

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.197 OF 2012
WITH
WRIT PETITION NO.2011 OF 2003 with CA No.328 of 2009
WITH
WRIT PETITION NO.2432 OF 2003 with CA No.329 of 2009

WP NO.197 OF 2012

Shri Shankarrao Govindrao Patil.	..	Petitioner
Vs		
Solapur Municipal Corporation & Others.	..	Respondents
—		

Shri S.G. Kudle for the Petitioner.
Shri R.S. Alange for Respondent Nos.1 and 2.
Shri C.R.Sonawane, AGP for Respondent No.3.

WP NO.2011 OF 2003 with CA No.328 of 2009

Shri Nagappa Tukappa Chougule & Others.	..	Petitioners
Vs		
The Commissioner, Solapur Municipal Corporation and Another.	..	Respondents
—		

Shri C.G. Gavnekar with Shri M.R. Deshpande for the Petitioners.
Shri R.S. Alange for the Respondent No.1.
Shri C.R. Sonawane, AGP for Respondent No.2.

WP NO.2432 OF 2003

Jagannath Revansidha Daraphale & Ors.	..	Petitioners
Vs		
The Commissioner, Solapur Municipal Corporation and Others.	..	Respondents
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Shri C.G. Gavnekar with Shri M.R. Deshpande for the Petitioners.
Shri R.S. Alange for the Respondent No.1.
Shri C.R. Sonawane, AGP for Respondent No.2.

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CORAM : A.S. OKA & G.S.PATEL, JJ
DATE : 31ST JULY 2013

P.C.

1. The Rule has been already issued in these Petitions. Today the Petitions are fixed for hearing as to interim relief. Considering the fact that the controversy involved is very narrow, we have taken up these Petitions for final hearing by consent of the parties.

2. The Petitioners in these Petitions were in the regular employment of the Village Panchayats on 5th May 1992. By exercising the power under Sub-section (3) of Section 3 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as “the said Act”) (now known as “the Maharashtra Municipal Corporations Act, 1949), the area of 11 Gram Panchayats was included within the limits of the Municipal Corporation of the city of Solapur. The Petitioners admittedly continued in the employment of the Municipal Corporation from 5th may 1992. On 25th March 2003, the employment of the Petitioners was regularized by the Municipal Corporation with effect from 1st February 2003.

3. Some of the Petitioners have already superannuated and some of them are still in service. The first common issue which is involved in these Petitions is whether the employment of the Petitioners from the respective dates of their initial appointments with the Village Panchayats till 1st February 2003 can be treated as the regular employment for grant of retirel benefits and other service benefits. The other issue is whether the employment of the Petitioners from 5th May 1992 till 1st February 2003 can be said to be a regular employment on the establishment of the Municipal Corporation.

4. We have perused the reply filed by the Solapur Municipal Corporation in these Petitions and in particular the Writ Petition No.2011 of 2003. The learned counsel appearing for the Municipal Corporation does not dispute that the Petitioners were in the employment of the erstwhile Village Panchayats which merged into the Solapur Municipal Corporation with effect from 5th May 1992. He pointed out that the employment of the Petitioners was continued on daily wage basis till 1st February 2003 when under the Government Resolution dated 31st May 2003, the State Government sanctioned 300 posts on the establishment of the Municipal Corporation. He invited our attention to the Section 493 of the said Act of 1949 and in particular the transitory provisions in Part-I of the Schedule to the said Act of 1949. His submission is that the employment of the Petitioners

with the Municipal Corporation with effect from 5th May 1992 was to be continued until other provision was made in accordance with the provisions of the said Act of 1949. His submission is that the appointments could have been made of the regular employees by the Municipal Corporation only after following the procedure laid down under Section 51 of the said Act of 1949 and only after the sanction to the posts was granted by the State Government by exercising power under Sub-section (4) of Section 51 of the said Act of 1949. He invited our attention to the order dated 5th June 2006 passed by a Division Bench of this Court by which the State Government was directed to file an affidavit setting out the specific stand of the Government as to whether the Petitioners can be treated regular employees from 1st February 2003 or from the year 1992 as claimed by them. He, therefore, submitted that in view of the Government Resolution dated 31st May 2003, the regular employment of the Petitioners on the establishment of the Municipal Corporation will be with effect from 1st February 2003.

5. We have carefully considered the submissions. In compliance with the order dated 5th June 2006 passed by a Division Bench of this Court, the State Government has filed affidavit of one Smt. Chitra Patodekar, Section Officer of the Urban Development Department of the Government of Maharashtra. Paragraph Nos.2 and 3 of the said affidavit read thus:

- “2. With reference to Para (C) of the prayer clause, it is submitted that the employees of 11 Grampanchayats have been absorbed in the service of the Solapur Municipal Corporation and have been continued by the Corporation as an employee of Solapur Municipal Corporation till date.

I say that the eleven villages came to be merged in the areas of the Solapur Municipal Corporation alongwith their assets, liabilities and their employees etc. as per provisions of Section 493, Appendix IV Paras 2 to 5 of the Bombay Provincial Municipal Corporation Act, 1947. EXHIBIT -”1” is the copy of extract of Section 493, Appendix IV, Paras 2 to 5. I say that the Government Resolution dt. 31.5.2003, the Govt. in Urban Development had given ex-post facto sanction to 300 posts of the employees of eleven Grampanchayats. Hereto annexed and marked as EXHIBIT-”2” is the copy of G.R. dt. 31.5.2003.

3. I say that it is true that consequent to merger of 11 Gram Panchayats into the Solapur Municipal Corporation in 1992, the Government have given instructions to the Solapur Municipal Corporation to absorb all assets, rights and responsibilities of the 11 Gram Panchayats along with their employees. Similarly letters have been issued by Government to the Corporation to absorb the said employees in the services of Solapur Municipal Corporation and to pay them salaries and allowances as per the rules of the Corporation. The ex-post facto sanction order for creation of 300 posts to enable the Corporation to absorb these employees in the establishment of the Solapur Municipal Corporation have been issued vide Government Resolution dt. 31st May, 2003.”

(Underlines supplied)

6. A copy of the Government Resolution dated 31st May 2003 has been annexed to the said affidavit. The said Government Resolution itself records that the Urban Development Department has given ex-post facto sanction to 300 posts of the employees of the Gram Panchayats who have been absorbed by Solapur Municipal Corporation. In Paragraph 3 of the said affidavit of the State Government, it is stated that the State Government has given instructions to the Municipal Corporation to absorb all assets, rights and responsibilities of the eleven Gram Panchayats along with their employees.

7. Thus, the affidavit makes it very clear that the Government has sanctioned 300 posts in accordance with Sub-section (4) of Section 51 of the said Act for accommodating the employees who were in the employment of erstwhile Gram Panchayats which merged with the Solapur Municipal Corporation with effect from 5th May 1992. In view of the ex-post facto sanction given by the State Government for creation of 300 posts, it follows that the employment of the Petitioners with the Solapur Municipal Corporation stands regularized with effect from 5th May 1992. On that day, the 11 Grampanchayats with which the Petitioners were employed merged with the Solapur Municipal Corporation.

8. We may note here that in view of the first proviso to Sub-clause (c) of Clause 5 of Part-I of Appendix -IV to the said Act, the service rendered by the Petitioners before 5th May 1992 with the Gram Panchayats shall be deemed to be the service rendered in the employment of the Solapur Municipal Corporation. Therefore, as far as the present Petitioners are concerned, their services from the dates on which they were employed by the respective Grampanchayats till 1st February 2003 will have to be treated as a regular employment on the establishment of the Municipal Corporation and, therefore, all consequential benefits while in the service as well as retiral benefits will have to be extended to the Petitioners on the said footing. As we have noted earlier, even according to the case of Municipal Corporation, the employment of the Petitioners has been regularized with effect from 1st February 2003.

9. Hence, we dispose of the Petition by passing the following order:

ORDER :

- (a) We direct that the service rendered by the Petitioners before the 5th May 1992 with the respective Grampanchayats till 5th May 1992 shall be treated as the regular service rendered on the establishment of the Solapur Municipal Corporation;

- (b) We also direct that the services rendered by the Petitioners with effect from 5th May 1992 till 1st February 2003 shall be deemed to be a regular service rendered on the establishment of the Solapur Municipal Corporation;
- (c) In view of the above directions, all service benefits as well as retirement benefits shall be extended to the Petitioners on the footing that the service rendered by the Petitioners from their respective dates of appointments on the establishment of the Grampanchayats till 1st February 2003 shall be deemed to be the service rendered on the establishment of the Solapur Municipal Corporation;
- (d) In case of those Petitioners who have already superannuated, necessary steps shall be taken for releasing pension and other retiral benefits within a period of three months from today;
- (e) The Rule is made absolute on above terms with no orders as to costs;

- (f) Civil Application Nos328 and 329 of 2009 do not survive and the same are disposed of.

(G.S.PATEL, J)

(A.S. OKA, J)