ors. V/s. Kailash Balu Mhatre and Others.***² This Court denied the benefit of permanency to temporary workers of Raigad Zilla Parishad merely because they completed 240 days of service. The limited relief that this Court granted in ***Raigad Zilla Parishad*** (supra) was to send a proposal to the State Government for sanction of posts for grant of benefit of permanency to the temporary workers considering the long length of service rendered by them.

5) In the present case, the Industrial Court has already granted relief of permanency in favour of Petitioner w.e.f. from 1 October 2003. The Zilla Parishad has implemented the order by not challenging the same. The Petitioners are thus treated as regular employees of Zilla Parishad from 1 October 2003. Considering the law enunciated by the Division Bench in ***Municipal Council Tirora*** (supra) the Petitioners cannot claim benefit of permanency only on the strength of completion of 240 days of service.

2. 2022(2) Mh.L.J. 146

6) Mr. Naik would express an anxiety that late absorption of the Petitioners in service would have adverse impact on payment of pensionary benefits to them as most of them may not have completed 20 years of service for being eligible for pension.

7) Firstly, the apprehension appears to be completely misplaced as the minimum service required for payment of pension on retirement is 10 years. Secondly, under the provisions of Note 1 of Rule 57 of Maharashtra Civil Services (Pension) Rules, 1982, there is a provision for allowing one-half of the temporary service towards qualifying service of pension. It would be for the Petitioners to make appropriate representation to the Zilla Parishad and the State Government for computation of 50% of temporary services rendered by them towards qualifying service of pension.

8) I accordingly, proceed to pass the following order:-

(i) Judgment and order dated 10 June 2009 passed by the learned Member Industrial Court, Maharashtra, Kolhapur, is confirmed.

(ii) Petitioners would be at liberty to make representation to the Sindhudurg Zilla Parishad and the State Government for computation of 50% of temporary services rendered by them prior to their

absorption in regular service towards qualifying service of pension.

(iii) Such representation shall be decided by the Sindhudurg Zilla Parishad and the State Government by considering the provisions of the Maharashtra Civil Services (Pension) Rules 1982 within a period of four months from the date of receipt of the representations.

9) Subject to the above clarification I do not find any reason to interfere in the order dated 10 June 2009. Writ Petition is accordingly disposed of. Rule is discharged.

[SANDEEP V. MARNE, J.]