

(1991) 07 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 4860 to 4886 of 1991 and 95 of 1992

Ratnagiri Municipal Council

APPELLANT

Vs

Harishchandra Shankar Pawar and another

RESPONDENT

Date of Decision : 12-07-1991

Acts Referred:

Maharashtra Municipalities Act, 1965 — Section 76

Citation : (1997) 3 LLJ 1235

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : C.R. Dalvi and R.D. Soni, AGP, for the Appellant; R.J. Kochar, for the Respondent

Judgement

1. These Writ Petitions under Article 227 of the Constitution of India impugn an Order of the Industrial Court, Kolhapur, dated July 12, 1991, made in Complaint (ULP) Nos. 198 to 224 of 1989 and 269 of 1989 under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. The concerned workmen of the Petitioner-Municipal Council had moved the Industrial Court, Kolhapur, by their complaints alleging an unfair labour practice, inter alia, within the meaning of item 6 of Schedule IV of the Act on the ground that they were continued as temporary employees for years together with a view to deprive them of the status and benefits of permanency. After recording the evidence, the Industrial Court was satisfied that it was factually so. Apart from the Ratnagiri Municipal Council, the State of Maharashtra was also impleaded as a party Respondent to the Complaints. By the impugned order, the Industrial Court has declared that the Petitioner-Municipal Council had engaged in unfair labour practice within item 6 of Schedule IV of the Act, and directed it to make permanent all the complainants from the respective dates of their complaints by complying with all the necessary requirements. It also declared that the complainants were entitled to the benefits of permanency from the respective

dates of their complaints.

3. The Petitioner-Municipal Council has impugned the Order of the Industrial Court only on the ground that, under the provisions of the Maharashtra Municipalities Act, the power of sanctioning permanent posts of the requisite type is vested in the Director of Municipal Administration without whose sanction they could not have created sufficient permanent posts in which the Original Complainant-workmen could have been employed. The petitioner-Municipal Council does not deny that, as correctly found by the Industrial Court, all the concerned workmen were working from 1982 onwards on the work of water supply, which is work of a perennial nature, and which the Municipal Council is required to carry on.

4. In view of the fact that the Petitioner-Municipal Council pleaded its helplessness in the matter, I have heard Mr. Soni, learned Assistant Government Pleader, to ascertain what difficulties, if any, were faced by the State Government in sanctioning the permanent posts. In fact, the documents annexed to Civil Application No. 95 of 1992 taken out by the Petitioner-Municipal Council paint a sordid picture. They show that the Petitioner-Municipal Council was virtually pleading with the State Government for creation of additional permanent posts. Though there was enough work of water supply to be carried out by the concerned workmen, and though the Commissioner of the division, who was at the material time delegated the power u/s 76 of the Maharashtra Municipalities Act, was convinced that the proposal made by the Municipal Council for creation of additional permanent posts was justified, the only reason given for not sanctioning the additional posts was the vague policy of the Government at the material point of time of not creating additional posts.

5. In response to the direction given by this Court, the Secretary of the General Administration Department, Government of Maharashtra, V. R. Dravid, is present before the Court today. He states that the power u/s 76 of the Maharashtra Municipalities Act is no longer delegated to the Divisional Commissioner and that he is currently holding additional charge of Director, Municipal Administration. He further states that, after having studied the facts of the case, he is satisfied that the plea made by the Municipal Council for creation of additional posts is justified, in view of the plight into which the workmen have been put. From the case papers, it appears that in 1992 the Director of Municipal Administration had sanctioned 16 additional permanent posts on which 16 out of the 28 original complainant workmen have already been absorbed as permanent workmen. Therefore, he states that he is now convinced that another 12 additional posts of appropriate type would have to be sanctioned for absorption of the remaining workmen. The additional posts, which need to be sanctioned, are the posts of six linemen, three fitters and three coolies. V. R. Dravid, Secretary, General Administration Department, who is present in Court, undertakes to the Court that these 12 posts would be sanctioned within the period of 30 days from today.

6. Petitioner-Municipal Council agrees that, as soon as the sanction of the

additional 12 posts is received, they would immediately absorb the remaining 12 workmen as permanent employees on the newly sanctioned 12 posts.

7. The only question that remains to be considered is the date from which benefits of permanency should be granted to the remaining 12 workmen on 12 permanent posts to be sanctioned. Fortunately, all parties are agreed that the 12 workmen shall be given the benefits flowing from permanency with effect from January 1, 1995.

8. In these circumstances, it is not necessary to pass any other order in the Writ Petitions, except to modify the impugned orders only with regard to the date from which the benefits of permanency will enure to (i) Harischandra Shankar Pawar, First Respondent in Writ Petition No. 4860 of 1991, (ii) Ganpat Suryaji Kuriadkar, First Respondent in Writ petition No. 4865 of 1991, (iii) Anant Babu Kurtadkar, First Respondent in Writ Petition No. 4866 of 1991 (iv) Barkya Sadashiv Kotre, First Respondent in Writ petition No. 4867 of 1991, (v) Ramchandra Govind Bavkar, First Respondent in Writ Petition No. 4868 of 1991, (vi) Arun Sadashiv Kotre, First Respondent in Writ Petition No. 4870 of 1991, (vii) Anant Shivram Shinde, First Respondent in Writ Petition No. 4872 of 1991, (viii) Ramehandra Sitaram Khanvilkar, First Respondent in Writ Petition No. 4877 of 1991, (ix) Gajanan Sakharam alias Tike, First Respondent in Writ Petition No. 4880 of 1991, (x) Laxman Sadashiy Kotre, First Respondent in Writ Petition No. 4881 of 1991, (xi) Mahadeo Hari Gotad, First Respondent in Writ Petition No. 4884 of 1991 and (xii) Amarnath Janardan Mayekar, First Respondent in Writ Petition No. 4886 of 1991. All Parties are agreed that substantial justice would be done if the benefits of permanency are granted from January 1, 1995

9. In the result, the following order is passed :-

(a) As far as the respondent-workmen in Writ Petitions, 4861 of 1991, 4862 of 1991, 4863 of 1991, 4864 of 1991, 4869 of 1991, 4871 of 1991, 4873 of 1991, 4874 of 1991, 4875 of 1991, 4876 of 1991, 4878 of 1991, 4879 of 1991, 4882 of 1991, 4883 of 1991, 4885 of 1991, and 52 of 1992 are concerned, it is not disputed that they have all been made permanent on sanctioned posts and that they are being given the benefits of permanency from the respective dates on which they were made permanent. In my view, substantial justice has been done and there is no further relief due to them. In these Writ Petitions, the impugned orders stand modified accordingly and the benefits of permanency shall enure to them from the respective dates on which they have been made permanent in the 16 sanctioned permanent posts. Writ Petitions 4861 of 1991, 4862 of 1991, 4863 of 1991, 4864 of 1991, 4869 of 1991, 4871 of 1991, 4873 of 1991, 4874 of 1991, 4875 of 1911, 4876 of 1991, 4878 of 1991, 4879 of 1991, 4882 of 1991, 4883 of 1991, 4885 of 1991, and 52 of 1992 are hereby dismissed and the Rules granted herein are discharged.

(b) Writ petitions 4860 of 1991, 4865 of 1991, 4866 of 1991, 4867 of 1991, 4868 of 1991, 4870 of 1991, 4872 of 1991, 4877 of 1991, 4880 of 1991, 4881 of

1991, 4884 of 1991, and 4886 of 1991 are partly allowed and Rules granted therein partly made absolute only to the extent that the 12 workmen ,(i) Harischandra Shankar Pawar, First Respondent in Writ Petition No. 4860 of 1991, (ii) Ganpat Suryaji Kurtadkar, First Respondent in Writ Petition No. 4885 of 1991, (iii) Anant Babu Kurtadkar, First Respondent in Writ Petition No. 4866 of 1991, (iv) Barkya Sadashiy Kotre, First Respondent in Writ Petition No. 4867 of 1991, (v) Ramchandra Govind Bavkar, First Respondent in Writ Petition No. 4868 of 1991, (vi) Arun Sadashiv Kotre, First Respondent in Writ Petition No. 4870 of 1991, (vii) Anant Shivram Shinde, First Respondent in Writ Petition No. 4872 of 1991, (viii) Ramchandra Sitaram Khanvilkar, First Respondent in Writ Petition No. 4877 of 1991, (ix) Cajanan Sakharam alias Take, First Respondent in Writ petition No. 4880 of 1991, (x) Laxman Sadashiv Kotre First Respondent in Writ Petition No. 4881 of 1991, (xi) Mahadeo Hari Gotad, First Respondent in Writ petition No. 4884 of 1991 and (xii) Amarnath Janardan Mayekar, First Respondent in Writ Petition 4886 of 1991, shall be made permanent in the newly sanctioned posts, but they shall be given the benefits of permanency with effect from January 1, 1995.

10. There shall be no order as to costs.

11. Mr. Dalvi, learned Advocate appearing for the Petitioner-Municipal Council, assures the Court that the services put in by all the concerned workmen as temporary workmen shall be taken into account for reckoning continuity of service, seniority and terminal benefits.

12. In view of this judgment, no further orders are needed in Civil Application No. 95 of 1992, which also stands disposed of by this judgment.

13. Certified copy expedited.