IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16013 OF 2024

Karmala Municipal Council
Through its Chief Officer and Anr. ***....Petitioners***

: Versus :

Dnyandev Tukaram Londhe
Since decd. Thr. LHs and Ors. ***....Respondents***

Mr. Sarang S. Aradhye *with Mr. Shantanu Gurav and Ms. Gauri Velankar, for the Petitioners.*

Ms. A.A. Nadkarni, *AGP for the Respondent No.5-State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 26 March 2025.

P.C. :

1) The petition challenges judgment and order dated 12 September 2023 passed by the Industrial Court, Solapur partly allowing Complaint (ULP) No. 164/2016 and directing the Petitioner-Municipal Council to pay retirement benefits to the Respondent by fixing their pay in the pay-scale from 25 November 1997 till the dates of their respective retirements. The Industrial Court has further directed payment of retirement benefits from April 2009 with further directions to pay interest at the rate of 6% p.a. on the amount of arrears of pension from April 2009 to 15 August 2016.

2) I have heard Mr. Aradhye, the learned counsel appearing for the Petitioner-Municipal Council and have considered the submissions canvassed by him. I have also gone through the findings recorded by the Industrial Court in the impugned judgment and order.

3) The case presents a unique conundrum. It appears that Respondents, alongwith other similarly placed individuals, were initially engaged as daily wagers in the services of Karmala Municipal Council in the year 1986. They filed proceedings before the Labour Court, Solapur claiming permanency in service. On account of non-filing of the Written Statement by the Petitioner-Municipal Council, the complaint came to be allowed. The application preferred by the Petitioner for setting aside *ex-parte* award was rejected. The Municipal Council thereafter challenged the award passed by the Labour Court by filing Writ Petition No. 1820/2007 in this Court, which came to be dismissed by order dated 1 August 2007. Petitioners thereafter filed LPA No.314/2007 challenging the order of the learned Single Judge dated 1 August 2007. The Appeal Court however dismissed the Appeal by its order dated 12 March 2009. Petitioners carried the matter before the Hon'ble Supreme Court by filing Special Leave to Appeal (C) No. 30652/2009 in which the Apex Court passed the following order : -

> In our view, neither the Industrial Court nor the High Court has committed any error, whatsoever, which would call for our interference. The special leave petitions require to be dismissed and are dismissed accordingly. However, we make it clear that while implementing the orders passed by the Industrial Court, the respondents would be entitled to receive a sum of Rs.1,00,000/- (Rupees One Lakh Only) in full and final settlement of all their claims including back wages.
>
> The petitioners shall reinstate the respondents and also pass appropriate orders making them permanent w.e.f. 25.11.1997.
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> With these observations, the special leave petitions are disposed of.

4) Thus, the Hon'ble Apex Court upheld the order for grant of permanency to the concerned employees w.e.f 25 November 1997. The only modification that the Apex Court made in the Award of the Industrial Court was with regard to grant of consequential benefits. The employees would have been entitled to difference of wages on account of grant of permanency w.e.f 25 November 1997. The Apex Court however caped the benefits arising out of arrears of wages at Rs.1,00,000/- each. However, direction for grant of benefit of permanency from 25 November 1997 was not disturbed.

5) Towards implementation of the Award of the Industrial Court, it appears that the Municipal Council sent a proposal to the Directorate of Municipal Administration possibly for creation of supernumerary posts and for grant of benefit of permanency to the concerned workers. By order dated 22 July 2016, the Directorate of Municipal Administration granted approval for creation of 12 supernumerary posts for grant of benefit of permanency to the 12 daily wages workers who were armed with the Award passed by the Industrial Court. The Respondents had already retired from service in the year 2009. Despite this, the Chief Officer of the Municipal Council passed order dated 16 August 2016 granting appointment to the Respondents on the post of Majoor in the pay-scale of Rs.2550-3200. On the same day i.e. 16 August 2016 another order was passed recording retirement of the Respondent-Dnyandev Tukaram Londhe on 14 March 2009. It appears that Respondents claimed pension in pursuance of grant of permanency to them. By order dated 11 August 2017, the Chief Officer sanctioned pension w.e.f 16 August 2016.

6) The Respondents filed complaint of unfair labour practice before the Industrial Court, Solapur to the extent of denial of pension

from the date of retirement in 2009, as well as denial of benefit of pay fixation w.e.f the date of grant of benefit of permanency that is 25 November 1997. The complaint has been allowed by the Industrial Court by order dated 12 September 2023, which is subject matter of challenge in the present petition.

7) As observed above, the Hon'ble Supreme Court has not disturbed the direction of the Industrial Court for grant of permanency from 25 November 1997. Mr. Aradhye would fairly admit that Respondents have been treated as permanent employees from 25 November 1997. He would however submit that the Petitioner-Municipal Council, on its own, cannot treat any worker as a regular employee unless the post is sanctioned by the Directorate of Municipal Administration. He would therefore submit that since 12 supernumerary posts were sanctioned by the Directorate of Municipal Administration on 22 July 2016, the order for absorption could only be issued on 16 August 2016. I find this submission to be totally unacceptable. Once the Industrial Court granted permanency from 25 November 1997 and once the order of the Industrial Court is upheld upto the Supreme Court, mere issuance of sanction for creation of supernumerary posts on 22 July 2016 would not mean that permanency would take effect from 22 July 2016. Once permanency is granted from 25 November 1997, Respondents ought to have been treated as regular employees of the Municipal Council from that date. They ought to have been paid pension from the date of their respective retirements. The action of the Municipal Council in issuing fresh orders of appointments as Majoors on 16 August 2016 in pursuance of approval dated 22 July 2016, after crossing the age of superannuation on 14 March 2009, was infact preposterous to say the least. Since the Respondents have been treated as permanent employees of the Municipal Council w.e.f 25 November 1997, they must receive pension

on the strength of services rendered by them from 25 November 1997 till the date of their respective retirements. The Industrial Court has rightly directed grant of notional pay-fixation from 25 November 1997 till the date of retirement. The modification made by the Hon'ble Apex Court in respect of the order of the Labour Court only relieved the Petitioner-Municipal Council of its liability to pay difference of wages. The amount of such difference of wages was capped by the Hon'ble Supreme Court at Rs.1,00,000/- each payable to the Respondents. This would not mean that the Respondents would be deprived the benefit of fixation of pay in the pay scale of Class-4 employees from 25 November 1997. Mere passing of approval order by the Directorate of Municipal Administration on 22 July 2016 cannot have the effect of nullifying the order of the Labour Court directing grant of permanency from 25 November 1997.

8) In my view, therefore no patent error is committed by the Industrial Court in directing pay fixation from 25 November 1997 on notional basis and direction to pay pension from April 2009 together with interest at the rate of 6% pa. The Writ Petition is devoid of merits. It is accordingly **dismissed** without any order as to costs.

NEETA SHAILESH SAWANT Digitally signed by NEETA SHAILESH SAWANT Date: 2025.03.28 14:43:14 +0530

[SANDEEP V. MARNE, J.]