

CIVIL APPEAL NO(s). 3651 OF 2005

SHRIRAMPUR MUNICIPAL COUNCIL

Appellant (s)

VERSUS

SARVA SHRAMIK SANGHA & ORS. Respondent(s)  
(With appln(s) for exemption from filing O.T.)

WITH

Civil Appeal NO. 3652 of 2005

(with appln(s) for exemption from filing OT)

Civil Appeal NO. 3653 of 2005

Civil Appeal NO. 3654 of 2005

(with appln(s) for exemption from filing c/c of the impugned judgment)

Date: 03/02/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU

HON'BLE MR. JUSTICE T.S.THAKUR

For Appellant(s)	Mr. P.S.Narsimha, Sr. Adv.
	Mr. Atul B.Dakh, Adv.
	Mr. Y.S. Bedre, Adv.
	Mr. D.B.Kurhe, Adv.
	Mr. Jagdeep Singh Phakla, Adv.for
	Dr. Kailash Chand,Adv.

Mr. Shivaji M. Jadhav, Adv.
Mr. Rahul Joshi, Adv.

For Respondent(s)	Mr. Shivaji M. Jadhav,Adv.
	Mr. Rahul Joshi, Adv.
	Mr. Ravindra Keshavrao Adsure, Adv.(NP)
Mr. Uday B. Dube, Adv.for	
Mr. Kuldip Singh, Adv.	

Mr. V.N.Raghupathy, Adv.(NP)

UPON hearing counsel the Court made the following

O R D E R

The Appeals are allowed in terms of the signed order. Parties are left to bear their own costs.

(Parveen Kr. Chawla)  
Court Master(Indu Satija)  
Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3651 OF 2005

Shrirampur Municipal Council

..Appellant

versus

Sarva Shramik Sangha &amp; Others

..Respondents

WITH

O R D E R

These Appeals by special leave arise out of two orders passed by the High Court of Bombay at Aurangabad Bench dated 7th December, 1988 and 12th December, 2003, whereby Writ Petition No.3238 of 1992 filed by the appellant has been allowed in part with directions to the appellant herein.

The controversy arises in the backdrop of facts which have been set out in detail in the orders passed by the High Court making it unnecessary for us to recount the same over again. Suffice it to say, a reference made under Sections 10B read with Section 12(5) of the Industrial Disputes Act, 1947 (for short 'the Act') was disposed of by the Industrial Tribunal by its orders dated 04th February, 1982 and 08th October, 1987. The Industrial Tribunal after examining the claims made by the employees and the response of the appellant-Municipal Council to the same, issued certain directions relating to demands 1, 2 and 4 made by the employees. In terms

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of the said directions, the municipality was required to regularise the services of the daily wagers employees working with it. The directions issued by the Industrial Tribunal also implied that the municipality would create posts against which such regularisation would become possible.

Aggrieved by the order passed by the Industrial Tribunal, the appellant filed Writ Petition No. 3238 of 1992 in the High Court of Bombay at Aurangabad Bench raising several issues and claiming several reliefs. The High Court, however, dismissed the writ petition qua all other reliefs prayed for in the writ petition except the one claimed in para 15(aa) of the writ petition by its order dated 07th December, 1988. Inasmuch as the writ petition was dismissed without passing any speaking



(viii) The respondents 4 and 5 to dispose of the proposals made by the petitioner for creation of posts within three months from today."

Civil appeal No.3653 of 2005 assails the correctness of the above directions.

We have heard at considerable length learned counsel for the parties and perused the record.

These appeals must, in our opinion, succeed on the

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short point that the order passed by the High Court on 07 th December, 1988 dismissing the writ petition qua prayers made in para 15 except in sub-para (aa) thereof is unsupported by any reasons. In our opinion, the writ petition raised important and debatable questions of law which the High Court ought to have looked into instead of summarily rejecting the writ petition. One of the issues which, in our opinion, would have necessarily arisen for the consideration of the High Court was whether the Industrial Tribunal was justified in directing regularisation of the adhoc employees in the absence of sanctioned posts against which such regularisation could be made. The High Court had further to examine whether the Tribunal could, in the facts and circumstances of the case, issue a direction which had the effect of obliging the Municipal Council or the government to create posts where none existed. These aspects, as noticed earlier, remain unnoticed in the order passed by the High Court dismissing the writ petition without so much as setting out the reasons for such a dismissal.

We are also of the view that while issuing directions in terms of its order dated 12th December, 2003, the High Court has not examined whether a direction for payment of higher emoluments arising out of the sanction subsequently granted by the government or independent of such a sanction could be issued. It is not in dispute that

the municipality does not have sufficient funds of its own  
to bear the additional financial burden that would flow

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from the orders it was directed to carry out. The  
municipality was and continues to be dependent heavily on  
the State Government for financial support even to pay its  
wage bill. Suffice it to say that all these aspects need  
be examined for which purpose we deem it just and proper to  
remit the matter back to the High Court.

We, accordingly, allow these appeals, set aside the  
impugned orders dated 07th December, 1988 and 12th December,  
2003 passed by the High Court of Bombay at Aurangabad and  
remit the matter back to it for a fresh hearing and  
disposal in accordance with law. Parties are left to bear  
their own costs.

.....J.  
[MARKANDEY KATJU]

NEW DELHI; .....J.  
FEBRUARY 03, 2010 [T.S. THAKUR]