

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 714 OF 2024

1. Pallavi Khale

R/o 2204, Petra Tower,
Marvel Gold Complex,
Near Joy Homes CHS,
Off LBS Road, Bhandup (West)
Mumbai – 400078.

2. Neeta Jadhav

R/o. Room No. 265,
Laxman Chawl, Shantilal Compound,
Jawahar Nagar, Khar East, Mumbai – 55.

3. Pooja Swapnil Yadav

R/o. - S 230, Sec 4, Airoli,
Navi Mumbai 400 708.

...Petitioners

Vs.

**1. Brihanmumbai Municipal
Corporation**

Brihanmumbai Municipal Corporation
Head Office, at
Mahapalika Marg, Mumbai – 400 001.

2. Municipal Commissioner

Brihanmumbai Municipal Corporation Head
Office at Mahapalika Marg, Mumbai – 400001.

**3. Deputy Municipal Commissioner (General
Administration)**

Brihanmumbai Municipal Corporation
Head Office
At, Mahapalika Marg, Mumbai 400 001.

4. The Law Officer

Brihanmumbai Municipal
Corporation Head Office,
at Mahapalika marg, Mumbai 400 001.

...Respondents

Mr. Joel Carlos with Mr. Sagar Patil and Mr. Vinod Mahadk i/by Mr. Kuldeep Singh - Advocate for the Petitioner

Mr. Narendra Bandiwadekar, Senior Advocate with Ms. Rupali Adhate i/by Ms. Komal Punjabi - for the Respondent-MCGM

CORAM : S. M. MODAK AND
SANDEEP V. MARNE, JJ.

RESERVED ON : 26th MARCH 2026

PRONOUNCED ON : 24th APRIL 2026

JUDGMENT (PER S.M.MODAK, J.) :-

1. The issue involved in this petition is whether, 'the appointment of the *'three Petitioners as Assistant Law Officer (Grade-II) can be treated as provisional merely on account of pendency of special leave petition before the Hon'ble Supreme Court?'* and whether, *'they are entitled to be considered for the promotion to the post of Assistant Law Officer?'*. Petitioners contend that they have been regularly appointed on the post of Assistant Law officer (Grade II) and have rendered unblemished service for seven years. It is contended that

since appointments are permanent, they are entitled to be considered for the promotion to the higher post of Assistant Law Officer. However, they are not considered for promotion on the basis of the clause in their appointment letters to the effect that ‘*their appointment is subject to the decision given by the Hon’ble Supreme Court in Special Leave Petition No. 8394 of 2013*’. According to them, this clause is unjustified and MCGM is unjustified in relying upon this clause for treating the appointment as ‘provisional’ or ‘temporary’ and that such approach is against settled principles of service jurisprudence.

2. Whereas, the Corporation contends that Petitioner’s appointments to the post of Assistant Law Officer (Grade-II) are temporary and subject to outcome of the decision in Special Leave Petition.

3. Their contention is even this clause is inserted in their respective appointment orders and Petitioners have even given an undertaking that they will not claim any equities, once appointed, they will abide to the decision given by the Hon’ble Supreme Court in the said Special Leave Petition.

4. According to the Corporation, once the Petitioners have

accepted this condition, now after passage of time, they cannot disown that and they cannot ask for Writ of Mandamus against them. According to them, there is no right accrued in favour of Petitioners and there is no corresponding duty cast upon the Corporation to treat them as permanent. Additionally, it is contended on behalf of the Corporation that advertisement was published on 18.07.2023 calling applications to the post of Assistant Law officer on direct recruitment basis. In that recruitment, even the Petitioners have applied but they could not clear the examination and were unsuccessful. It is their contention that after they were unsuccessful, now the present petition is filed seeking promotions and hence it needs to be dismissed.

5. Hence, the correct issue involved in this petition, is to consider the effect of making the appointment of the Petitioners subject to the outcome of the decision in the Special Leave Petition and whether after passage of time of seven years and particularly when the Special Leave Petition is yet not decided, whether the Petitioners' claim for further promotion to the post of Assistant Law Officer can be considered by this Court.

6. On this background, we have heard learned Advocate Shri Carlos

for the Petitioners and learned Senior Advocate Shri Bandiwadekar for the Corporation. We have taken up the Writ Petition for final hearing at an admission stage.

7. It will be important to consider the background of this petition. That is to say, under what circumstances Corporation has filed Special Leave Petition in the Hon'ble Supreme Court. The relevant facts are as follows:-

8. It will be relevant to consider the relevant Rules about prohibition on an advocate to accept the full-time employment. Rule 49 of Bar Council of India Rules prescribes that an Advocate, who is enrolled with the Bar Council cannot accept full-time salaried employment. Once he is in practice, he has to devote time to the practice and he cannot be an employee of the employer prescribed therein. Once such an advocate has accepted any employment, it was his bounden duty to inform the Bar Council and then he has to stop practice as an advocate so long as he continues in such employment. However, there is one exception. This prohibition to practice will not be applicable to certain law officers. Such law officers who were employed by the Central Government or the State Government or any Public

Corporation or body constituted by the State. They can represent their employer in Courts of law. On the same lines, there are the Rules framed by the Bar Council of Maharashtra and Goa.

9. The source of power is given in Section 28 (2)(d) of the Advocates Act, 1961. It provides a person who is otherwise qualified to be admitted as an advocate and once he is in full or part-time service or employment then he cannot be admitted as an advocate. There is also an exception. This will not apply to a person who is law officer of the Central Government or Government of the State.

10. However, in the year 2001, the Bar Council of India has made certain amendments in the Rules. “*The exemption applicable to the Law officers*” was deleted. Meaning thereby earlier the law officers even though in the employment were permitted to practice in Court, after this deletion, even they are prohibited from appearing in the Court on behalf of their employer. Similarly, the Bar Council of Maharashtra and Goa as per the resolution passed on 21.07.2002 has carried out the similar amendment. The proviso to Rule 1 of Bar Council of Maharashtra and Goa was deleted. In the month of December 2001, Bar Council of India has passed classificatory resolution.

11. On the basis of this resolution, there was occasion to Bar Council of Maharashtra and Goa to bring it to the notice of the Municipal Commissioner vide their letter dated 12.10.2007 that their advocate employees still continue to appear in the Court on behalf of the Corporation. This has led to challenging the amendment on behalf of the Corporation by filing Writ Petition (L) No. 1827 of 2012 before this Court. Considering the issue involved, it was referred to Full Bench and vide detail judgment dated 17.10.2012 (Coram :- Dr. D. Y. Chandrachud, V. M. Kanade and A. A. Sayed, JJJ.), this amendment by way of deletion was not struck down as unconstitutional or arbitrary. The result is Assistant Law Officer Grade-II who are appointed by the Corporation and earlier they used to represent the Corporation in Courts of law were not permitted to continue that job.

12. This decision has been challenged by the Corporation before Supreme Court by way of Special Leave Petition and same is still pending. However, the Hon'ble Supreme Court vide order dated 01.03.2013 has stayed the effect and operation of this judgment.

13. When the Corporation published relevant advertisement, they have included this embargo in the said advertisement and appointment

of these Petitioners were made subject to condition that the appointment will depend upon the outcome of decision in Special Leave Petition.

14. As said above, the issue involved in this petition is whether Corporation can be justified in not considering the Petitioners for promotion to the post of Assistant Law Officer merely on the ground that their appointments are treated as temporary in nature and their continuation will depend upon the outcome of SLP.

15. On this background, it will be relevant to consider the contents of the appointment orders of these three Petitioners. They are on the same lines. The relevant clauses are as follows :-

- a) The appointment is subject to the Rules, Mumbai Corporation Service Rules, 1989 and Mumbai Corporation of Greater Mumbai Services (Conduct) Rules, 1999 and the Disciplinary Rules.
- b) The candidates must possess the computer qualification and they should acquire it within a period of two years. Otherwise, their services will be discontinued.
- c) To execute an undertaking.

- d) Their office hours will be as per the convenience of the administration and they are entitled to the public holidays and weekly off. They are entitled to get the benefits which are granted to other employees. They can be deputed at any place regional office or department of the Corporation.
- e) They are not entitled to get benefit of pension and the General Provident Fund but the DCPS scheme will be applicable to them.
- f) Their appointment will be on probation of three years and it will be subject to the outcome of the decision in Special Leave Petition.

16. When we have considered the terms as mentioned in the appointment order, what we find is that all the terms are similar to the terms which are normally incorporated in the appointment orders of an employee which is to be appointed permanently in near future on fulfillment of those terms. The only clause which suggests that they are temporary in nature, is clause no. (1) which says that it will be subject to the decision in Special Leave petition and that is why, they are

temporary in nature. When these appointments are made, the issue about entitlement of law officers of the Corporation to represent in Courts is pending before the Hon'ble Supreme Court which is a reason why the Corporation has interpreted that clause in the appointment orders.

17. The issue is when these Petitioners contend they have completed probationary period and yet the SLP is pending, “*whether they can still be considered as temporary employees for the purpose of promotion to the next higher post?*”

18. It is true confirmation of an employee/regularization of an employee falls within the domain of an employer. At the same time, it is true if the services of an employee/officer are not regularized, certainly such inaction/decision falls within the domain of judicial review. The Hon'ble Supreme Court has decided this issue in various judgments. Certain parameters are laid down. They are as follows:-

- (i) Whether the appointment is illegal or irregular.
- (ii) The appointment is illegal when selection process is followed but employee does not possess qualification/sanctioned post is not sanctioned. It is irregular when he possesses requisite

qualification and posts are sanctioned, but appointment is made without following selection process.

(iii) It is settled law that illegal appointments cannot be regularized but irregular appointments can be.

(iv) It has to be seen whether the posts on which appointments are made, whether advertised or whether the candidates are appointed in circuitous way. Because if appointments are public appointments then it must be brought to the notice of public and appointment should not be in clandestine manner.

(v) In this case, it is matter of record that advertisement was published on 03.06.2016 and applications were called.

(vi) After advertisements are called whether candidates were asked to compete with each other.

(vii) Court has to see whether there is transparency in the recruitment process. In this case, the merit of the candidates was tested by examination or interview. The Petitioners were selected in that process and appointed as per orders dated 22.12.2016, 26.12.2016 and 27.12.2016

19. In a case before us, the entire recruitment process is followed. Even it is not the case of the Corporation that the posts of Assistant Law Officers(Grade II) were not vacant at the time the petitioners were appointed. It is true as per Mumbai Corporation Service Regulations 1989, there is provision for appointment of an officer on probation basis. In this case the petitioners have completed probation of three years. It is fact that they were not discontinued within that period. If we will read the appointment orders, we may find that clauses are similar to the clauses which are included in the regular appointment orders.

20. Mr. Carlos submitted that apart from appearance in Court, as per Manual 1 (the particulars of its organization functions and duties), the Assistant Law Officers used to perform many other duties. It includes :-

- (a) It also deals with the preparation of all types of Agreements, Lease, Conveyance, Memorandum of Understanding in respect of Municipal Properties and matters and investigation of titles of the properties to be taken over by the Corporation as per D.C. Regulations

and M.R.T.P. Act.

(b) Legal Department also gives legal opinion to the civic administration as and when sought for.

He has produced its photo copy. According to Mr. Carlos even if Supreme Court upholds the view taken by Full Bench of this Court, these Petitioners would be prevented from appearing in Courts on behalf of the Corporation and in that eventuality they can be given other legal work. It is also true in the appointment orders there is clause that the Petitioners are required to work in any office or department as directed. It is not that appointment of Petitioners are made only for representing the Municipal Corporation in Courts. Assistant Law Officer (Grade II) performs several other duties and responsibilities. Therefore, even if the Full Bench judgment of this Court is upheld in the Supreme Court, appointment of the Petitioners would not be automatically rendered illegal.

21. After considering all the factors, we feel that the Petitioners have made out the case for treating them as having been appointed regularly. Even if it is assumed that the Corporation was justified in making appointments provisional, after passage of time the Petitioners are certainly entitled to get that relief. It is true even though the work

which the Petitioners are performing at present is stopped due to the decision of the Supreme Court still they can be given other legal work. It is no doubt true at present Assistant Law Officers (Grade-II) are required to appear in the Courts. It does not mean that they cannot do any other legal work.

22. Mumbai Municipal Corporation is one of the biggest Corporation in India who is having a budget of crores of rupees, needs personnel who are expertise in legal field. It is very well true that there are several developmental projects going on in the City of Mumbai. Its territorial limits extend from Colaba to Boriwali on Western Side and from Colaba to Mulund to Eastern Side. There are several Slum Rehabilitation Schemes undertaken and various infrastructure projects undertaken by the Government with the help of Corporation and independently also. It cannot be believed that Corporation is not in need of Law Officers. In fact these Petitioners are having experience of appearing in Courts and it will certainly help the Corporation in ascertaining legal angle to the decisions. So certainly case for treating the appointments as regular is made out. If it is so certainly the Petitioners can be considered for promotion to the post of Assistant

Law Officers as they have rendered eligibility service of 5 years on the post of Assistant Law Officer (Grade-II).

23. Hence, the following order is passed:-

ORDER

- (i) The Petition is allowed.
- (ii) It is declared that the Petitioners are regular Assistant Law Officers (Grade-II) of the Corporation and they be treated as regular employees from their respective dates of appointment.
- (iii) The Petitioners be granted all the service benefits which an employee is entitled on becoming permanent.
- (iv) The Corporation is directed to consider the Petitioners for the promotion to the post of Assistant Law Officers as and when there is an occasion.

24. With the above observations, the Writ Petition is disposed of.

(SANDEEP V. MARNE, J.)

(S. M. MODAK, J.)