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

WRIT PETITION NO.4967 OF 2023

PETITIONERS :- Ori. plaintiff

1 Subhash s/o Sukhdev Sahare, Aged about 42 years, Occ : Nil

2 Vinod s/o Nilkanth Wanve, Aged about 48 years, Occ : Nil

3 Roopchand s/o Pralhad Sontake, Aged about 53 years, Occu. : Nil

4 Roopchand s/o Narayan Gedam, Aged about 58 years, Occ : Nil

5 Lokesh s/o Shiva Patil, Aged about 43 years, Occu: Nil

All R/o C/o Subhash Sukhdeo Sahare, Reshimbag Square, Siraspeth, Near Gautam Wachanalaya, Nagpur.

..**VERSUS**..

RESPONDENTS :- Ori. defendants

1 Nagpur Municipal Corporation Civil Lines, Nagpur Through its Municipal Commissioner

2 The Member Industrial Court, Civil Lines Nagpur

Deleted as per Hon'ble Court's order dt.21.8.23

WITH
WRIT PETITION NO.4968 OF 2023

PETITIONERS :- Ori. applicant

1 Bhimrao s/o Gautam Lingayat, Aged about 52 years, Occu: Nil

2 Anil s/o Daulatrao Lokhande, Aged about 55 years, Occu: Nil

3 Laxman s/o Anandrao Potpose, Aged about 51 years, Occ. : Nil

4 Dilip S/o Daulatrao Lokhande,
Aged about 56 years, Occ : Nil

All C/o Shivaji Nagar, Near Ambedkar Statue, Mahal, Nagpur.

..VERSUS..

RESPONDENTS :- 1 Nagpur Municipal Corporation Civil Lines, Nagpur Through its Municipal Commissioner

Ori. respondent

2 The Member Industrial Court, Civil Lines Nagpur

Deleted R.No.2, vide Hon'ble Court's order dt.21.8.23

WITH
WRIT PETITION NO.4722 OF 2025

PETITIONER :- 1 Nagpur Municipal Corporation, through its Commissioner, having office at Civil Lines, Nagpur.

ori. respondent No.1 to 3.

2 Nagpur Municipal Corporation, through its Health Department, having office at Civil Lines, Nagpur.

3 Nagpur Municipal Corporation, through its Zonal Office, Lakadganj Zone, Zone No.8, Lakadganj, Nagpur.

..VERSUS..

RESPONDENTS :- 1 Rajkumar S/o Ramaji Burbure, aged about 54 years, occupation: Service, R/o. Nandanwan Road, near Ambedkar Putla, Rajendra Nagar, Nandanwan, Nagpur-08.

Ori. complainant

Ori. Respondent No.4

2 The State of Maharashtra, Through its Secretary, Nagar Vikas Vibhag, Mantralaya, Vistar Bhavan, Mumbai-400 032.

WITH

WRIT PETITION NO.2976 OF 2025

PETITIONER :- **1** Nagpur Municipal Corporation, through its Commissioner, having office at Civil Lines, Nagpur.
Ori. Respondent No.1 to 3

2 Nagpur Municipal Corporation, through its Health Department, having office at Civil Lines, Nagpur.

3 Nagpur Municipal Corporation, through its Zonal Office, Lakadganj Zone, Zone No.8, Lakadganj, Nagpur.

..**VERSUS**..

RESPONDENT'S :- **1** Tejram S/o. Waman Gedam, aged about 62 years, occupation: Retired, R/o. Plot No.335/A/13/B, nandanvan Road, Near Buddha Vihar, Bagadganj, Kumbhar Toli, Nagpur-08.
Ori. complainant

Ori. Respondent No.4

2 The State of Maharashtra, Through its Secretary, Nagar Vikas Vibhag, Mantralaya, Vistar Bhavan, Mumbai-400 032.

WITH

WRIT PETITION NO.2974 OF 2025

PETITIONER :- **1** Nagpur Municipal Corporation, through its Commissioner, having office at Civil Lines, Nagpur.
Ori. Respondent No.1 to 3

2 Nagpur Municipal Corporation, through its Health Department, having office at Civil Lines, Nagpur.

3 Nagpur Municipal Corporation, through its Zonal Office, Lakadganj Zone, Zone No.8, Lakadganj, Nagpur.

..VERSUS..

RESPONDENT'S :- 1 Amit S/o. Wasudeo Wasnik, aged about 46 years, occupation: Service, R/o Sakkardhara Road, Near Pragtishil Buddha Vihar, Bhande Plot, Rani Bhosle Nagar, Nagpur-08.

Ori. complainant

Ori. Respondent No.4

2 The State of Maharashtra, Through its Secretary, Nagar Vikas Vibhag, Mantralaya, Vistar Bhavan, Mumbai-400 032.

WITH

WRIT PETITION NO.2972 OF 2025

PETITIONER :- 1 Nagpur Municipal Corporation, through its Commissioner, having office at Civil Lines, Nagpur.

Ori. Respondent No.1 to 3)

2 Nagpur Municipal Corporation, through its Health Department, having office at Civil Lines, Nagpur.

3 Nagpur Municipal Corporation, through its Zonal Office, Lakadganj Zone, Zone No.8, Lakadganj, Nagpur.

..VERSUS..

RESPONDENTS :- 1 Manoj S/o Bhaurao Date, aged about 55 years, occupation: Service, R/o. Bhandara Road, Near Shiv

Ori. complainant

Mandir, Old Bagadganj, Kumbhar Toli, Nagpur -08.

Ori. Respondent No.4

2 The State of Maharashtra, Through its Secretary, Nagar Vikas Vibhag, Mantralaya, Vistar Bhavan, Mumbai-400 032.

WITH

WRIT PETITION NO.2978 OF 2025

PETITIONER (Ori. Respondent Nos.1 to 3) :-

1 Nagpur Municipal Corporation, through its Commissioner, having office at Civil Lines, Nagpur.

2 Nagpur Municipal Corporation, through its Health Department, having office at Civil Lines, Nagpur.

3 Nagpur Municipal Corporation, through its Zonal Office, Lakadganj Zone, Zone No.8, Lakadganj, Nagpur.

..**VERSUS**..

RESPONDENT'S :-

Ori. complainant

1 Tulshiram S/o Somaji Barsagde, aged about 57 years, occupation: Service, R/o. Juni Mangalwari, Gangabai Ghat Road, near Kanji House, Bagadganj, Nagpur -08.

Ori. Respondent No.4

2 The State of Maharashtra, Through its Secretary, Nagar Vikas Vibhag, Mantralaya, Vistar Bhavan, Mumbai-400 032.

WITH

WRIT PETITION NO.2975 OF 2025

PETITIONER :- 1 Nagpur Municipal Corporation, through its Commissioner, having office at Civil Lines, Nagpur.
(Ori. Respondent Nos.1 to 3)

2 Nagpur Municipal Corporation, through its Health Department, having office at Civil Lines, Nagpur.

3 Nagpur Municipal Corporation, through its Zonal Office, Lakadganj Zone, Zone No.8, Lakadganj, Nagpur.

..**VERSUS**..

RESPONDENT'S :- 1 Kailash S/o. Raghunath Kamble, aged about 49 years, occupation: Service, R/o. Plot No.A1/161, Railway Station Road, Near Baghel Kirana Store, Jaidurga Nagar, Bhandewadi, pardi Ngapur-08.
Ori. complainant

2 The State of Maharashtra, Through its Secretary, Nagar Vikas Vibhag, Mantralaya, Vistar Bhavan, Mumbai-400 032.
Ori. Respondent No.4

WITH

WRIT PETITION NO.2980 OF 2025

PETITIONER :- 1 Nagpur Municipal Corporation, through its Commissioner, having office at Civil Lines, Nagpur.
Ori. Respondent No.1 to 3

2 Nagpur Municipal Corporation, through its Health Department, having office at Civil Lines, Nagpur.

3 Nagpur Municipal Corporation, through its Zonal Office, Lakadganj Zone, Zone No.8, Lakadganj, Nagpur.

..VERSUS..

RESPONDENT'S :- 1 Dinesh S/o. Ambadas Moon, aged about 53 years, occupation: Service, R/o.Behind Buddha Vihar, Rajiv Gandhi Nagar, Dr. Ambedkar Marg, Nagpur-17.
Ori. complainant

2 The State of Maharashtra, Through its Secretary, Nagar Vikas Vibhag, Mantralaya, Vistar Bhavan, Mumbai-400 032.
Ori. Respondent No.4

WITH

WRIT PETITION NO.4723 OF 2025

PETITIONER :- 1 Nagpur Municipal Corporation, through its Commissioner, having office at Civil Lines, Nagpur.
Ori. Respondent No.1 to 3

2 Nagpur Municipal Corporation, through its Health Department, having office at Civil Lines, Nagpur.

3 Nagpur Municipal Corporation, through its Zonal Office, Lakadganj Zone, Zone No.8, Lakadganj, Nagpur.

..VERSUS..

RESPONDENT'S :- 1 Jiwan Nilbaji Borkar, aged about 61 years, occupation: Retired, R/o. Plot No.161, Bhandara Road, Near Alok Buddha Vihar, Gangabai Ghat, Nagpur-08.
Ori. complainant

2 The State of Maharashtra, Through its Secretary, Nagar Vikas Vibhag, Mantralaya, Vistar Bhavan, Mumbai-400 032.
Ori. Respondent No.4

WITH

WRIT PETITION NO.2979 OF 2025

PETITIONER :- 1 Nagpur Municipal Corporation, through its Commissioner, having office at Civil Lines, Nagpur.

Ori. Respondent No.1 to 3.

2 Nagpur Municipal Corporation, through its Health Department, having office at Civil Lines, Nagpur.

3 Nagpur Municipal Corporation, through its Zonal Office, Lakadganj Zone, Zone No.8, Lakadganj, Nagpur.

..**VERSUS**..

RESPONDENTS :- 1 Jagdish S/o. Rajeram Borkar, aged about 48 years, occupation: Retired, R/o. Near Buddha Vihar, Tah. Kuhi, Mohadi, Titur, Kuhi, District: Nagpur – 440202.

Ori. complainant

Ori. Respondent No.4

2 The State of Maharashtra, Through its Secretary, Nagar Vikas Vibhag, Mantralaya, Vistar Bhavan, Mumbai-400 032.

WITH

WRIT PETITION NO.2977 OF 2025

PETITIONER :- 1 Nagpur Municipal Corporation, through its Commissioner, having office at Civil Lines, Nagpur.

Ori. Respondent No.1 to 3

2 Nagpur Municipal Corporation, through its Health Department, having office at Civil Lines, Nagpur.

3 Nagpur Municipal Corporation, through its Zonal Office, Lakadganj Zone, Zone No.8, Lakadganj, Nagpur.

..**VERSUS**..

RESPONDENT'S :- 1 Dinesh S/o. Uddhav Patil, aged about 47 years, occupation: Service, R/o. Gangabai Ghat Road, Near Ashok Buddha Vihar, Kanji House, Juni Mangalwari, Nagpur -08.

Ori. complainant

Ori. Respondent No.4

2 The State of Maharashtra, Through its Secretary, Nagar Vikas Vibhag, Mantralaya, Vistar Bhavan, Mumbai-400 032.

WITH

WRIT PETITION NO.2973 OF 2025

PETITIONER :- 1 Nagpur Municipal Corporation, through its Commissioner, having office at Civil Lines, Nagpur.

Ori. Respondent No.1 to 3.

2 Nagpur Municipal Corporation, through its Health Department, having office at Civil Lines, Nagpur.

3 Nagpur Municipal Corporation, through its Zonal Office, Lakadganj Zone, Zone No.8, Lakadganj, Nagpur.

..**VERSUS**..

RESPONDENT'S :- 1 Sunil S/o Ramdas Tirpude, aged about 52 years, occupation: Service, R/o. House No.8, Sawari Amma Dargah Road, Near Jian Kirana Store, Pawanputra Nagar, Nagpur-23.

Ori. complainant

Ori. Respondent No.4

2 The State of Maharashtra, Through its Secretary, Nagar Vikas Vibhag, Mantralaya, Vistar Bhavan, Mumbai-400 032.

WITH

WRIT PETITION NO.2970 OF 2025

PETITIONER :- 1 Nagpur Municipal Corporation, through its Commissioner, having office at Civil Lines, Nagpur.
ori. respondent No.1 to 3.

2 Nagpur Municipal Corporation, through its Health Department, having office at Civil Lines, Nagpur.

3 Nagpur Municipal Corporation, through its Zonal Office, Lakadganj Zone, Zone No.8, Lakadganj, Nagpur.

..**VERSUS**..

RESPONDENTS :- 1 Smt. Laxmibai W/o Lokmitra Babulkar, aged about 54 years, occupation: Service, R/o. Old Mangalwari, Gangabai Ghat Road, Bhandewadi, Bagadganj, Nagpur-08.
Ori. complainant

Ori. Respondent No.4

2 The State of Maharashtra, Through its Secretary, Nagar Vikas Vibhag, Mantralaya, Vistar Bhavan, Mumbai-400 032.

Mr. V. P. Marpakwar, Advocate for Petitioner in W.P. No.4968 of 2023 and 4967 of 2023
Mr. S. N. Bhattad, Advocate for Respondent No.1 in W.P. No.4968 of 2023 and 4967 of 2023 and for petitioners in other respective petitions.
Mr. U. P. Aakare, Advocate for the Respondent No.1 in respective petitions
Mr. S. B. Bissa AGP for respondent/State in respective petitions.

CORAM :ROHIT W. JOSHI, J.
RESERVED ON :13.10.2025
PRONOUNCED ON 22.12.2025

ORAL JUDGMENT :

1) **Rule.** Rule made returnable forthwith. Heard finally with consent of learned counsel for the respective parties.

2) All these petitions give rise to identical questions of law and the facts of the petitions are almost similar, therefore, the petitions are being decided by a common judgment. For the purpose of convenience, facts of writ petition No.4722 of 2025 will be taken into consideration.

3) Petitioners are original respondent Nos. 1 to 3 and respondents are original complainant. Petitioners will be referred as, “NMC” and the respondent No.1 as, “complainant” for the sake of brevity.

4) Respondent No.1 in Writ Petition No.4722 of 2025 had filed a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act,1971, (hereinafter referred to as

"MRTU & PULP Act" for the purpose of brevity), being Complaint ULP No.413 of 2015. It is the case of the complainant that he was appointed as a Safai Karmachari with NMC on the post of cleaner/sweeper w.e.f. 27.07.1993. Initially wages were paid at the rate of Rs.25/- per day. The wages were increased from time to time to Rs.294/- per day. According to the complainant he has rendered more than 240 days of service in each calendar year ever since his appointment and his working was satisfactory, clean and unblemished. The complainant raised a grievance that work of a regular employee was being extracted from him while treating him to be a substitute worker for a period of around 22 years. The complainant alleged that the NMC had indulged in unfair trade practice under Item 6 and 9 of Schedule-IV of MRTU & PULP, Act. It is also contended that the service of complainant is governed by the provisions of Bombay Industrial Relations Act & Industrial Employment (Standing Orders), Act, 1946 and Model Standing Orders ("MSO") framed under the said Act. According to the complainant, in view of Clause 4(C) of the MSO he is entitled

to the benefit of regularization in service upon completion of 240 days of work in one calendar year. The complainant has referred to resolutions dated 27.11.2015 and 21.01.2016 passed by the NMC for creation of 4,500 and odd posts of Safai Karmacharis. It is, however, stated that NMC failed to take effective steps for implementation of the said resolutions, resulting in serious hardship to the Safai Karmacharis like the complainant. Reference was also made to resolution dated 30.11.2009, whereby benefit of regularization in service was granted to certain employees who were working as Safai Karmacharis.

5) The NMC filed its written statement opposing the complaint. It raised a contention that since the complainant was not appointed by following the procedure prescribed for appointment of a regular employee, the claim of regularization made by the complainant was not tenable. The respondent also contended that there was no sanctioned post against which services of the complainant could be regularized. It is stated that the complainant was working as a substitute Safai Karmachari and was not entitled to claim

benefit of regularization merely on the ground that he had completed 240 days of service in a calendar year. The NMC also contended that Model Standing Orders are not applicable since it has its own Certified Standing Orders. It is contended that apart from Certified Standing Orders, service conditions are also governed by the provisions of Maharashtra Civil Services Rules, 1981. Lastly, the NMC raised a contention that the State Government had granted approval for creation of 4407 supernumerary posts of Safai Karmacharis and pursuant to the said Government Resolution, appointment order dated 28.02.2020 was issued in favour of the complainant on a supernumerary post as a regular employee. It is stated that the employees are not entitled to benefit of previous service as per the said appointment order. A contention is raised that since the appointment order is accepted unconditionally, complainants cannot seek benefit of previous employment in view of clause 19 of the appointment order which prohibits the employees from claiming benefit of the previous service. It is contended that the said clause is fully binding on the complainant. Apart

from this, technical ground is also raised that complaint filed on behalf of individual complainant was not maintainable.

6) The learned Industrial Court framed issues in the matter on which the respective parties recorded their evidence. After hearing the parties the learned Industrial Court has allowed the complaint vide judgment and order dated 30.09.2024. The learned Industrial Court has granted a declaration that the NMC had indulged in unfair labour practice under Items 6 and 9 in Schedule IV of MRTU & PULP, Act and directed it to cease and desist from continuing the same. Further directions are issued to submit proposal to the State Government to grant benefit of permanency to the complainant on completion of 240 days of service and further upon acceptance of the proposal to grant all consequential benefits including pension and gratuity. Similar orders are passed in cases of several other Safai Karmacharis. The said orders are subject matter of challenge in the present writ petitions.

7) Mr. Sharad Bhattad, learned Advocate for the petitioner, raised a preliminary objection that complaint filed

by the individual employees is not maintainable and as such, the complaint was liable to be dismissed on this ground alone. He contends that even if the case of the complainants is taken on their face value and accepted to be true, the case would fall under Schedule IV, Item 6 and not under Item 9. He further contends that a complaint with respect to unfair labour practice under Schedule IV, Item 6 can be entertained only at the behest of a recognized union, in view of Section 21 of the MRTU and PULP Act.

8) The contention is liable to be rejected in view of the settled legal position that Standing Orders framed under the Bombay Industrial Relations Act, 1946 (BIR, Act) constitute service conditions and failure to follow Model Standing Orders and/or deprive the employees of rights flowing therefrom amounts to an unfair labour practice under Schedule IV, Item 9. Legal position in this regard is well settled by a catena of decisions of this Court, including in the case of ***Narendra Thakre Vs. NMC,*** reported in ***(2006) 3 AIR BomR, 551.***

9) Apart from this, the record indicates that there is

no recognized union to represent or espouse the cause of the complainants and therefore, the complainants will be entitled to file individual complaints even with respect to unfair labour practice under Schedule IV, Item 6, in view of the proviso to Section 21 of the Act.

10) Since, the foundation of the claim of the employees' is clause 4(C) of the Model Standing Orders, it will be appropriate to decide as to whether service conditions of the employees will be governed by MSO. It is the case of the employees that their services are governed by MSO. As against this, the contention of NMC is that MSO are not applicable to NMC since there are separate certified Standing Orders which are duly sanctioned under the provisions of the Act.

11) Mr. Sharad Bhattad, the learned Advocate for the NMC, contends that the learned Labour Court had erred in allowing the complaint filed by the respondent-employee. It is his contention that NMC is a public body and, therefore, appointments in NMC are required to be made by following a prescribed procedure. The learned Advocate contends that

the initial appointment of the respondent-employee with NMC was not made by following the procedure prescribed for appointment of regular employees and therefore the complainants cannot claim regularization or permanency. The learned Advocate has placed reliance on judgment of the Hon'ble Supreme Court in the matter of ***State of Karnataka Vs. Umadevi*** reported in **(*2006) 4 SCC 1,*** in support of his contention that since the complainants were not appointed by following procedure prescribed for appointment of regular employees, they cannot claim regularization in service as a matter of right. The learned Advocate further contends that although in the matter of ***MSRTC Vs. Casteribe Rajya Parivahan Karmachari Sanghatna***, reported in **(*2009) 8 SCC 556,*** the Hon'ble Supreme Court has explained that the law laid down in Umadevi (supra) would not result in creating any fetter on Courts dealing with labour laws from granting relief to employees who are subjected to unfair labour practices**,** relief of regularization in service cannot be granted unless the service is rendered against a duly sanctioned post and that too by following the prescribed procedure. He

further contends that the judgment also clarifies that creation of a post is beyond the powers of any Court of law and therefore, creation of post cannot be ordered by a judicial order. The learned Advocate contends that the learned Industrial Court has erred in granting declaration that NMC had indulged in unfair labour practice by continuing services of complainants as daily wagers although the complainants had not rendered service against any sanctioned vacant post.

12) The learned Advocate argues that in view of Section 51(4) of the Maharashtra Municipal Corporations Act, the power to create a post is not vested with NMC and, therefore, it was not within the competence of NMC to regularize services of the respondent-employee since posts were not in existence.

13) In furtherance of his contention that there is no right of regularization in service vested with any employee in the absence of a sanctioned post and that creation of post is beyond the competence of a Court of law, it being necessarily an administrative function. He further contends that benefit of regularization is granted to the complainants by creating a

supernumerary post, on completion of 20 years service. He contends that policy of regularization is an administrative decision and that the learned Industrial Court was not justified in directing the NMC to set fresh proposal for regularization of service of complainants on completion of 240 days service. The learned Advocate has placed reliance on the following judgments:-

(a). ***MSRTC Vs. Casteribe Rajya Parivahan Karmachari Sanghatana,*** reported in ***(2009) 8 SCC 556,***

(b). ***CEO, ZP, Thane Vs. Santosh Tukaram Tiware,*** reported in ***(2023) 1 SCC 456,***

(c). ***Union of India Vs. Ilmo Devi,*** reported in ***(2021) 20 SCC 290,***

(d). ***Hari Nandan Prasad and anr. Vs. Food Corporation of India,*** reported in ***(2014) 7 SCC 190,***

(e). ***Divisional Manager Aravali Golf Club and anr. Vs. Chander Hass and anr.,*** reported in ***(2008) 1 SCC 683.***

(f). ***Municipal Council, Tirora Vs. Tulsidas Bidhade,***

reported in ***2016 (6) MhLJ 867 (D.B.)***

14) Apart from the aforesaid decisions, the learned Advocate has drawn attention to the judgment by the Hon'ble Supreme Court in the matter of ***ONGC..Vs...Krisan Gopal and others*** reported in ***2021 18 SCC 707.*** The Hon'ble Supreme Court has dealt with the earlier decision in the matter of ***ONGC Ltd., Vs. Petroleum Coal Labour Union (PCLU),*** reported in ***(2015) 6 SCC 494*** and referred the said decision for reconsideration to a larger bench in view of the following observations:-

> *28. The following propositions would emerge upon analysing the above decisions:*
>
> *28.1 Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution.*
>
> ***28.2*** *The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage*

employees despite their performing the same work as regular workmen on lower wages.

28.3. *The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service.*

28.4. *Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit on a par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14.*

28.5. In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of Vth Schedule to the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

29. The decision in PCLU needs to be revisited in order to set the position in law which it adopts in conformity with the principles emerging from the earlier line of precedent. More specifically, the areas on which PCLU needs reconsideration are:

29.1 The interpretation placed on the provisions of Cluase 2(ii) of the Certified Standing Orders.

29.2 The meaning and content of an "unfair labour

practice" under Section 2(ra) read with Item 10 of the Vth Schedule to the ID Act.

29.3 ***The limitations, if any, on the power of the Labour and Industrial Courts to order regularisation in the absence of sanctioned posts.*** *The decision in PCLU would, in our view, require reconsideration in view of the above decisions of this Court and for the reasons which we have noted above.*

15) The Hon'ble Supreme Court recorded that, *prima facie,* the law laid down in *PCLU* is not be in accordance with earlier binding precedents in the matter of ***Mahatma Phule Agricultural University V. Nasik Zilla Sheth Kamgar Union*** reported in ***(2001) 7 SCC 346,*** in the matter of ***SBI Vs. Raja Ram*** reported in ***(2004) 8 SCC 164,*** in the matter of ***SBI Vs. Rakesh Kumar Tewari*** reported in ***(2006) 1 SCC 530*** and in the matter of ***ONGC Ltd., V. Engg. Mazdoor Sangh*** reported in ***(2007) 1 SCC 250.***

16) As against this, the learned Advocates for the complainants argue that it is well settled that jurisdiction of Labour and Industrial Court to grant relief restraining the employer from indulging in acts of unfair labour practices extends even in cases where the employer is the Government

or any other authority, such as local body, statutory corporation, government company, etc,. The learned Advocates contend that merely because the employer is a local body/Municipal Corporation, it cannot claim exemption from applicability of provisions of enactments regulating rights of employees. It is contended that in case where employees are working continuously over a period of years as daily wagers, thereby depriving them of the right of regularization and permanency in service, a duty is enjoined on the Courts of law to grant appropriate relief directing the employer to desist from indulging in unfair labour practice and to grant further appropriate relief to the employees, who are victims of such unfair labour practice. They contend that for years together the complainants have been forced to work as daily wagers which is clearly an unfair labour practice under Item 6 and 9 in Schedule IV of MRTU and PULP, Act. The learned Advocates contend that the unfair labour practice by the employer cannot be continued by raising a contention that there exist no post against which services of employees can be regularized. The learned Advocates have

placed reliance on the following decisions in support of their contention:-

(a) ***Pandurang Sitaram Jadhav Vs. State of Maharashtra,*** reported in ***2019 (3) CLR 639.***

(b) ***Jaggo Vs. Union of India and ors,*** reported in (***2024) SCC online SC 3826.***

(c) ***Shripal and another Vs. Nagar Nigam, Ghaziabad,*** reported in (***2025) SCC online 221.***

(d) Dharam Singh Vs. State of UP, reported in ***(2025) SCC Online 1735.***

(e) Judgment ***dated 08.11.2023*** *by* ***Bombay High Court (Civil Appellate Jurisdiction) in Writ Petition No.5357 of 2021*** in the matter of ***The Commissioner, Municipal Corporation of Greater Mumbai Vs. Kachara Vahatuk Shramik Sangh.***

17) The said judgments are cited in order to contend that relief of regularization in service can be granted even in cases where there is no sanctioned post if the nature of work is perennial. They therefore contend that the contention of NMC that there were no sanctioned posts against which services of the employees could be regularized is liable to be rejected.

18) Apart from the aforesaid, the learned Advocates also

contend that the employer/NMC is also guilty of favoritism by treating similarly situated employees differently. It is contended that in identical cases orders of regularization are passed against NMC and that in compliance of the said orders NMC has granted relief of regularization to similarly circumstanced employees. The learned Advocates contend that the employer/NMC ought not to have filed the present petition since orders passed in favour of similarly circumstanced employees are accepted and followed by it. The learned Advocates have placed reliance on judgment of the ***Learned Industrial Court, Maharashtra (Nagpur Bench) in complaint ULP No.377 of 2011,*** whereby relief of regularization in service was granted in favour of complainants in the said case vide ***judgment and order dated 25.06.2018, which was confirmed by this Court vide judgment dated 17.06.2019 passed in Writ Petition No. 2433 of 2019.*** It is pointed out that ***SLP No.21925 of 2019,*** challenging the said judgment passed by this Court was also dismissed by the Hon'ble Supreme Court on 31.01.2020. The learned Advocates for the complainants have placed reliance

on the following judgments in support of their contention:-

(I) State of U.P. Vs. Arvind Kumar Srivastava and ors 2015 (1) SCC 347

In the said judgment the Hon'ble Supreme Court has held that in service matters when relief is granted by Court of law to one set of employees, the employer must extend the benefit of the judgment to all similarly circumstanced employees. It is held that failure to extend benefit of such a decision to employees who had not approached the Court results in discrimination. It is held that merely because some employees do not approach the Court, they cannot be treated differently and that the benefits must be extended to them even if they do not approach the Court.

(II) Pandurang Sitaram Jadhav Vs. State of Maharahstra 2019 (3) CLR 639

In this case, the employees were working for years together as ad-hoc employees. The work performed by them was that of regular employees. Their appointment was not made by following regular selection process. However, similar ad-hoc employees who were not selected by regular selection process had approached the Industrial Court wherein order of

regularization in service was passed and the said order was confirmed up to the Hon'ble Supreme Court. In view of the aforesaid, the Hon'ble Supreme Court held that the workers in the said case were entitled to benefit of regularization.

CONSIDERATION

19) The contention of Mr. Bhattad that MSO will not be applicable to the employees of NMC in view of certified Standing Orders is liable to be rejected in view of the judgment of this Court in the case of ***NMC Vs. Ramchandra Sathe,*** reported in ***1992(1) CLR 779.***

20) The contention of the employees that orders granting regularization in service are accepted by NMC in cases of identically circumstanced employees is based on judgment in complaint ULP No.377 of 2011. Perusal of the said decision will demonstrate that the employees in the said case were appointed as Safai Karmacharis on contractual basis. The said employees were holding driving licenses and their services were utilized by NMC as drivers. Additional wages were paid to them while work of driver was extracted

from them. The employees filed the complaint contending that they were entitled for regularization of service on the post of driver since they had completed more than 240 days of service in a calendar year on the said post. The learned Industrial Court found that NMC had failed to bring material on record to substantiate that the appointment of the said employees was made as a stop-gap arrangement and that they were awarded work of drivers intermittently when the regular drivers were not available for work. It is further observed that four drivers who were juniors to the complainants were granted benefit of regularization on the ground that they had completed 240 days of service in a calendar year. On this basis a finding was recorded that NMC was guilty for showing favoritism to one set of employees by ignoring the claim of the complainants who were identically situated. Perusal of deposition of NMC witnesses which is extracted in paragraph 34 of the judgment by the learned Industrial Court indicates that the posts against which order of regularization was passed were in existence. The said decision therefore indicates that order of regularization was

passed in favour of workmen (drivers) who had put in more than 20 years of service as daily wagers against sanctioned posts. In view of the fact that posts where in existence and relief of regularization in service was granted to similarly circumstanced employees, the said complaints were allowed. The distinguishing feature in the present cases is that here the posts were not sanctioned and therefore the contention of favoritism to one set of employees cannot be accepted.

21) The core issue between the parties is as to whether a workman who has put in more than 240 days of continuous service in a calendar year is entitled to benefit of regularization in service under Clause 4(C) of MSO, even in the absence of a sanctioned vacant post.

22) The learned Advocates for the workmen have placed reliance on following judgments:-

Dharamsingh Vs. State of UP, **(*AIR 2025 SC 3897*,)**

(a) The Hon'ble Supreme Court has held that when workers perform permanent tasks, equity demands that those tasks are placed on sanctioned posts so that the workers are treated with fairness and dignity. The workers in the said case

were employed on the posts of peons, attendants and drivers as daily wagers. A proposal for sanction of 14 posts was forwarded to the State Government by the U.P. Higher Education Services Commission, which was rejected. Writ petition was filed by the concerned employees challenging the rejection of proposal for sanction of posts, which was dismissed by the learned Single Judge of the High Court. Intra-court appeal preferred by the employees was also dismissed on the ground that there was no vacancy against which services of the petitioners could be regularized and further that there were no Rules in place for regularization. In this backdrop, the workers/petitioners approached the Hon'ble Supreme Court. The Hon'ble Supreme Court allowed the appeal preferred by the workers, holding that there cannot be any justification on the part of the State in refusing to grant sanction to posts despite availability of work which is of perennial nature. It is held that financial constraints cannot be cited as a valid ground for not granting sanction to posts when work of regular and perennial nature is performed by workers who are engaged as daily wagers. The

ratio of the said judgment is that Government cannot refuse to grant sanction for creation of posts on the ground of financial constraints. In the said case decision taken by the Government refusing to grant sanction for creation of posts was under challenge. The ratio of the said judgment will not, therefore, be directly applicable to the present case. It will be appropriate to refer to paragraph 6 of the judgment, wherein the Hon'ble Supreme Court has observed that although the principal challenge in the petitions was to refusal on the part of the State Government to grant sanction to creation of posts, the petition was decided as if it was merely a case of regularization in service. The Hon'ble Supreme Court has also held that although creation of posts is primarily an executive function, the decision of the Government refusing to grant sanction to creation of posts cannot be immune from judicial scrutiny.

Jagoo Vs. Union Of India, 2024 Scc Online 3826.

(b) In this case, the Hon'ble Supreme Court has held that since the nature of work which was performed by the employees was of perennial nature and fundamental to the

functioning of the offices of the employer, the contention of the employer regarding lack of regular posts against which services of the employees could be regularized was liable to be rejected. It is held that having regard to the nature of work, it was necessary to hold that the posts were regular posts irrespective of the method by which the employees were initially appointed. It was also found that the employees in the said case were treated indifferently inasmuch as benefit of regularization in service was granted to individuals who had put in lesser years of service as compared to the workers in the said case, although they were performing work of similar nature. It is held that benefit of regularization cannot be denied to the employees by treating them as temporary and by taking shelter under procedural formalities. The Hon'ble Supreme Court has placed reliance on the Constitution Bench decision in the matter of ***Uma Devi*** and has observed that in the said case it was held that employees who were engaged against sanctioned posts and had served continuously for more than 10 years should be considered for regularization as a one-time measure.

Shripal Vs. Nagar Nigam Ghaziabad (2025) SCC online 221

(c) In this case, the workers were working continuously since the year 1998-99. They had filed a case seeking regularization. Their services were terminated during conciliation proceedings. They had challenged the said termination. In this situation, the matter reached to the Hon'ble Supreme Court. The Hon'ble Supreme Court allowed the appeal, finding that the work performed by the workers was integral part of essential municipal functions of the employer/Municipal Council. It must be stated that in the said case, the High Court had held that the employer-Municipal Council was not justified in terminating the services of the workers abruptly. It had issued orders directing reinstatement in service of the workers as daily wagers. The Hon'ble Supreme Court set aside the order passed by the High Court to the extent that direction was issued for re-engagement of the workers on daily wages. It was found that the termination of services of the workers during pendency of conciliation proceedings was in breach of provisions of the U.P. Industrial Disputes Act,1947 and was

accordingly illegal. Accordingly, order of termination was quashed and set aside by the Hon'ble Supreme Court, relief of reinstatement was granted with continuity, holding that the workers shall be eligible for all the consequential benefits such as seniority and eligibility for future promotions. The Hon'ble Supreme Court directed the Municipal Council to initiate fair and transparent process for regularization of services of the workmen in the said case having regard to the perennial nature of work. The relevant observations of the Hon'ble Supreme Court are as under:-

> *12. The evidence, including documentary material and undisputed facts, reveals that the Appellant Workmen performed duties integral to the Respondent Employer's municipal functions specifically the upkeep of parks, horticultural tasks, and city beautification efforts. Such work is evidently perennial rather than sporadic or project-based. Reliance on a general "ban on fresh recruitment" cannot be used to deny labor protections to long-serving workmen. On the contrary, the acknowledged shortage of Gardeners in the Ghaziabad Nagar Nigam reinforces the notion that these positions are essential and*

ongoing, not intermittent.

13. By requiring the same tasks (planting, pruning, general upkeep) from the Appellant Workmen as from regular Gardeners but still compensating them inadequately and inconsistently the Respondent Employer has effectively engaged in an unfair labour practice. The principle of "equal pay for equal work," repeatedly emphasized by this Court, cannot be casually disregarded when workers have served for extended periods in roles resembling those of permanent employees. Long-standing assignments under the Employer's direct supervision belie any notion that these were mere short-term casual engagements.

16. The High Court did acknowledge the Employer's inability to re-justify these abrupt terminations. Consequently, it ordered engagement on daily wages with some measure of parity in minimum pay. Regrettably, this only perpetuated precariousness: the Appellant Workmen were left in a marginally improved yet still uncertain status. While the High Court recognized the importance of their work and hinted at eventual regularization, it failed to afford them continuity of service or meaningful back

wages commensurate with the degree of statutory violation evident on record.

17. In light of these considerations, the Employer's discontinuation of the Appellant Workmen stands in violation of the most basic labour law principles. Once it is established that their services were terminated without adhering to Sections 6E and 6N of the U.P. Industrial Disputes Act, 1947, and that they were engaged in essential, perennial duties, these workers cannot be relegated to perpetual uncertainty. While concerns of municipal budget and compliance with recruitment rules merit consideration, such concerns do not absolve the Employer of statutory obligations or negate equitable entitlements. Indeed, bureaucratic limitations cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period.

Writ Petition No.5357 of 2021 (Bombay High Court Civil Appellate Jurisdiction), Dated 08.11.2023

(d) The principal dispute in the said matter was as to whether the employees in the said case were employees of the contractor or direct employees of the Municipal

Corporation. In the context of the said dispute, a contention was raised that there was no vacant post in the establishment of Municipal Corporation. This Court held that the argument about lack of posts cannot be accepted and that the Corporation cannot continue to exploit its workers stating that there is no post against which their services can be regularized. It was directed that the workers in the reference were entitled to all benefits at par with permanent workers of the Municipal Corporation.

23) As against this, there are other line of decisions by the Hon'ble Supreme Court and this Court, on which the learned Advocate for the NMC has placed reliance. Following are the decisions on which reliance is placed by the NMC.

CEO, ZP, Thane, Vs. Santosh Tukaram Tiware, (2023) 1 SCC 456

(i) In the case of said judgment the workers were appointed as drivers at Public Health Centre on contractual basis till finalization of tenders. The appointments were made in the year 2010. Thereafter, transportation tender was finalized in the year 2021 and services of the

employees/drivers were terminated on 15.07.2021, in view of allotment of work of transportation to a third agency. The termination was effected after a period of around 11 years of service rendered by the drivers on contractual basis. The petition preferred by the drivers was allowed by the High Court. Directions were issued by the High Court to regularize the drivers in service. In this backdrop, the employer/ZP approached the Hon'ble Supreme Court. The Hon'ble Supreme Court allowed the appeal preferred by the employer, holding that merely because the worker had held the post of driver for a long period of time will not mean that he was entitled to regularization of service when decision to avail services of a contractor was taken by the employer (ZP). Relevant observations of the Hon'ble Supreme Court while rejecting the claim of the employee are as under:-

> *16. Merely because Respondent 1 continued in service for longer period on contractual basis the High Court ought not to have passed the order of regularisation more particularly, when a policy decision was taken to avail the services of the driver by the agency/contractor and that the*

appointment of Respondent 1 and other similarly situated drivers was not made after any selection procedure. The appointment of Respondent 1 was purely on stopgap and on contractual basis.

The Hon'ble Supreme Court referred to and distinguished its earlier decision in the matter of ***Pandurang Sitaram Jadhav Vs. State of Maharashtra,*** reported in ***(2020) 17 SCC 393*** and held that in the said case appeal preferred by the employee was allowed since benefit of regularization was granted to similar employees working in the same establishment. Likewise, the Hon'ble Supreme Court also dealt with earlier decision in the matter of ***Sheo Narain Nagar Vs. State of UP,*** reported in ***(2018) 13 SCC 432*** where benefit of regularization in service was granted to the worker from the date on which temporary status was granted to him, on the ground that in the said case there was requirement of work of the employee and that a post was also available for granting the benefit of regularization. Existence of post is considered to be a distinguishing factor. Based on these reasons, the Hon'ble Supreme Court distinguished the earlier

two decisions and quashed the order passed by the High Court granting benefit of regularization in service to the worker although he had completed around 11 years of service on temporary basis.

Union of India Vs. Ilmo Devi. 2021 (20) SCC 290

(ii) In the said case, the respondents-workers were working as part time Safai Karmacharis, at post office. The workers had approached the Central Administrative Tribunal seeking directions to frame policy for absorption/ regularization in service with a further prayer to grant benefit of temporary status to the employees. The original application was opposed on the ground that the workers were rendering service for less than 5 hours in a day and that they were not rendering service against any sanctioned post. The claim of the workers for regularization in service was rejected by the Tribunal. The Tribunal directed the employer to initiate the process of recruitment for appointment of Safai Karmacharis on regular basis and issued a direction that the workers (Safai Karmacharis) who had filed the original application should be allowed to participate in the selection

process. It was also directed that in case any decision is taken for granting benefit of regularization in service as a onetime measure as per judgment of the Hon'ble Supreme Court in the case of ***Umadevi (supra)***, the case of the workers should also be taken into consideration. Both sides approached the High Court challenging the said judgment. In the meantime, a fresh regularization scheme was framed by the employer/Union of India. The High Court directed the employer/Union of India to consider the claim of regularization of workers as per the scheme framed. The claim of regularization by the workers was rejected on the ground that there were no sanctioned posts and further that the workers had not put in 10 years of service as on 10.04.2006 i.e. the date of judgment in the matter of ***Uma Devi (supra)***. The High Court directed the Union of India-employer to reformulate the policy and take decision to sanction the posts in a phasewise manner within a period of 6 months. This order by the High Court was assailed before the Hon'ble Supreme Court. In this backdrop, the Hon'ble Supreme Court has held that in absence of any sanctioned

post, the High Court could not have issued directions for regularization of service. It is further held that High Court cannot, in exercise of its jurisdiction under Article 226, issue a direction to the Government for creation of posts or formulating a policy for regularization in a particular manner. It is further held that no employee can claim regularization in service as a matter of right irrespective of policy for regularization. Relevant observations of the Hon'ble Supreme Court while rejecting the claim of the employees are as under:-

> "*13……As observed above, there are no sanctioned posts in the Post Office in which the respondents were working, therefore, the directions issued by the High Court in the impugned judgment and order are not permissible in the judicial review under Article 226 of the Constitution. The High Court cannot, in exercise of the power under Article 226, issue a mandamus to direct the Department to sanction and create the posts. The High Court, in exercise of the powers under Article 226 of the Constitution, also cannot direct the Government and/or the Department to formulate a particular*

regularisation policy. Framing of any scheme is no function of the Court and is the sole prerogative of the Government. Even the creation and/or sanction of the posts is also the sole prerogative of the Government and the High Court, in exercise of the power under Article 226 of the Constitution, cannot issue mandamus and/or direct to create and sanction the post.

14. Even the regularisation policy to regularise the services of the employees working on temporary status and/or casual labourers is a policy decision and in judicial review the Court cannot issue mandamus and/or issue mandatory directions to do so. In R.S. Bhonde, it is observed and held by this Court that the status of permanency cannot be granted when there is no post."

Hari Nandan Prasad Vs. FCI, (2014) 7 SCC 190,

(iii) In this judgment of the Hon'ble Supreme Court has reconciled the law laid down by the Hon'ble Supreme Court in the matter of ***UP Power Corporation Ltd., Vs. Bijli Mazdoor Sangh (2007) 5 SCC 755 and Maharashtra SRTC Vs.***

Casteribe Rajya Parivahan Karmachari, reported in **(*2009) 8 SCC 556.*** In the case of ***UP Power Corporation Ltd., (supra).*** The Hon'ble Supreme Court held that in the light of judgment in the matter of ***Uma Devi, (supra)*** Courts functioning under Acts regulating labour laws could not grant relief of regularization to a daily wager who was not appointed in service after undergoing a proper selection procedure, since it would lead in violation of right to equality. In the case of ***MSRTC Vs. Casteribe (supra),*** the Hon'ble Supreme Court has held that the law laid down in ***Uma Devi, (supra)*** cannot denude the labour Courts of their power to grant appropriate relief of regularization in cases where unfair labour practice was established. The Hon'ble Supreme Court, after taking into consideration both these judgments has laid down that two judgments are not contrary to each other. It is explained that Labour/Industrial Court can exercise jurisdiction to grant relief of regularization to workers only where the employer has indulged in unfair labour practice by not filling up permanent posts and continuing workers on temporary basis or on daily wages against sanctioned posts. It is held that

even if posts are available and case of unfair labour practice is not made out, direction for regularization in service cannot be issued by Labour/Industrial Court. It is also held that direction for regularization cannot be issued in the absence of any post. A further rider is added that in case where benefit of regularization in service is granted to similarly situated workmen, the benefit of regularization will have to be extended to all similarly circumstanced workers.

24) As regards the decisions relied upon by the learned Advocates for the workers including the judgment in the matters of ***Dharamsingh (supra), Jaggo (supra), Shripal (supra)*** and ***WP No.5357 of 2021 (supra),*** which hold that benefit of regularization can be granted if the work is perennial in nature, the same appears to be in tune with the law laid down by the Hon'ble Supreme Court in the matter of ***PCLU (supra)***. The correctness of ***PCLU*** is doubted by the Hon'ble Supreme Court in the case of ***ONGC..Vs...Krisan Gopal (supra)*** while making reference to a larger bench.

25) Judgments in the matters of ***Jaggo, Dharamsingh and Shripal,*** do not take into consideration earlier decisions

in the matter of ***MSRTC Vs. Casteribe, CEO, ZP, Thane Vs. Santosh and Harinandan Prasad Vs. FCI,*** which hold that relief of regularization cannot be granted in the absence of a sanctioned post and further that creation of post is beyond the province of a Court of law.

26) The Hon'ble Supreme Court has held in the matter of ***National Insurance Co. Vs. Pranay Sethi,*** reported in ***(2017) 16 SCC 680*** that when two judgments equal bench strength are pressed into service and the ratio thereof cannot be reconciled, the judgment which is prior in point of time will be a good law and must be followed as a binding precedent.

27) Whereas the judgments of the Hon'ble Supreme Court which are relied upon by the NMC lay down that relief of regularization cannot be granted to workers in the absence of any sanctioned post, the decisions relied upon by the complainants indicate that the Hon'ble Supreme Court has laid emphasis on nature of work to hold that if workers are continued as temporary employees for years together extracting work of perennial nature, the Courts will have the

authority to grant relief of regularization even in the absence of sanctioned post. Having regard to the judgment in the matter of ***ONGC Vs. Krishan Gopal (supra),*** which has doubted the correctness of the decision in the matter of ***ONGC Vs. PCLU (supra)*** and also having regard to the judgment of the Hon'ble Supreme Court in the case of ***Pranay Sethi (supra)***, which holds that if ratio of two judgments cannot be reconciled, the judgment prior in point of time must be followed as a binding precedent unless the subsequent decision takes into consideration the earlier judgment, I am of the considered opinion that the ratio laid down in the matter of ***CEO, ZP Thane, Vs. Santosh (supra), Union of India Vs. Ilmo Devi (supra), Hari Nandan Prasad Vs. FCI (supra), MSRTC Vs. Casteribe (supra)*** needs to be followed as against judgments in the matter of ***Dharamsingh Vs. State of UP (supra), Jaggoo Vs. UOI (supra)*** and ***Shripal Vs. Nagar Nigam(supra).*** It will also be appropriate at this stage to refer to paragraph 53 of the judgment of Constitution Bench of the Supreme Court in the case of ***Secretary, State of Karnatka Vs. Umadevi (supra),*** wherein

the Hon'ble Supreme Court has, in no uncertain terms, held that regularization in service cannot be a mode of recruitment and that daily wagers or ad-hoc employees who are initially appointed in public institutions dehors the statutory and constitutional scheme of public employment do not have any right to the post on which they work and cannot claim regularization in service on the strength of the length of service rendered with the employer as daily wagers or on temporary basis. In paragraph 53 of the judgment the Hon'ble Supreme Court has issued a clarification. The relevant portion of paragraph 53 is extracted herein-below for ready reference.

> *"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the*

services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

28) Perusal of aforesaid portion will demonstrate that directions for regularization as a onetime measure is issued only in cases where persons have rendered service on ad-hoc

basis against duly sanctioned vacant posts. Thus, ***Umadevi*** also permits regularization as a onetime measure only against duly sanctioned posts. The direction for taking steps for regularization of services of irregularly appointed employees is also issued in cases where such employees were employed against duly sanctioned vacant posts. ***Umadevi*** also does not direct creation of posts for granting benefit of regularization.

29) In this regard, it will be appropriate to refer to the judgment of the Hon'ble Supreme Court in the matter of ***MSRTC Vs. Casteribe,*** **reported in (*2009) 8 SCC 556.*** The said judgment lays down the ratio that ***Umadevi*** cannot be considered to be an authority to hold that Labour and Industrial Courts constituted under the MRTU and PULP, Act cannot pass appropriate orders restraining the employer from indulging in unfair labour practices by continuing employees as badlis, casuals or temporaries and to continue them for years together with object of depriving them of the benefit of permanency in service. In paragraph 36 of the judgment, it is held that the Labour and Industrial Courts do have power to grant the benefit of permanency to workers in case unfair

labour practice under Item 6 of Schedule IV is established and the post against which the worker is employed does exist. In paragraph 37, the Hon'ble Supreme Court has reiterated the settled legal position that Courts cannot direct the creation of posts. It has referred to and follow the law laid down in the judgment of ***Mahatma Phule Agricultural University Vs. Nashik Zilla Shet Kamgar Union,*** reported in ***2001 (7) SCC 346.***

30) The issue as regards applicability of MSO to local bodies is considered by the Division Bench in the matter of ***Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade,*** reported in ***2016 (06) MhLJ 867***. The said judgment is delivered in a reference in view of divergent views of learned Single Judges in relation to applicability of clause 4(C) of MSO and the right of regularization of employees who have completed 240 days of service in a calendar year in a Municipal Council, in the absence of any sanctioned post. The Division Bench observed that the controversy was covered by two earlier Division Bench judgments in the matters of ***Pune Municipal Corporation Vs.***

Dhananjay Prabhakar Gokhale reported in ***2006 (4) MhLJ 66*** and ***State of Maharashtra Vs. Pandurang Sitaram Jadhav*** reported in ***2008 (5) All MR 497.*** Referring to Section 76 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act,1965, it is held that the right to sanction posts under Section 76 is not vested with the Municipal Council and likewise, the Municipal Council is also not the competent authority for making appointments of employees in view of Section 76(3) of the Act and, therefore, the workers who had completed more than 240 days in service in a calendar year cannot fall back on clause 4(C) of the MSO in order to claim regularization in service. It is held that, in such cases, a worker cannot contend that the Municipal Council had engaged in unfair labour practice. The Division Bench held that applicability of MSO was subject to the appointment being made in accordance with the Section 76 of the Act.

31) As regards judgment in the matter of ***PMC Vs. Dhanajay Gokhale (supra)*** the Division Bench has held that merely completion of 240 days service in a year will not be

good enough for an employee working with the Municipal Corporation to claim regularization as per clause 4(C) of MSO. It is held that unless it is established that the service was rendered against a vacant post which is duly sanctioned by the competent authority, the employee will not have any right of regularization. In the said case, the employees had entered into an agreement with the employer-Municipal Corporation that their claim for permanency would be available only upon completion of 5 years' continuous service and that too subject to availability of vacancy against permanent post.

32) As regards judgment in the matter of ***State of Maharashtra Vs. Pandurang Jadhav (supra),*** the appointment of employees was made by the State Government on temporary basis. There was no sanctioned post or vacancy in existence against which the workers were employed. The appointments were not made by following the prescribed procedure. The Division Bench has held that since the workers had failed to establish that their appointments were made after following prescribed procedure, coupled with the

fact that the appointment was not against any sanctioned vacant post, it was not possible to grant benefit of regularization or permanency to the workers. It is held that in such cases, clause 4(C) of MSO will not be applicable.

33) In the case of ***Shrirampur Municipal Council Vs. V. K. Barde,*** reported in ***2011 (4) MhLJ 875,*** the learned Single Judge has held that Industrial Tribunal does not possess jurisdiction to order creation of post. It is further held that principle of "equal pay for equal work" cannot be made applicable in cases where daily-rated employees perform the same work as regular employees.

34) In the matter of ***Ramesh Vitthal Patil Vs. Kalyan Dombivali Municipal Corporation,*** the petitioners/employees sought a declaration that they had assumed character of permanent employees by placing reliance on clause 4(C) of MSO on the ground that they had put in more than 240 days of service in a calendar year. The claim of the employees that they had attained status of permanent employees was rejected by this Court, holding that a worker cannot claim the right of permanency under Clause 4(C) of MSO irrespective

of the nature of appointment. It is held that the provisions of MSO are made subject to provisions of any other law for the time being in force and, therefore, unless an appointment is made in accordance with the provisions of the Municipal Corporation Act, the right of regularization or permanency cannot be claimed under Clause 4 (C) of MSO.

35) The aforesaid five decisions of this Court in the matter of ***Municipal Council Tirora Vs. Tulsidas, Pune Municipal Corporation Vs. Dhananjay, State of Maharashtra Vs. Pandurang, Shrirampur Municipal Council Vs. B.K. Barde*** and ***Ramesh Vitthal Patil Vs. Kalyan Dombivali Municipal Corporation*** leave no doubt at all that right to claim regularization in service based on clause 4(C) of MSO cannot be claimed unless the appointment is made against a sanctioned post in accordance with the procedure prescribed under the Corporations Act or Municipal Councils Act.

36) The judgment dated 08.11.2023 in Writ Petition no.5357/2021 (Civil Appellate Jurisdiction at Bombay) does not take into consideration the earlier Division Bench decisions in the matter of ***PMC Vs. Dhananjay Gokhale and***

Municipal Council, Tirora Vs. Tulsidas. I am therefore unable to follow the law laid down in the said judgment in view of the aforesaid two Division Bench judgments. The said decision is also not in tune with other Single Bench judgments in the matters of ***State of Maharashtra Vs. Pandurang and Ramesh Vitthal Patil Vs. Kalyan Dombivali Municipal Corporation.***

37) In view of the aforesaid authoritative pronouncements of Division Benches of this Court in relation to employees appointed against posts that are not sanctioned in Municipal Council as also Municipal Corporation, in the considered opinion of this Court, the judgment delivered by the learned Industrial Court cannot be sustained.

38) The complainants have failed to make out any right to claim regularization or permanency upon completion of 240 days service in a calendar year as per MSO 4(C) of the MSO, since their appointments were not against any sanctioned vacant post.

39) It must also be stated that the proposal forwarded by the NMC for creation of additional posts is accepted by the

State Government and accordingly 4407 supernumerary posts have been created. The complainants have been accommodated against the said posts by regularizing their services upon completion of 20 years of service. Based on the decision by the State Government, the NMC has issued appointment orders in favour of the complainants. It is, however, provided that the complainants(employees) will not be entitled to the benefit of their previous service. In view of the said development which has taken place during the pendency of the complaint, the controversy between the parties is narrowed down as to whether benefit of regularization in service can be claimed by the workers upon completion of 240 days service as per MSO 4(C), or they will be entitled to the benefit of regularization upon completion of 20 years of service as per Government Resolution issued by the Government of Maharashtra and the consequent appointment orders issued in their favour by NMC. In the considered opinion of this Court, merits of a policy decision for regularization of services of daily wagers cannot be adjudicated by the Industrial Court. It needs to be mentioned

that the complainants were not appointed by strictly following the prescribed procedure. Their appointments were also not against sanctioned posts. Therefore, complainants cannot claim benefit of MSO 4(C). The policy decision to grant benefit of regularization on completion of 20 years is, therefore, not in violation of MSO 4(C). The learned Industrial Court has not even set aside the said Government Resolution.

40) In view of the above, the learned Industrial Court was not justified in directing the NMC to forward fresh proposal to the State Government to grant the benefit of permanency in service to the comdplainants upon completion of 240 days of service and to grant all consequential benefits upon proposal being accepted. The conclusion that NMC had indulged in unfair labour practice is also not sustainable, since the complainants have failed to make out any right to regularization in service upon completion of 240 days of service in a calendar year.

41) In view of the above, in the considered opinion of this Court, the contention of the workers that they are

entitled to regularization in service upon completion of 240 days of service as per MSO 4(C), even in the absence of sanctioned vacant posts, is liable to be rejected.

42) In that view of the matter, the petitions deserve to be **allowed** and are accordingly allowed. The following judgments and orders passed by the learned Industrial Court, Nagpur are quashed and set aside and the said complaints are dismissed.

Sr. No.	Date of impugned judgment	Case No.
i	30.09.2024	Complaint ULP No.413 of 2018,
ii	01.10.2024	Complaint ULPA No.421 of 2015
iii	30.09.2024	Complaint ULPA No.418 of 2015
iv	30.09.2024	Complaint ULPA No.419 of 2015
v	30.09.2024	Complaint ULPA No.414 of 2015
vi	30.09.2024	Complaint ULPA No.417 of 2015
vii	10.10.2024	Complaint ULPA No.07 of 2016
viii	01.10.2024	Complaint ULPA No.423 of 2015
ix	01.10.2024	Complaint ULPA No.422 of 2015
x	30.09.2024	Complaint ULPA No.416 of 2015
xi	30.09.2024	Complaint ULPA No.415 of 2015
xii	01.10.2024	Complaint ULPA No.06 of 2016

43) Writ Petition Nos.4967 of 2023 and 4968 of 2023 are **dismissed.**

(ROHIT W. JOSHI, J.)

Tanmay...