



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10607 OF 2017

- 1) Sahebrao S/o Sheshrao Pawar,
Age-55 yrs., Occ. - Service.
R/o Pardeshwar nagar,
Opp. Pardeshwar Temple,
Nandkheda Road, Parbhani.
- 2) Dnyanoba S/o Gyanoji Late,
Age-56 yrs., Occ. - Service.
R/o MHADA colony, Near Shantiniketan,
Gangakhed Road, Parbhani.
- 3) Prakash S/o Balasaheb Kulkarni,
Age-54 yrs., Occ. - Service.
R/o House No.6/7, MHADA colony,
Near Shantiniketan, Gangakhed Road,
Parbhani.
At present Municipal Council Purna,
Dist. Parbhani.

...PETITIONERS

- VERSUS -

1. The State of Maharashtra
Through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
2. The Directorate of Municipal Administration,
3rd floor Government Transportation
Seva Building, Sir Pochkhanwala Road,
Warli, Mumbai – 30.
3. The Regional Directorate of
Municipal Administration, Aurangabad Division,
Aurangabad.
The Divisional Commissioner's Office,

Aurangabad.

4. The Collector,
Parbhani, Dist. Parbhani.
5. The Commissioner,
Municipal Corporation,
Parbhani, Dist. Parbhani.

...RESPONDENTS

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Shri Vilas M. Humbe, Advocate for the petitioners.
Shri B.V. Virdhe, AGP for respondent Nos.1 to 4/State.
Smt. Rani Bharukha-Bora, advocate h/f Shri S.S. Bora, advocate
for respondent No.5.

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**CORAM : KISHORE C. SANT
&
SUSHIL M. GHODESWAR, JJ.**

Reserved on : 09 January 2026

Pronounced on : 22 January 2026

JUDGMENT (*Per Sushil M. Ghodeswar, J.*) :-

1. Heard.
2. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.
3. By this petition filed under Article 226 of the Constitution of India, the petitioners pray for quashing and

setting aside the impugned order dated 04.08.2017 issued by respondent No.5/ Municipal Commissioner thereby, cancelling the order dated 11.06.2009 granting pay scale of Clerks to petitioner Nos.1 to 3 w.e.f. 03.01.1987, 30.08.1986 and 02.05.1986, respectively and instead, directing to give the said benefits w.e.f. 31.08.2001.

4. According to the petitioners, they were appointed as daily wage clerks with the erstwhile Municipal Council, Parbhani (now respondent No.5/ Municipal Corporation) on vacant posts by orders dated 01.05.1986, 23.12.1985 and 02.05.1986, respectively. However, since their services were terminated, they filed Writ Petition Nos.3457/1990, 3603/1990 and 3100/1990. According to them, this Court by interim order restrained the respondent Municipal Corporation from discontinuing their services. It is claimed that their services as clerk were regularized w.e.f. 31.08.2001. It is also claimed that the writ petitions filed by them were disposed of by this Court vide order dated 10.01.2002 with clarification that the terms of employment of the petitioners shall be governed by the conditions of service as applicable to other regular employees of respondent No.5.

5. It is the case of the petitioners that petitioner No.3 was granted pay scale of clerk on 25.07.2003 w.e.f. his initial appointment as daily wage clerk, however, it was cancelled by respondent No.5 vide order dated 13.08.2004. Thereafter, the Collector, Parbhani, vide order dated 05.02.2005 directed the Chief Officer of Parbhani Municipal Council to follow the order passed by this Court and cancel the order dated 13.08.2004. In view of the directions of the Collector, the then Chief Officer of Parbhani Municipal Council vide order dated 23.03.2005 cancelled earlier order dated 13.08.2004 and granted pay scale of Rs.950-1500/- w.e.f. 01.05.1986 to petitioner No.3. Since the aforesaid order in the matter of petitioner No.3 was cancelled, therefore, petitioner Nos.1 and 2 also approached the Collector with similar prayer. The Collector vide letter dated 15.06.2005 directed the Chief Officer to extend said benefits to petitioner Nos.1 and 2. Accordingly, the Municipal Council by order dated 24.06.2005 also extended revised pay scale to petitioner Nos.1 and 2. However, the said orders dated 23.03.2005 and 24.06.2005 were cancelled by order dated 14.07.2005. The petitioners again approached the authorities and vide order dated 11.06.2009, the Municipal Council again extended pay scale of clerk with

consequential benefits w.e.f. 03.01.1987, 20.08.1986 and 02.05.1986. According to the petitioners, again respondent No.5 cancelled the order dated 11.06.2009 by the impugned order dated 04.08.2017 and directed to give the benefits of clerk pay scale to the petitioners w.e.f. 31.08.2001 instead of 03.01.1987, 30.08.1986 and 02.05.1986.

6. The learned advocate Shri Humbe appearing for the petitioners submitted that the impugned order dated 04.08.2017 is passed without giving them a notice or hearing. Respondent No.5/ Municipal Commissioner has no authority to pass the impugned order. The petitioners are entitled to get benefits of pay scale with consequential benefits w.e.f. their initial appointments. He submitted that the principle of 'equal pay for equal work' is also applicable to temporary employees performing same duties and responsibilities as that of regular employees. In support of his submissions, Shri Humbe has relied upon the judgment of the Hon'ble Supreme Court in *State of Punjab and others vs. Jagjit Singh and others, (2017) 1 SCC 148*. Shri Humbe has relied upon the judgment delivered by the Hon'ble Supreme Court in *State of Punjab and others vs. Rafiq Masih (White Washer) and others*,

(2015) 4 SCC 334, to submit that the recovery on account of mistake committed by the employer would be impermissible.

7. Mrs.Bora, the learned advocate appearing for the contesting respondent No.5/ Municipal Corporation has drawn attention of this Court to the affidavit in reply dated 28.01.2018 filed on behalf of respondent No.5 and submitted that the instant case is having checkered history as under:-

(a) The petitioners along with several similarly situated employees, were appointed prior to 10.03.1993 on a purely temporary daily-wage basis, for short periods of 30 or 45 days, without following any due procedure prescribed for public employment.

(b) Prior thereto, the petitioners had already approached this Court by filing Writ Petition Nos. 3457/1990, 3100/1990 and 3603/1990, seeking regularization.

(c) The General Body of the Municipal Council, Parbhani passed Resolution No.9 dated 25.03.2000, proposing regularization of 252 daily-wage employees, and forwarded the same to the Divisional Commissioner of Municipal Administration, Aurangabad.

(d) Pursuant to the said resolution, the Divisional Commissioner, by order dated 31.08.2001, granted one-time regularization to the petitioners and other similarly situated employees, with a specific condition that the posts so regularized would stand abolished upon the retirement of the incumbents and would not be filled thereafter.

(e) The said order further required the employees to submit undertakings that they would not claim any monetary benefits of their past daily-wage service, which undertakings were duly furnished by the petitioners.

(f) Consequently, regular appointment orders dated 18.10.2001 were issued incorporating the said condition that the petitioners will not be entitled to claim the monetary benefits.

(g) When the earlier writ petitions came up for hearing on 10.01.2002, this Court was informed that the petitioners' services had already been regularized, and accordingly the writ petitions were disposed of as infructuous, with clarification that the terms and conditions of employment would be governed by those applicable to regular employees.

(h) Despite the clarity of the above orders, petitioner No.3 made repeated representations from October 2002

onwards, seeking benefits from the date of initial appointment. There are multiple communications between the Collector, Parbhani, the Chief Officer, and the Divisional Commissioner between 19.12.2002 and 07.04.2003.

(i) Acting under pressure of petitioner No.3 and his repeated representations to different authorities, the then Chief Officer passed an order dated 25.07.2003, erroneously granting petitioner No.3 benefits from the date of his initial appointment w.e.f. 02.09.1985.

(j) In fact, petitioner No.3 had kept his service book with himself instead of giving it to the office and therefore, the then Chief Officer called him to submit the service book.

(k) Upon scrutiny, the subsequent Chief Officer quashed the order dated 25.07.2003 by office order dated 13.08.2004.

(l) This led to further representations by petitioner No.3 before the Collector on 18.08.2004, 06.11.2004, and 30.11.2004.

(m) During this period, legal opinion was sought on 27.09.2004 and the petitioners were expressly informed by communication dated 18.11.2004 that they were not entitled to past service benefits in view of the order dated 31.08.2001.

(n) However, on directions of the Collector dated

05.02.2005, the then Chief Officer restored the earlier benefits by office order dated 23.03.2005.

(o) The matter was thereafter referred to the Director of Municipal Administration, Mumbai, and based on telephonic instructions, the said order dated 23.03.2005 was quashed by another office order dated 14.07.2005.

(p) Despite this and ignoring subsequent communications, the petitioners again approached the authorities on 29.12.2008, resulting in the then Chief Officer passing an order dated 11.06.2009, granting benefits from the date of initial appointment, without authority and contrary to binding directions.

(q) When this order dated 11.06.2009 was found to be illegal and the product of misrepresentation, therefore, same has been rightly cancelled by the impugned order dated 04.08.2017.

8. In view of this peculiar checkered history, the learned advocate Mrs.Bora vehemently submitted that the petitioners were never entitled to the benefits of past daily-wage service in view of the order dated 31.08.2001, the undertakings furnished by them and the appointment order dated 18.10.2001.

The impugned withdrawal order is, therefore, passed after detection of the illegality and misrepresentation. As far as the contention regarding lack of opportunity of hearing is concerned, Mrs. Bora submitted that the same is untenable, particularly when the petitioners themselves had secured the order dated 11.06.2009 by illegal means and misrepresentation. Accordingly, the petition deserves to be dismissed and the impugned action calls for no interference.

9. After having heard the learned advocates for the respective sides at length, the legal position emerging from the judgments relied upon by the learned advocate for the petitioners, cannot be disputed. However, the facts of the instant case are entirely different. Here, the petitioners were issued with appointment orders dated 31.08.2001 by the Divisional Commissioner-cum-Regional Director, Municipal Administration, Aurangabad, under Sections 76(1) and 76(2) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. This order dated 31.08.2001 came to be passed as one time measure to overcome with the special situation arose in this case and it was specifically

mentioned that the said posts were to be abolished if fell vacant for any reason in future. The said posts were not permitted to be filled in future. It was specifically mentioned in the order dated 31.08.2001 itself that if the said posts are filled in and the Municipal Council incurs losses on account of such illegal appointments, then such losses would be recovered from the appointing authority in view of the directions of this Court at the Nagpur Bench in Writ Petition No.640/1997 in case of Malkapur Nagar Parishad, District Buldhana. Earlier daily wage services will not be considered for any monetary or service benefits. These appointments were made without approval of the Directorate of Municipal Administration. On the basis of such terms and conditions, the order dated 31.08.2001 came to be issued in respect of 252 employees thereby, regularizing their services as one time measure. In pursuance of the order dated 31.08.2001, the writ petitions filed by the petitioners came to be disposed of as infructuous vide order dated 10.01.2002, however, this Court clarified that the terms of employment of the petitioners shall be governed by the condition of services as applicable to other regular employees.

10. The record reveals that placing reliance upon the order of this Court dated 10.01.2002, petitioner No.3 indulged in communications with the authorities praying for regular pay scale of clerk along with arrears. Petitioner No.3 not only approached the Chief Officer, but also approached the Collector and the Divisional Commissioner. The record reveals that on many occasions, the authorities were misled by petitioner No.3 and they were persuaded to pass illegal orders based on misrepresentation and pressure tactics adopted by the petitioners. On repeated insistence by petitioner No.3, the authorities, without going through the record and the fact that the petitioners were regularized on the condition that they shall not claim any monetary benefits, have passed illegal orders right from 2002 to 2009. The communications annexed to the reply of respondent No.5 would demonstrate that petitioner No.3 was virtually leaving no stone untouched to mislead and pressurize the officers under the garb of the order of this Court.

11. It is submitted by Mrs. Bora, at the Bar, that all other 249 employees have accepted the order of regularization passed by the Divisional Commissioner, however, it is only these three

petitioners, by using pressure tactics, have misled the authorities to pass illegal and incorrect orders of granting them benefits. We find that the conduct and approach of the petitioners is highly unjustified and deprecated.

12. Another aspect which requires to be considered is that the petitioners have not annexed their undertakings given to respondent No.5 at the time of their appointments and thus, they have suppressed material fact from this Court. The appointment order of the petitioners issued in the year 2001 specifically states that the petitioners shall not be entitled for monetary or service benefits of earlier daily wage service, still the then Chief Officer vide his illegal order dated 25.07.2003 granted pay scale from their initial date of appointment of 1985-1986. The subsequent Chief Officer after realizing the mistake committed by the earlier Chief Officer, cancelled the said order vide his order dated 13.08.2004.

13. It is well settled that the writ jurisdiction under Article 226 is discretionary and equitable, and a litigant who approaches the Court with unclean hands or suppresses material facts is not entitled to any relief. The petitioners having

repeatedly obtained benefits contrary to binding orders and undertakings, cannot seek equitable relief. The impugned order merely restores legality and does not warrant interference. Therefore, we are of the view that the petitioners are not entitled to claim any monetary benefits of their past service and, therefore, the impugned order is legal, correct and proper.

14. The Hon'ble Supreme Court has repeatedly held that litigants who abuse the process of law by misleading authorities, suppressing material facts, or securing illegal benefits are liable to be visited with costs. In ***Kishore Samrite vs. State of U.P., (2013) 2 SCC 398***, the Supreme Court held that such litigants pollute the stream of justice and must be deterred by imposing realistic and deterrent costs. Similarly, in ***Subrata Roy Sahara vs. Union of India, (2014) 8 SCC 470***, the Apex Court emphasized that courts must curb misuse of judicial process to protect the sanctity of justice delivery system.

15. In view of the conduct of the petitioners of pressurizing and misleading the authorities and obtaining illegal and incorrect orders, so also, approaching this Court by suppressing material facts, we were about to impose heavy costs

on the petitioners, however, considering the apology tendered by the learned advocate for the petitioners and the fact that the illegality has already been rectified, this Court deems it appropriate to refrain from imposing costs, while strongly deprecating the conduct of the petitioners.

16. The Writ Petition is dismissed. No order as to costs.

17. Rule is discharged.

kps (SUSHIL M. GHODESWAR, J.) (KISHORE C. SANT, J.)