

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7340 OF 2012

Commissioner, Sangli Miraj
And Kupwad Cities Municipal
Corporation, Through Commissioner **... Petitioner**

Versus

Mr. Nisar Yasin Shaikh **... Respondent**

**WITH
INTERIM APPLICATION NO. 7756 OF 2023
WITH
INTERIM APPLICATION NO. 525 OF 2022
IN
WRIT PETITION NO. 7340 OF 2012**

Mr. Nisar Yasin Shaikh **... Applicant**

Versus

Sangli Miraj Kupwad City Municipal
Corporation Through Its Commissioner **... Respondent**

**WITH
WRIT PETITION NO. 7341 OF 2012**

Commissioner, Sangli Miraj
And Kupwad Cities Municipal
Corporation, Through Commissioner **... Petitioner**

Versus

Shri. Deval Ramchandra Kamble **... Respondent**

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**WITH
WRIT PETITION NO. 10999 OF 2011**

Commissioner, Sangli Miraj
And Kupwad Cities Municipal
Corporation, Through Commissioner

... Petitioner

Versus

Shri. Sunil Shivajirao Shinde

... Respondent

Mr. G. H. Keluskar *for the Petitioner.*

Mr. Sukumar R. Ghanvat *for Respondent No.1 in WP/7340/2012.*

Mr. Omkar Nagwekar *i/b Ms. Prabha Badadare for Respondent in WP/7341/2012.*

Ms. Shraddha Pawar *i/b Mr. Nilesh Patil for Respondent in WP/10999/2011.*

Ms. Sulbha Chipade, *AGP for Respondent-State.*

Mr. Arjun Landge, Desk Officer, from Urban Development Department, Mantralaya is present.

CORAM : SANDEEP V. MARNE, J.

DATE : 07 MAY 2025.

P.C. :

1) These Petitions are filed by Sangli Miraj and Kupwad Cities Municipal Corporation challenging the judgments and order passed by Industrial Court, Sangli by which relief of permanency is granted in favour of the Respondents. In Writ Petition No. 7340 of 2012 Respondent-Nisar Yasin Shaikh is directed to be made permanent from the date of filing of Complaint i.e. 1 August 2008 but has been directed to be paid benefits of permanency from the

date of the order (5 May 2012). In Writ Petition No. 10999 of 2011 (Sunil Shivajirao Shinde), the Industrial Court has directed grant of permanency to him on the post of Ward Servant after one year from 7 December 1998 with notional benefits of permanency without any monetary benefits vide judgment and order dated 10 October 2011. In Writ Petition No. 7341 of 2012 (Deval Ramchandra Kamble), the Respondent is directed to be made permanent on the post of Garden Worker from the date of filing of the compliant i.e. 30 July 2008 with monetary benefits of permanency from the date of order (10 April 2012).

2) I have heard Mr. Keluskar, the learned counsel appearing for Petitioner-Municipal Corporation and Mr. Ghanvat, the learned counsel appearing for Respondent in Writ Petition No.7340 of 2012, Ms. Pawar, the learned counsel appearing for Respondent in Writ Petition No. 10999 of 2011, Mr. Nagwekar, the learned counsel for Respondent in Writ Petition No. 7341 of 2012 and Ms. Chipade, the learned AGP appearing for Respondent-State.

3) The Industrial Court has granted relief of permanency in favour of Respondents on account of they rendering service of 240 days in a year. By now, it is well established position of law that an industrial adjudicator cannot direct permanency in absence of availability of sanctioned posts on the establishment of a state instrumentality. Many times, an order passed by an industrial adjudicator directing grant of permanency in absence of vacant post results in indirect creation of posts on establishment of a state instrumentality. In ***The Municipal Council, Tirora and Anr. Vs. Tulsidas Baliram Bindhade***¹ Division Bench of this Court has

¹ 2016 (6) Mh.L.J. 867

answered the reference holding that it is impermissible to grant permanency to daily workers on establishment of state instrumentalities under Model Standing Order (Clause 4C) merely on completion of 240 days of service. In that sense, the impugned orders, to the extent they direct regularisation merely on account of completion of 240 days of service, suffer from clear jurisdictional error.

4) At the same time, it appears that Respondents have worked with the Petitioner-Municipal Corporation for a considerable period of time. The Municipal Corporation itself appears to be eager to absorb them in service. In respect of several Municipal Corporations, State Government has directed creation for supernumerary posts for absorption of daily wage workers, who have rendered substantial year of service. It appears that the Respondent-Municipal Corporation adopted a Resolution on 31 March 2018 for permanent absorption of Respondents-Nisar Yasin Shaikh and Sunil Shivajirao Shinde. It is not known as to why the third employee-Deval Ramchandra Kamble was not included in the Resolution dated 31 March 2018. In pursuance of the resolution dated 31 March 2018 adopted by the Municipal Corporation, a reference was made to the State Government on 14 September 2021 seeking approval for their permanent absorption in service. It appears that the State Government has written back to the Municipal Corporation on 30 September 2021 stating that the issue of permanent absorption of the two employees is in the realm of the Municipal Corporation and that the Municipal Corporation should take decision in regard to implementation of orders passed by Industrial Court. There appear to be sufficient vacancies on the establishment of the Municipal Corporation against which the

Respondents could have been absorbed in permanent service. Therefore though their entitlement for permanency merely on completion of 240 days of service cannot be upheld, at the same time willingness shown by the Petitioner-Municipal Corporation to absorb them in service cannot altogether be ignored. In fact in ***Raigad Zilla Parishad Vs. Kailash Balu Mhatre***² Co-ordinate Bench of this Court has adopted the mechanism of sending a proposal to the State Government for creation of posts for permanent absorption of daily wage workers of Raigad Zilla Parishad. In the present case, there appears to be no difficulty about availability of posts for absorption of Respondents in service. In my view, therefore though the Industrial Court has faulted in allowing the complaints filed by the Respondents, the relief of permanency can still be accorded to them, not from the dates indicated by the Industrial Court, but with effect from 31 March 2018, which is date of adoption of Resolution by the Municipal Corporation. The Respondents have rendered considerable period of service. One of them is apparently no longer in service as he has crossed the age of retirement. The other two are also left with very few years of service. In that view of the matter, their regularisation from 31 March 2018 may ensure that they receive at least some pensionary benefits. The Constitution Bench in its judgment in ***Secretary, State of Karnataka Vs. Umadevi & Ors.***³ has identified one time exception in respect of those irregularly appointed daily wage workers, who have worked against sanctioned posts and who have completed 10 years of service. Such daily wage workers were directed to be regularised as one time exception by the Hon'ble Apex Court in its judgment in ***Umadevi***. Respondents apparently fulfill the said criteria and in my view, they deserve to be

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

3 2006 II CLR 261-SC

made permanent, albeit not from the dates indicated by the Industrial Court, but atleast with effect from 31 March 2018 when the general body of the Municipal Corporation resolved to make them permanent.

5) The Petitions succeeds partly and I proceed to pass the following order :

- i) The impugned judgments and orders passed by the Industrial Court, Sangli are modified to the extent that Respondents shall be treated to have been absorbed in permanent service of the Petitioner-Municipal Corporation w.e.f. 31 March 2018.
- ii) They shall be paid the difference of wages from 31 March 2018 onwards within period of four months.
- iii) The arrangement is made in the unique facts and circumstances of the case and the same shall not be treated as precedent in case of similarly placed employees.

6) With the above directions, all the Writ Petitions are **disposed of**. There shall be no orders as to costs.

7) In view of disposal of all Writ Petitions, nothing would survive in the Interim Applications, which are also disposed of.

[SANDEEP V. MARNE, J.]