

IN THE INDUSTRIAL COURT MAHARASHTRA AT PUNE**Complaint (ULP) No. 230 of 2015**
CNR NO. MHIC120003692015

Pimpri Chinchwad Mahanagarपालिका
Karmachari Mahasangh
Mumbai Pune Road,
Pimpri, Pune 411 018

... Complainant

Vs.

The Municipal Commissioner
Pimpri Chinchwad Municipal Corporation
and another

... Respondents

ORDER BELOW EXH. U-2
(Dated : 17/08/2018)

This complaint is filed u/s 28 and item 6 and 9 of Schedule IV of the MRTU & PULP ACT, 1971. The complainant has come with the case that the Respondents have committed unfair labour practice under item No. 6 and 9. They have employed the affected employees but are the members of the complainant as temporary employees and continued them as such for years with the object of depriving them of the status and privileges of permanent employees. So also the Respondents have failed to implement wage settlement or agreement between them.

2. The complainant is registered trade union, registered under the Trade Unions Act. The Union is also a recognised union under the MRTU & PULP ACT, 1971. This complaint is filed on behalf of all the workers enlisted in the list of the workers alongwith appointment date with the complaint. The

Respondent No.1 is a Municipal Commissioner and administrative head of Respondent No. 2. The Respondent No.1 called the enlisted workers for interview and gave them appointments since their respective date mentioned in the list till 1.8.2015. The enlisted workers are still working with the Respondents. The Respondent No.1 has not given permanency benefits to all the workmen after completion of 240 days. The Respondents are duty bound to obey the Industrial and Labour Laws and Rules therein. The Respondent No. 2 establishment is governed by the Bombay Provincial Municipal Corporation Act 1949, now it is known as Maharashtra Municipalities Act. It is a body corporate with perpetual succession and binding to obey all the laws of land i.e. Labour and Industrial Laws.

3. All enlisted workers are appointed on the post of "Ward Boy" or other mentioned against their names in the list by the Respondent No.1. Initially such workers were appointed for six months and then after giving break they are again appointed for further six months. The last appointment was made by Respondent No.1 on 12.1.2015. All the enlisted workers are working now with Respondent No.2 at various places.
4. The Respondent published an advertisement in daily newspaper for the post of "Ward Boy". The Respondents called them for interview with the documents of educational qualification. They were interviewed and by scrutinizing the documents, they were appointed as workers on the post of Ward Boy. Thereafter, the enlisted workers were appointed

from time to time for six months after giving one days break. The enlisted workers are working on remuneration since their appointment. They are doing work of perennial nature since last six years at par with the permanent Ward Boy. However, they are not getting salary at par with the permanent Ward Boy. Therefore, they claimed that it be declared that the Respondents have committed unfair labour practices under items 6 and 9 of Schedule IV and the Respondents be directed to make permanent the enlisted workers after completion of 240 days from the first appointment, and giving them all the permanency benefits and privileges. The complainant is asking in the application temporary reliefs that the Respondents are restrained from terminating services of the enlisted workers till final disposal of the complaint.

5. By filing written statement and say to the main complaint, and this application at Exh. C-3, the Respondents have resisted the claim. According to the Respondents, the complaint is not maintainable. The Respondents have not committed any breach of law. The enlisted workers are not employees of the Respondents. Therefore there is no question of commission of unfair labour practices by the Respondent. They were appointed for specific period on honorarium basis. They are not “employees” u/s 2(s) of the Industrial Disputes Act, 1947. They are taken on contract for the specific period. Hence, they have no right to claim services as employees after the period is over. There is no any relationship between them as employer

and employee. The averments made in the complaint, as well as this application are false. The enlisted workers were appointed without permission from the Government to fill up regular post of "Ward Boy" etc. The said appointment are made as per resolution of the Standing Committee for temporary period till following due procedure of appointment directed as per government circulars. It is admitted that the Corporation published advertisement in the daily newspaper, and as per said advertisement, the enlisted workers were given appointment for specific period on contract basis. Hence, there is no question of failure of rules and regulations. Hence the complainant cannot claim any relief against the Respondents.

6. Heard Id. Advocate for both the sides. Perused the record. Following points are arising for my consideration to decide the present revision application. My findings and the reasonings thereon are as follows :

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether the complainant proves prima facie case in its favour ?	In the affirmative
2) In whose favour balance of convenience lies ?	In favour of complainant.
3) Whether the complainant will suffer irreparable loss if interim relief is rejected ?	In the affirmative
4) What Order?	As per final Order.

REASONS

AS TO POINT No.1 to 3 :-

7. There is no dispute between the parties about the appointment of the enlisted workers in the various hospitals run by the Respondents. The complainant has placed on record documentary evidence at Exh.U-4 i.e. appointment orders etc. By these orders, the enlisted workers are appointed and their services were extended from time to time for years together. Till today they are working with the Respondents. The Respondents have not disputed the facts that till today the enlisted workers are working with them.
8. It is claimed by the complainant that though the enlisted workers are working continuously from last so many years they are not made permanent with the intention that they would not be liable to pay the salary or other benefits equivalent to the permanent employees. The Respondents are utilising the services of the enlisted workers on meagre remuneration. However, the enlisted workers are doing same work as done by the permanent Ward Boy, but not getting full payment from the Respondents. Therefore, they have knocked the doors of this Court, and have asked interim relief not to terminate till final disposal of the complaint.
9. It is argued by the ld. Advocate for the complainant that on completion of 240 days in a year, the Respondents were bound to make permanent the enlisted workers. However, it is not been done by the Respondent. There was only one day

break in a year and within one year from the date of appointment the enlisted workers have completed work of 240 days. Therefore the Respondents are bound to make permanent all these employees.

10. As against this, the Respondents have come with the case that the appointment of enlisted workers were on temporary basis for specific period. On completion of that period, their services are automatically terminated. They cannot claim permanency. Their appointments are not as per the procedure prescribed by the Government. Therefore, they claimed that the application be rejected.
11. It is to be noted here that even the Respondents have not disputed the fact that before appointment they have issued advertisement in daily newspaper. The enlisted workers were interviewed and by scrutinizing the documents of educational qualification they are appointed. Hence, it cannot be said that they are not appointed on issuing public notice.
12. The Id. Advocate Mr. S.B. Malegaonkar argued that running hospital by the Municipal Corporation is its optional activity. The Corporation is not getting any benefits from the hospital. The hospitals are being run for poor and needy people and for their medical treatment. The hospitals are being run from the public funds. Therefore, it is not an "industry". Even the enlisted workers have not appeared for the written examination. No oral examination was taken. Initially six months appointment was given. The Government is not made

party to the complaint. Hence, this complaint is hit by the principle of non-joinder of necessary parties u/s 2(oo) of the Industrial Disputes Act, 1947. The appointment of all workers were on temporary basis. The Standing Orders are not applicable to this application. No appointment by proper channel. He placed reliance on the reported ruling in the case of **Gangadhar Pillai Vs. M/s. Siemens Limited** in the Judgment dated 10.11.2006 of the Hon'ble Apex Court. He also placed reliance on one another Judgment of Hon'ble Apex Court dated 17.12.2008 in the case of **State of Punjab Vs. Bahadur Singh and Others.**

13. He further submitted that the Respondents are not going to terminate services of the enlisted workers. The cited rulings which are cited by the Id. Advocate for the complainants are applicable at the time of final hearing of the complaint.
14. The Id. Advocate for the Respondent – Mr. Malegaonkar brought my attention towards the Government Resolution dated 9.2.2018 and one Judgment of Hon'ble Apex Court in Civil Appeal No. 6134 to 6157/2016 in the case of **State of Maharashtra and Others Vs. Anita and Another** etc. The Hon'ble Apex Court has held therein that :

“After having accepted contractual appointment, the Respondents are estopped from challenging the terms of their appointment. Creation of posts was only for administrative purposes for sanction of the amount towards expenditure incurred but merely because the posts were created they

cannot be held to be permanent in nature. The Tribunal and the High Court ought not to have interfered with the policy decision to hold that the appointments are permanent in nature.”

With due respect I hold that at this stage, this ruling is not applicable to the present case.

15. The Id. Advocate for the complainant Mrs. V. S. Sareen placed her reliance on the reported rulings in the cases of :

(i) The Bangalore Water Supply and Sewerage Board etc and A. Rajappa and others etc reported in 1978 II LLJ Page 73 SC.

(ii) Pune Municipal Corporation and Ors Vs. Ashok Sakharam Jadhav reported in 2002 I CLR 357 (Bombay High Court).

(iii) Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya P. Karmachari Sanghatana reported in 2009 III CLR 262.

(iv) Secretary to Government, State of Maharashtra PWD and Others Vs. Baliram Kawaduji Shivarhuke, Nagpur reported in 2010 I CLR 641.

(v) Maharashtra Rajya Shetki Mahamandal Karmachari Sanghatana Vs. M.D. Maharashtra State Farming Corporation Ltd and Another reported in 2006 I CLR 467.

(vi) Municipal Council Chandrapur Vs. Bhartiya Nagar Parishad Kamgar Sangh Chandrapur and Another reported in 2008 III CLR 1054.

16. It is further argued by the Id. Advocate for the complainant that the enlisted workers are working for years together in the Respondents. Initially they were appointed for six months.

Thereafter by giving one day break they were again appointed for the same post and their period of services are extended from time to time till today. The workers are working with the Respondent for last so many years. However, they are not made permanent. They are entitled to be a permanent employee of the Respondent on completion of their services for 240 days before long break but they are not considered to make permanent. Therefore, the complainant has filed this complaint in this Court.

17. The Judgments cited on behalf of the Respondents are not applicable to the present case in view of the subsequent Judgments of the Hon'ble Apex Court and Hon'ble High Court. It is held by the Hon'ble Apex Court in the case of **Gangadhar Pillai Vs. M/s. Siemens Limited** referred above that :

“It is well settled by the catena of the decisions of the Hon'ble Apex Court that the project related employees cannot as a matter of right, demand any status and privileges of permanent employee. Considering the same merely because the Petitioner has been engaged from time to time in relation to the projects undertaken by the Respondent company, no fault can be found in the impugned order holding that there was no unfair labour practice on account of such employment and non grant of status and privileges of permanent employee to the petitioner.”

With due respect, I hold that the case in hand is not about the appointment of the enlisted workers on any project.

18. It is also held by the Hon'ble Apex Court in the case of **Secretary, State of Karnataka and Others Vs. Umadevi and**

Others that :-

“A sovereign Government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages. A regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. Regular appointment must be the rule.”

With due respect, I hold that this rule is not applicable to the present application at this stage.

19. The Hon'ble Apex Court in the case of **Pune Municipal Corporation and Others Vs. Ashok Sakharam Jadhav** held that as per BPMC Act, and rules therein the permanency benefits is to be given on completion of five years service in accordance with the settlement with the union. The Respondent have been made permanent long after they completed 240 days but not necessarily after five years. The petitioners should have made them permanent immediately on completion of 240 days. The petitioner are guilty of unfair labour practice.
20. The Hon'ble Apex Court in the case of **Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya P. Karmachari Sanghatana** has held that :-

“The complaint was filed under item 5,6,9, and 10 of Schedule IV and section 28 of MRTU &

PULP ACT, 1971. The affected employee in the complaint in Thane Court were engaged by the Respondent Corporation as casual labourers for cleaning the buses. They were required to work everyday atleast for 8 hours. They did work of permanent nature for paltry amount and that posts are available in the Depot. In their complaint, they alleged unfair labour practice under items 5,6,9 and 10 of Schedule IV of the Act. The allegations in Bombay Court are almost similar. The Respondent Corporation opposed the complaints alleging that those employees are casuals and no permanency status can be given to them. Industrial Court, Thane directed Respondent to cease and desist from unfair labour practice and to give to affected employees status, wages and all other benefits of permanency applicable to the post of cleaners. Industrial Court, Bombay directed to pay equal wages to concerned employees which are paid to permanent workers. In writ petition by Respondent, Id. Single Judge directed that employees in both the complaints be given benefit of permanency including salary and allowances. Writ Appeals thereon were dismissed and hence these appeals to Supreme Court. Argument before the Supreme Court is that the impugned orders are not maintainable, in view of decision of the Supreme Court in the case of Umadevi and Standing Order 503 – Supreme Court rejected the contention and dismissed appeals.”

This Rule is perfectly applicable to the present application.

21. The Id. Advocate for the complainant has placed her reliance on many other reported rulings. However, the ratio laid down in all these rulings are the same. Hence, I need not

discuss those Judgments thoroughly in this order. The enlisted workers are working with the Respondents since last so many years. This fact is not disputed by the Respondent. Hence the complainant has made prima facie case in its favour. As per the provisions of the Industrial Disputes Act, 1947 and other labour laws the enlisted workers have right to become permanent in the services. Therefore, the balance of convenience lies in favour of the complainant. If the interim relief is rejected at this stage, the complainant would suffer irreparable loss. The Respondent would immediately terminate services of the enlisted workers and they would be out of service. Hence, on the above discussions, I record my findings on Point No. 1 to 3 accordingly, and proceed to pass following order :

ORDER

1. The application Exh. U-2 is allowed.
2. The Respondents are hereby restrained from terminating services of the enlisted workers till final disposal of this complaint.
3. Cost would cost in cause.

Sd/-

Place : Pune

(P. R. Bhavake-Patil)

Member

Industrial Court, Pune.

Date : 17.08.2018

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