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

WRIT PETITION NO.6479 OF 2024

The Commissioner, Nashik Mahanagar Palika
and Anr.

.. Petitioners

Versus

Shaikh Mudir Ali Saheb and Anr.

.. Respondents

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- Mr. Subhash V. Gutte, Advocate for Petitioners.
- Ms. Saba Shaikh a/w Ms. Apeksha Jadhav, Advocates for Respondents.

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**CORAM : MILIND N. JADHAV, J.
RESERVED ON : AUGUST 12, 2025.
PRONOUNCED ON : SEPTEMBER 03, 2025.**

P.C.:

- 1.** Heard Mr. Gutte, learned Advocate for Petitioners and Ms. Shaikh, learned Advocate for Respondents.
- 2.** Petitioners are Nashik Municipal Corporation. Petitioner No.1 is the Commissioner. Petitioner No.2 is the Health Officer. Judgement and Award dated 07.02.2024 passed by the learned Labour Court, Nashik in Reference (IDA) No.1 of 2020 is under challenge. By virtue of the impugned Award, Petitioners are directed to reinstate Respondent No.1 – workman with continuity of service from 31.07.2016. Copy of impugned Award is appended at page No.22 of the Petition.

3. It is an admitted position that Respondent No.1- workamn has been working in the Health Department of Nashik Municipal Corporation continuously for 21 years from 15.05.1995 to 31.07.2016. Respondent No.1 was admittedly appointed in the year 1995 on daily wages under Hivtap Eradication Scheme to work under the instructions of the Medical Officer of Corporation. Thereafter on 10.05.2001 to 31.07.2016 his services were continued by Corporation through Respondent No.2 – Contractor. There is no dispute about the fact that Respondent No.1 has continued working with the Corporation for more than 21 years after which he was terminated abruptly rather orally on 31.07.2016.

4. Respondent No.1 has satisfied the twin conditions namely, 240 working days in one calendar year without any break and has worked consecutively for 5 years. For his oral termination on 31.07.2016, Medical Officer of Corporation assigned the reason that Respondent No.1's name was not in the Seniority List of the employees maintained by the Contractor. Record of the case clearly shows that Respondent No.1 filed Writ Petition No.5009 of 2005 in this Court which was decided on 06.03.2006. Thus there is no dispute that Respondent No.1 was working with the Corporation since long.

5. There are two further aspects which need consideration, namely that work done by Respondent No.1 falls into the category of

essential services and secondly services of Respondent No.1 were employed by Corporation alongwith similarly placed regular / permanent employees of Corporation. Defence taken by Corporation is that there is no employer – employee relationship between the Corporation and Respondent No.1 and it is so vehemently argued by Mr. Gutte, learned Advocate for Petitioner – Corporation. However the said argument cannot be countenanced in the facts of the present case.

6. According to Mr. Gutte, there is no binding contract between the Corporation and Respondent No.1 and therefore there is no relationship between them. He would submit that merely working through a private Contractor cannot entitle Respondent No.1 to be appointed on permanent basis as an employee of the Corporation. He would submit that if such a plea is allowed every worker working through the Contractor will claim employment as employee of the Corporation as a matter of right. He would stress on the fact that there is no direct relationship of employer and employee between Corporation and Respondent No.1. He would submit that Writ Petition No.5009 of 2005 was filed by some employees including Respondent No.1 who were working under the Contractor for a direction to the Contractor to maintain a Seniority List of the workmen. He would submit that once it is confirmed that Respondent No.1 is not a direct employee of the Corporation then Reference (IDA) No.1 of 2020 ought to have been dismissed. He would therefore persuade the Court to

allow the Petition and set aside the impugned Award.

7. *PER CONTRA*, Ms. Shaikh, learned Advocate for Respondent No.1 would submit that the sheer tenure of service rendered by Respondent No.1 spanning for more than 21 years with the Corporation is an admitted fact. She would submit that this itself qualifies for giving permanent status to Respondent No.1 and therefore Reference (IDA) No.1 of 2020 has been correctly answered. She would submit that being the principal employer – the Corporation cannot resile from continuing the employment of Respondent No.1. That apart she would submit that the Medical Officer of the Corporation has orally terminated services of Respondent No.1 and therefore if such was the case then due process of law ought to have been followed by the Corporation. She would submit that it is an admitted position that appointment letter is given to Respondent No.1 by Corporation in the year 1995. She would submit that there is overwhelming oral and documentary evidence placed on record showing nexus of Respondent No.1 with the Corporation and the same has been taken into account by the learned Labour Court while passing the Award. Hence she would submit that the impugned Award be upheld and appropriate directions be given to appoint Respondent No.1. She would persuade the Court to consider the fact that Respondent No.1 has already been deined backwages by virtue of the impugned Award though he is not at fault and action of termination by the Corporation is held to be illegal.

She would submit that Respondent No.1 j not filed any challenge to the impugned Award and therefore it deserves to be upheld.

8. I have heard Mr. Gutte, learned Advocate for Petitioners and Ms. Shaikh, learned Advocate for Respondents and perused the record of the case. Submissions made by both the learned Advocates at the bar have received due considertaion of the Court.

9. At the outset it is seen that Respondent No.1 joined the services of Corporation in the year 1995 and to be precise on 15.05.1995. He worked in the Health Department of the Corporation undertaking various works under the direct supervision of the Medical Officer of the Corporation under the Hivtap Eradication Scheme alongwith other permanent employees of the Corporation. Though it may be true that engagement of Respondent No.1 was on daily wage basis in 1995, however it is seen that he has worked for 240 days in each calender year and consecutively from the year 1995 to 2016 i.e. for over two decades. There is overwhelming evidence namely oral and documentary placed on record which enures to the benefit of Respondent No.1 - workman and militates against the case of the Corporation.

10. Evidence of Corporation's - witness when seen reveals that the Officer of the Corporation has admitted that Respondent No.1 was issued appointment letter and he has also deposed that the essential

work done by Respondent No.1 is still available with the Corporation. Once this is the nature of evidence, services of Respondent No.1 - workman could not have been exploited by the Corporation for over two decades and thereafter his services terminated merely on the ground that he is a daily wage worker and there is no employer and employee relationship between the parties. Hence it is illegal on the part of the Corporation to terminate the services of Respondent No.1 - workman in such circumstances, without following the due process of law.

11. Record also indicates that services of Respondent No.1 - workman have been continued without any break continuously for over two decades by the Corporation. It is seen that there is a categorical finding returned by the learned Labour Court in paragraph No.12 of the Award recording that from the pleadings of both the parties it is seen that the Corporation has availed the services of Respondent No.1 - workman through different Contractors and therefore the Court has rejected the submissions of the Corporation that his services are terminated only because of the contract with S. R. Pest Control coming to an end. Once this is the case then exploitation of Respondent No.1 - workman cannot be allowed to be continued for years together without giving his the due benefit.

12. In view of the above observations and findings and the cogent reasons given by the learned Labour Court while answering issue Nos.2 and 3 in paragraph Nos.9 to 13 of the Award, in my opinion, no interference whatsoever is called for to disturb the Award dated 07.02.2024 passed by the Labour Court. Resultantly, the Writ Petition fails.

13. The Award dated 07.02.2024 is upheld and confirmed.

14. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

15. After the order is pronounced in Court, Mr. Gutte, learned Advocate for Petitioners persuades the Court to stay the said order for a period of 10 weeks to enable the Petitioners to test the validity and legality of the order in the superior Court.

16. I have considered the request made by Mr. Gutte, however in the facts of the present case and more specifically looking to the timeline in the present case, I am not inclined to grant stay to the present order. Hence, the request for stay is rejected.

[MILIND N. JADHAV, J.]

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