



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2401 OF 2024

1) Municipal Council Mehkar,
Through it's Chief Officer,
Municipal Council, Mehkar,
Tq. Mehkar, Dist. Buldhana.

2) President,
Municipal Council, Mehkar,
Tq. Mehkar, Dist. Buldhana.

.... **PETITIONERS**

// **VERSUS** //

1) Eknath S/o Rangnath Khillare,
Aged about 56 years, Occ.- Service,
R/o. Mehkar,
Tq. Mehkar, Dist. Buldhana.

2) Prakash S/o Bajrang Awasarmol,
Aged about 60 years, Occ.-Service,
R/o. Mehkar,
Tq. Mehkar, Dist. Buldhana.

.... **RESPONDENTS**

WITH

WRIT PETITION NO. 2220 OF 2024

1) Municipal Council Mehkar,
Through it's Chief Officer,
Municipal Council, Mehkar,
Tq. Mehkar, Dist. Buldhana.

2) President,
Municipal Council, Mehkar,
Tq. Mehkar, Dist. Buldhana.

.... **PETITIONERS**

// **VERSUS** //

Gajanan Laxman Gofan,
Aged about 57 years, Occ.- Service,
R/o. Mehkar,
Tq. Mehkar, Dist. Buldhana.

.... **RESPONDENT**

Mr. K. P. Mahalle, Advocate for the Petitioners in both Petitions.
Mr. Tejas Patil, Advocate for the Respondents in both Petitions.

CORAM : SMT. M.S. JAWALKAR, J.

DATE ON RESERVING THE JUDGMENT : 13.02.2025.

DATE ON PRONOUNCING THE JUDGMENT : 18.03.2025.

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned Counsel appearing for the parties.
2. As in both the matters similar issue is involved they are taken up to decide together. Writ Petition No. 2401/2024 is taken as lead case for consideration of facts and other material.
3. Being aggrieved by the order of learned Member, Industrial Court, Akola who partly allowed the Complaint ULP No.173/2015 vide Judgment dated 19/04/2023 holding that the petitioners are engaged in an act of unfair Labour Practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practices Act, 1971 (for short the “MRTU & PULP Act”) directing the petitioners to desist from the same and further directing the petitioners to pay the benefits of regularization and permanency which are legally due to the respondents/complainants prior to 2002 along with 10% interest till the date of its realization.

4. Respondents are the Class IV employees of the petitioner No.1 – Municipal Council regularized in service from 14/05/2002. Respondents herein preferred a Complaint ULP No.173/2015 before the learned Member, Industrial Court, Akola under Section 28(1) Read with Schedule IV Item 5 and 9 of the MRTU & PULP Act, stating therein that they are working with the petitioner no.1 – Municipal Council since 1970 continuously. Through Bhartiya Serva Seva Shramik Sangha, District Buldhana, the Complaint ULP No.142/1987 was preferred before the Industrial Court Maharashtra (Amravati Bench), Amravati and in the said complaint, vide order dated 22/10/1996, the learned Industrial Court, directed the petitioner no.1 – Municipal Council to regularize the employees given in the said schedule filed by the Bhartiya Serva Seva Shramik Sangha, District Buldhana on their respective posts against their names with all other incidental benefits and difference of wages since the date of their juniors were regularized in service. However, the respondents did not get any benefit.

5. Petitioner No.1 challenged the said order dated 20/10/1996 before this Court. This Court in the said Writ Petition No.1612/1997 had granted stay to the order dated 20/10/1996 and on 20/07/2006, dismissed the Writ Petition No.1612/1997. Thereafter, the Municipal Council, Mehkar preferred LPA No.243/2007 challenging

the order dated 20/07/2006 passed by this Court in Writ Petition No.1612/1997 and the same came to be dismissed on 11/01/2008.

6. During the pendency of the Writ Petition No.1612/1997 before this Court, the Regional Director, Administration of Municipal Council vide order dated 14/05/2002, held that 1 employee of Class III and 19 employees of Class-IV working with the Municipal Council, Mehkar prior to 10.03.1993 as mentioned in "Schedule A" are being given regularization by the Municipal Council to work on the respective Class-III and Class-IV posts after creating the said posts on 14/05/2002 subject to certain terms and conditions mentioned in the said order dated 14/05/2002 in accordance with Section 76(2) of the Maharashtra Municipal Councils, Nagar Panchayat and Industrial Townships Act, 1965.

7. Learned Member of Industrial Court, Akola partly allowed the Complaint ULP No.173/2015 vide Judgment dated 19/04/2023 holding that the petitioners are engaged in an act of unfair Labour Practice under Item 9 of Schedule IV of the MRTU & PULP Act, directing the petitioners to desist from the same and further directing the petitioners to pay the benefits. Before deciding the Writ Petition No.1612/1997 on 20/07/2006, particularly when the stay to the Judgment dated 22/10/1996 was in operation, the present respondents, by accepting the terms and conditions as enumerated in

the order dated 14/05/2002 passed by the Regional Director, Administration of Municipal Council, settled the matter with the petitioners. Therefore, once the respondents have settled the matter, they ought not to have again approached before the learned Industrial Court, Akola, however, the respondents herein preferred a complaint before the learned Industrial Court, Akola. Once the claim of earlier service benefits is specifically renounced by the respondents, they estopped themselves from claiming the said benefits again. Therefore the aforesaid order of the learned Industrial court is the subject matter of challenge in the present writ petition.

8. Learned counsel for the petitioners contended that the condition no. 8 in the order dated 14/05/2002 was that the prior service on the daily wages delivered by the respondents would not be considered further for any monetary and service benefits. The present respondent nos.1 and 2 have submitted their respective affidavits dated 14/08/2003 before the petitioner no.1. Bare perusal of the said affidavits reveals that while settling the dispute pending before this Court in Writ Petition No.1612/1997 between the petitioners and respondents, the respondents have accepted all the terms and conditions which were mentioned in the order dated 14/05/2002 passed by the Regional Director, Administration of Municipal Council. Therefore, once the respondents have settled the matter, they ought

not to have again approached before the learned Industrial Court, Akola, however, the respondents herein preferred a complaint before the learned Industrial Court, Akola. The learned Industrial Court, Akola has absolutely failed to examine this aspect, particularly when the said affidavits were marked as exhibits. Hence the aforesaid order needs interference by this court and which also needs to be set aside.

9. Learned counsel for the Petitioner relied on following citations :-

- (i) Nagar Urban Co-operative Bank Ltd., Ahmednagar Vs Sandhya Bansilal Dayama, 2018(5) Mh.L.J. 869,*
- (ii) U.P. Awas Evam Vikas Parishad and others Vs. Rajendra Bahadur Srivastava and another, 1995 Supp (4) SCC 76 &*
- (iii) State of Uttar Pradesh through its Secretary and others Vs. Meraj Ahmad, (2017) 9 SCC 322*

10. Learned Counsel for the respondent Nos.1 and 2 submitted that the learned Lower Court rightly held that the entire crux of the matter lies in the Undertaking/Affidavit dated 14/08/2003. That the present petitioners were claiming that the present respondent nos.1 and 2 have decided and undertook not to accept their permanency benefits by renouncing their earlier claims prior to 14/05/2002. The learned Lower Court further correctly held that the Division Bench of this Court has categorically mentioned in its judgment that the present

petitioners are wrong in not giving benefits to the present respondent nos.1 and 2. Any kind of undertaking, Settlement or Affidavit, which is subversive or contradicting the Judgment of this Hon'ble Court is null and void.

11. It is further contended that the learned lower Court held that the witness of the present petitioners in his cross examination has also admitted that there was no compromise of any sort before this Court and hence the admission of the present petitioner's witness is sufficient to conclude that the present petitioners are engaged in unfair labour practice under the Schedule IV, Item 5 and 9 of the MRTU & PULP Act. Hence the aforesaid order does not require any interference and needs to be confirmed.

12. Heard both the parties. Perused the impugned order, considered the documents on record and citations relied on by the parties.

13. The respondents herein earlier filed ULP No.173/2015 claiming relief of declaration that respondents are engaged in unfair labour practice and further direction that to pay arrears of salary along with interest and for cancellation of documents obtained by respondents by force. Prior to that, there was a complaint filed by Bhartiya Serva Seva Shramik Sangh against the Municipal Council,

Mehkar under Section 28 of the MRTU & PULP Act. In the said complaint, the Industrial Court, Amravati passed the order dated 22/10/1996 as under :

“O r d e r

The Complaint is allowed. It is declared that the respondent has engaged in unfair labour practice under Item 6 of Schedule IV of the M.R.T.U. and P.U.L.P Act, 1971.

The respondent is therefore directed to regularise the employees given in Schedule on their respective posts shown against their names with all other incidental benefits and difference of wages since the date of their juniors were regularised in service.

This order will be applicable only to the employees in the schedule excluding the employees who have been already regularised in the meanwhile.

This order shall be complied with within a period of three months.”

14. The said order was challenged by filing Writ Petition No.1612/1997 by the Municipal Council, Mehkar. This Court vide order dated 20/07/2006, dismissed the petition. It is necessary to hold that this Court observed specifically in para 8 as under :

“8. Here facts demonstrate that the petitioner-Municipal Council has regularized the junior employees and six of the complainants. The regularization of juniors is against permanent vacancies. The facts, however, disclose that three employees, for whose benefit the present petition is being defended, are also working as Filter Attendant

or Pump Attendant since 1966, 1977 and 1974 respectively. Thus a period of about 30 years has expired after these employees started working on these posts and even today they are in employment. It is thus obvious that permanent work is available and is being done by these employees. Readiness of petitioner to regularize them, expressed before this Court, also proves existence of posts for them. In these circumstances, I am not inclined to accept the arguments of the learned counsel for the petitioner that the employees cannot be regularized and the Industrial Court was wrong in granting them benefit.”

This order was challenged by the Municipal Council in LPA No.243/2007, which was dismissed vide order dated 11/01/2008 by the Division Bench of this Court.

15. The petitioners placed on record the order passed by the Regional Director of Nagar Prashashan and Commissioner, Amravati Division, Amravati, by which one employee of Class-III and nineteen employees of Class-IV, working since 1993 are directed to be regularized by exercising power under Section 76(2) of the Maharashtra Municipal Council, Nagar Panchayats and Industrial Townships Act, 1965. As per Schedule-A to the said order, the name of petitioners reflecting as Serial No.4 and 6. The learned Industrial Court, Akola passed the order in Complaint ULP No.173/2015, dated 19/04/2023. The case of the applicants before the Industrial Court that after the judgment of High Court in LPA No.243/2007, the respondents

had taken an undertaking from the complainants to the effect that they will not claim for the back wages before 14.05.2002, It was forcefully taken from the complainants. According to the complainants, the four persons have given the said benefits but denied the same to the complainants.

16. As against this, the case of the respondents is that the complainants have themselves undertaken that they will not claim any previous benefits and therefore, the respondents are not liable to pay any kind of monetary relief to the complainants. The learned Industrial Court after considering the evidence on record held that respondents have engaged in unfair labour practice and claim of the complainants was partly allowed. The issue of maintainability raised by the respondents was rejected on the ground that the undertaking/affidavit which the respondents rely upon are null and void as they are not in consonance with the directions of the learned Industrial Court as well as High Court. The only basis for denying the benefits appears to be the alleged undertaking given by the respondents dated 14.08.2003 by renouncing their earlier claims prior to 14.05.2002. However, as rightly observed by the learned Industrial Court subsequent thereto the writ petition came to be dismissed and LPA arising out of which also came to be dismissed. Thus, findings recorded by the learned Industrial Court that any kind of undertaking, settlement or affidavit, which is

subversive or contradicting the judgment of the High Court is null and void is just and proper.

17. The learned Counsel for the petitioners relied on ***Nagar urban Co-operative Bank Ltd., Ahmednagar*** (Supra) in support of his contention that submissions which are not proved by recording oral and documentary evidence before the Industrial Court, a mere denial of an assertion, without evidence, would not take the case of the respondents any further. In my considered opinion, in fact, the said judgment is in favour of the respondents and the petitioners have not proved its submission that juniors were not regularized and given the benefits.

18. The learned Counsel for the petitioners also placed reliance on ***U. P. Awas Evam Vikas Parishad*** (supra), however facts involved in the above referred citation are distinguishable in view of the unequivocal undertaking given by the first respondent therein. It is held that it is no longer open to him to contend that his dismissal order of 1971 was illegal. He approached the High Court in 1991 seeking to quash his termination order of 1971 after securing conditional reinstatement. His challenge after his appointment on his representation and acceptance of conditions subject to which he was to be appointed is an attempt to overreach his goal in a circuitous route. In the present matter, there was an order passed by the Industrial Court

which confirmed by the High Court that respondents are entitled to the benefits. The petitioners have deprived the respondents by obtaining alleged undertaking, which is contrary to the judgment passed by this Court in Writ Petition No.1612/1997.

19. Similarly, the ***State of Uttar Pradesh*** (supra), the facts involved are distinguishable in the said writ petition. In para 7 of the said judgment, it is observed as under :

“7. In a writ petition of 1987, the learned Single Judge directed on 4-9-1998 that if the only ground of termination was that the respondent had been tried on a charge of murder, he shall be taken back in service, provided there was no other impediment in allowing him to join service. The respondent filed another writ petition in 1989. The learned Single Judge was manifestly in error in entertaining a challenge to the order of termination dated 9-4-1984. Such a challenge was not open to the respondent and could not have been entertained once he had accepted his termination and sought fresh appointment on 7-2-1989 by undertaking to give up any claim in connection with his past service. In the face of the unequivocal undertaking of the respondent, the learned Single Judge erred in allowing the writ petition and in setting aside the order of termination. The Division Bench, in the special appeal, was in error in affirming the order of the Single Judge.”

Thus, the respondent therein accepted his termination and sought fresh appointment on 7/2/1989 by undertaking to give up any claim in connection with his past service. Here, an undertaking given

by the respondents is contrary to the judgment passed by this Court, which was not challenged anywhere by the petitioners herein.

20. In view of this background, there is no infirmity or perversity in the judgment passed by the learned Industrial Court. The respondents herein are working with the Municipal Council for more than 40 years, as such, they are entitled for all benefits arising out of regularization. As such, no case is made out by the petitioners.

21. In view of that, both the Writ Petitions are, therefore, **dismissed**. No order as to costs. However, granting interest @ 10% by the learned Industrial Court needs to be modified to 6%. Considering the period for which Municipal Council is directed to pay deficit back wages, interest of 6% would be appropriate. Hence, the interest @ 10% granted by the learned Industrial Court is **modified** as to **6%**.

(SMT. M.S. JAWALKAR, J.)