



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6559 OF 2006
WITH
CIVIL APPLICATION NO. 2405 OF 2018

1. Ghanashyam R. Mhatre)
 2. Subhash Mahadev Patil)
 3. Rupesh Ramchandra Khaire)
 4. Ravindra Raghunath Dhambre)
 5. Tushar Suresh Khaire)
 6. Augustine John Koli)
 7. Sou. Kanchan Ram Karekar)
 8. Jayesh Ramesh Vatsarak)
 9. Navanath Dhondiba Ingle)
 10. Chandrasingh K. Sunar)
 11. Smt. Geeta Govind Nage)
 12. Ravi Uday Mhatre)
 13. Yadav Hirappa Matmatabade)
 14. Peter Anton Koli)
 15. Ku. Jayvanti H. Bhoir)
 16. Prashant Vasant Patil)
 17. Santosh J. Telenge)
 18. Nitin P. Choudhari)
 19. Vishal S. Swami)
 20. Smt. Manda B. Shivgan)
 21. Mahendra B. Joshi)
 - All major, Occupation- Service)
 - residing at and Post Uran, Taluka Uran,)
 - District Raigad – 400 702)
- ...Petitioners

Vs.

1. **State of Maharashtra,**)
through its Secretary to the Ministry of)
Municipal Administration, having)
office at Mantralaya, Bombay.)
2. **The Director of Municipal**)
Administration,)
Maharashtra State, Bombay.)
3. **Deputy Director of Municipal**)
Administration)
Nos. 2 and 3 having Office at the)

Directorate of Municipal Administration)
 Government Transport Services)
 Bulding, Sir Pochkhanwala Road,)
 Worli, Bombay – 400 030.)

4. Uran Municipal Council,)
 having office at Taluka Uran,)
 District Raigad 400 702)
 through its Chief Officer.)

...Respondents

Ms. Manjiri S. Parasnis for the Petitioners.
 Smt. M. P. Thakur, AGP for State.
 Mr. Prasad Keluskar i/b. Mr. G. H. Keluskar for Respondent No.4.

**CORAM: G. S. KULKARNI &
 AARTI SATHE, JJ.**
DATE: 18 JUNE 2026.

Oral Judgment (Per G. S. Kulkarni, J.) :-

1. This petition under Article 226 of the Constitution of India is filed praying for the following reliefs:-

a) That this Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order and/or direction in the Nature of Writ of Mandamus thereby directing (i) Respondents No.2 and 3 herein to forthwith withdraw and/or cancel the Impugned Order dated 19.6.2006 being Exhibit "L" to this Writ Petition in so far as it relates to Uran Municipal Council, (ii) Respondent No.4 herein be directed to forthwith withdraw and/or cancel the Impugned Order dated 10.8.2006 being Exhibit "M" Collectively to this Writ Petition;

b) That this Hon'ble Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ, Order and/or direction in the Nature of Writ of Certiorari thereby quashing and/or setting aside (i) the Impugned Order dated 19.6.2006 passed by the Respondent No.3 herein being Exhibit "L" to this Writ Petition in so far as it relates to Uran Municipal Council, (ii) Impugned Order dated 10.8.2006 issued by Respondent No.4 herein being Exhibit "M" Collectively to this Writ Petition;

c) Pending the hearing and final disposal of this Writ Petition, this Hon'ble Court may be pleased to stay the execution and/or operation and/or implementation and/or effect of (i) the Impugned Order dated 19.6.2006 passed by the Respondent No.3 herein being Exhibit "L" to this Writ Petition in so far as it relates to Uran Municipal Council, (ii)

Impugned Order dated 10.8.2006 issued by Respondent No.4 herein being Exhibit "M" Collectively to this Writ Petition;

- d) Interim and ad-interim reliefs in terms of prayer clause (c) above be granted;
- e) Costs of this Writ Petition be awarded;
- f) Such other just and equitable orders be passed.”

2. The relevant facts are required to be noted which read thus:-

3. The petitioners, who are 21 in number, were appointed to various Class IV posts by respondent no.4-Uran Municipal Council (for short, “the **Municipal Council**”). It appears to be not in dispute that the appointments were made by the Municipal Council without following the norms prescribed by the State Government and the applicable provisions of law, namely, the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, the “**said Act**”). The petitioners, however, contended that their appointments were legal and valid, as an advertisement was issued pursuant to which they appeared before the Selection Committee for interviews, they were subsequently issued appointment orders on different dates, i.e., on 31 March 1997, 14 May 1997 and 29 September 1997. The petitioners, although were appointed by following the lawful procedure, were not being treated as regularly appointed even when work was being taken from them, as if they were regular employees. Consequently, on behalf of the petitioners, on 31 March 2001, the Municipal Labour Union filed Complaint (ULP) No. 141 of 2001 before the Labour Court at Thane, seeking regularization of the petitioners’ services. During the pendency of the said complaint, respondent no.2-Director of Municipal

Administration, Maharashtra State, issued an order dated 24 June 2002 regularizing the services of the petitioners by exercising powers under Section 76(2) of the said Act. The said order is significant and, hence, is required to be noted. It reads thus:-

“(Official Translation of a photocopy of an Order, typewritten in Marathi)

**Directorate of Municipal Administration,
Government Transport Services Building,
3rd Floor, Sir Pochkhanwala Road,
Worli, Mumbai – 400 025.**

Order No. M.A.D.In. 1002/M.No.241/02/70.

Date : 24th June, 2002.

Read: 1] The letter bearing Outward No.U.M.C./ Establishment/256/ 2002-2003, dated 18.4.2002.
2] Resolution No.4, dated 3.9.1996 of Uran Municipal Council Standing Committee.
3] Resolution No.16, dated 20.1.1997 and No.47, dated 25.4.1997 passed in Uran Municipal Council General Meeting.

Order

The appointments of twenty one employees on the establishment of Uran Municipal Council, as mentioned in Appendix – A, were made without following the procedure prescribed by the Government. The said appointments are made to the posts which are lying vacant for a long period and which are duly sanctioned and therefore, in exercise of the powers conferred under Section 76 (2) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, the said appointments **are hereby regularised and ex post facto sanction is granted thereto, subject to following conditions.**

Conditions :

- 1] The approval is granted to regularise the appointments of twenty one employees mentioned in Appendix – A, only as one time exception.
- 2] It should be noted that the Municipal Council should not make such appointments in this manner in future without following prescribed procedure of the Government. However, if such appointments are made, the expenditure to be incurred therefor will be recovered from the Authorities making the appointments and the persons thus appointed shall have no right to remain in the Service and other Government action shall be taken against them.
- 3] As the Municipal Council has made appointments in an irregular manner, the grant received from the Government towards Dearness

Allowance on these employees' salaries shall not be admissible for the period with effect from the date 1.4.2002 to 31.3.2004, as a penalty to the Municipal Council.

Sd/-
[Bhagwan Sahay]
Director,
Directorate of Municipal Administration.

To,
1] The Chief Officer, Uran Municipal Council, District Raigad.
2] The Collector, Raigad.
3] The Regional Director, Municipal Administration, Konkan Region, Konkan Bhavan, Mumbai.
4] Deputy Chief Auditor, Local Fund Accounts Audit, Konkan.
5] Select File.

[Milind Gavade.]
Deputy Director,
Directorate of Municipal Administration.”
(emphasis supplied)

4. Thus, by virtue of the aforesaid order, with effect from 24 June 2002, the petitioners attained the status of regular employees. In view of the aforesaid order dated 24 June 2002, regularizing the petitioners' services, the petitioners withdrew Complaint (ULP) No. 141 of 2001 filed before the Labour Court at Thane, by making an application, the contents of which read thus:-

“ The Respondents have issued the letters of permanency to the workers concerned in the above complaint and therefore the matter is settled between the parties.

The Complainant is enclosing the orders of individual worker issued by the Respondents.

The Hon'ble Court may be pleased to dispose off the Complaint as settled.”

(emphasis supplied)

5. In pursuance to the aforesaid application, the Labour Court permitted withdrawal of the complaint dated 15 January 2003, in view of the dispute

between the parties being settled.

6. However, what transpired thereafter, leading the petitioners to file the present petition, is quite peculiar, namely, subsequently an order dated 19 June 2006 came to be passed by an officer lower in rank than the Deputy Director, albeit with the approval of the Director, to the effect that the date of absorption/regularization of the petitioners, would not be as stipulated in the order dated 24 June 2002 (supra), but instead shall take effect from the date of the said order, i.e., 19 June 2006. However, in altering the said date, no reasons were assigned. It is this communication which is impugned in the present proceedings. The impugned order is required to be noted which reads thus:-

“ Pursuant to the Order of this Office under reference, the appointment of irregular employees on the establishment of your Municipal Council had been regularized as per sections 56 [2] and 337 of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 and Ex-post facto sanction had also been granted thereto.

However, it has been observed that the Municipal Council has regularized the appointments of the said employees from the date of their first appointment instead of regularizing the same from the date of this Office Order.

Therefore, the said employees should be regularized with effect from the date of this Order. Moreover, if Dearness Allowance grant has been drawn on the salaries of the said employees for the period from the date of their regularization till the date of this Order, the same should be calculated and communicated to this office immediately and while demanding the further grant, the said further grant should be demanded after deducting the said amounts therefrom.

By the approval of Commissioner and Director.

(Signature Illegible)

[Dilip Paygude]

Deputy Director,

Directorate of Municipal Administration.

Copy to:
Desk No. 27, Directorate of Municipal Administration for taking further action.”

7. Thus, by virtue of the impugned order, the benefit of regularization granted from 24 June 2002 was taken away and deferred to a subsequent date, namely, 19 June 2006, i.e. the date of the impugned order.

8. Ms. Parasnis, learned counsel for the petitioners, has raised several contentions. Her primary contention is that the impugned order does not record any reasons for undoing the exercise of regularization undertaken by the initial order dated 24 June 2002, by which the services of the petitioners were regularized with effect from the said date and on the terms and conditions stipulated therein. She submits that the petitioners had accepted the said order and, considering that the dispute stood resolved, had also withdrawn the Complaint (ULP) filed by them before the Labour Court. It is her submission that there was neither any reason nor any justification for the Deputy Director to pass the impugned order, merely on account of an alleged act of the Nagar Parishad in recognizing the petitioners' appointments from the year 1997. She further submits that the observation contained in paragraph 2 of the impugned order is incorrect, as the petitioners had accepted in its entirety the order dated 24 June 2002 passed by the Director, granting regularization from the date of the said order. It is her contention that the impugned order is also in breach of the principles of natural justice, as the regularization granted to the petitioners by the order dated 24 June 2002 was abruptly taken away by the impugned order dated 19 June 2006, and that too without assigning any reasons. According to her, looked from any angle, the impugned order deserves to be interfered with and set aside on these grounds.

9. The contesting respondent is respondent no.2, the Director. A reply affidavit of Vijaykumar Pandurang Mhasal, Assistant Regional Director of Municipal Administration, has been filed purporting to justify the impugned order. The affidavit is of a limited nature. The relevant contents thereof are required to be noted, which read thus:-

“3) With reference to para Nos. (2) to (5) of the Writ Petition I say that it is crystal clear from the order dated 24th June, 2002 that 21 workers were recruited by the Municipal Council Uran without following rules and regulations. I say that Uran Municipal Council appointed these workers on the sanctioned and vacant posts, but these appointments were not legal and valid because proper procedure was not followed. I say that an interview was not conducted by the Employment Officer, Social Welfare Officer and Tribal Development Officer, Raigad District and the candidate interviewed were not from exhaustive list of these three department. However Director Municipal Administration vide its order dated 24th June, 2002 accorded post facto sanction to the appointment of employees mentioned in the Annexure 'A' of the order. I say that since these appointments were irregular, the condition was imposed that the Municipal Councils will not get any D.A on the wages of these employees from the period 01-04-2002 to 31-03-2004. It is also admitted that the Respondent No. 4 had specifically mentioned that the appointment of said employee (at Ex. G) is regularised from the date of 30-10-2002 shows that employees were fully aware of the fact that their services have been regularised from the specific date mentioned in the said order.

4) With reference to para No. (6) of the Writ Petition I say that certain employees were given benefit or regularisation from their initial date of appointment. I say that it was clarified by Director Municipal Administration vide its order dated 19/06/2006 that the services of the said workers should be regularised from the date of order of the Respondent No. 2 and not from the initial date of the appointment of these workers.

5) With reference to para No. (7) of the Writ Petition I say that Government had taken policy decision for regularisation of daily wages employees who were in the employment of Municipal Councils before 10.03.1993. As the services of these employees were regularised from the date of issue of Respondent No. 2 ordered regularising their services, the Petitioners can not claim regularisation from the date of their initial appointment by the Municipal Council.

It is well settled principle of law that nobody is allowed to take an undue advantages of legal wrong.

It is also submitted that there will be no discrimination between employees regularised from the date of appointment and those employees

who were regularised from the date of their initial appointment by Municipal Councils.

It is also submitted that as per the policy of the Government daily wages employee in Municipal Council working before 10.03.1993 had to be regularised and employees who were appointed after this cut off date will not get benefit of regularisation.

Therefore, the order dated 19th June, 2006 issued by this office is just and proper. This order is just and clarification of initial order dated 24th June, 2002 and hence the order should be sustained.”

10. Ms. Thakur, learned AGP, submitted that the initial appointment itself was not legal and for such reason, the impugned order was required to be passed, particularly in view of the action taken by the Municipal Council, as set out therein. She, however, did not dispute that, by the communication dated 24 June 2002 (supra), the appointments of the petitioners, although initially made irregularly by the State Government, were regularized, and that the said order was acted upon.

11. We have accordingly heard learned counsel for the parties as also we have perused the record. We find much substance in the contentions as urged on behalf of the petitioners, for the reason that, admittedly, by the order dated 24 June 2002 issued by respondent no.2-Director, and subject to the terms and conditions as set out therein, respondent no.2, in exercise of powers under Section 76(2) of the said Act, had regularized the appointments of the petitioners. Such regularization was required to be given effect from the date of the said order, i.e., 24 June 2002.

12. As rightly contended on behalf of the petitioners, the said order passed by respondent no.2 was accepted by the petitioners, which led them to withdraw the

complaint filed before the Labour Court on the ground that the disputes stood settled. Thus, the petitioners had changed their position pursuant to the order dated 24 June 2002, which created and vested rights in the petitioners. In such circumstances, it is apparent that the impugned order dated 19 June 2006 came to be passed abruptly, without issuance of a show-cause notice or grant of an opportunity of a hearing to the petitioners. The effect of the impugned order was to take away the benefit of the regularization granted on 24 June 2002 and to postpone the same to a later date, i.e., with effect from 19 June 2006, the date of the impugned order.

13. We find from the contents of the impugned order that it does not record any valid reason, except what is stated in paragraph 2. Even such reason would not be sufficient, as the order does not expressly recall or supersede the earlier order dated 24 June 2002 under which the petitioners were regularized with effect from 24 June 2002. Rather, by a stroke of the pen, it seeks to recognize the regularization only from the date of the impugned order. Before such drastic action was to be resorted, it was necessary that in a manner known to law, the order dated 24 June 2002 was recalled, for which a show cause notice ought to have been issued to the petitioners. In our opinion, even this could not have been done after a period of four years, as both parties had acted upon the regularization orders dated 24 June 2002 whereunder the petitioners had stood regularized.

14. Although the reply affidavit makes a lame attempt to justify the impugned order, in our opinion, it hardly constitutes a justification acceptable in law for this Court to accept the case of respondent no.2. The reason is that the issue of

irregular appointment had become a non-issue in view of the order dated 24 June 2002. We may also observe that the petitioners had consistently taken a stand that their appointments stood regularized, as the advertisement had been issued and the interviews had been conducted by the Selection Committee of the Uran Municipal Council. Such issue was also *sub judice* before the Labour Court in the complaint (ULP) filed by the petitioners, however, in view of the order dated 24 June 2002 issued by respondent no.2 granting regularization, the said complaint was withdrawn. Thus, this is not a case where the petitioners had relinquished their right to contend that their appointments were neither irregular nor illegal, however, the petitioners accepted the order dated 24 June 2002 granting regularization, which, in our opinion, was itself in the nature of a compromise.

15. In the light of the aforesaid discussion, we find that there was no valid justification for the issuance of the impugned order. The impugned order was also passed without granting an opportunity of hearing to the petitioners and, admittedly, has the effect of bringing about civil consequences. The position in law in this regard is well settled. No order depriving the petitioners of the benefits conferred upon them by the earlier order of regularization, could have been passed in the manner as adopted in passing the impugned order. Looked from any angle, the valuable rights of the petitioners guaranteed under Articles 14 and 16 of the Constitution of India have stood breached.

16. Resultantly, the petition needs to succeed. It is accordingly allowed in terms of prayer clauses (a) and (b) which read thus:-

“a) That this Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order and/or direction in the Nature of Writ of Mandamus thereby directing (i) Respondents No.2 and 3 herein to forthwith withdraw and/or cancel the Impugned Order dated 19.6.2006 being Exhibit "L" to this Writ Petition in so far as it relates to Uran Municipal Council, (ii) Respondent No.4 herein be directed to forthwith withdraw and/or cancel the Impugned Order dated 10.8.2006 being Exhibit "M" Collectively to this Writ Petition;

b) That this Hon'ble Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ, Order and/or direction in the Nature of Writ of Certiorari thereby quashing and/or setting aside (i) the Impugned Order dated 19.6.2006 passed by the Respondent No.3 herein being Exhibit "L" to this Writ Petition in so far as it relates to Uran Municipal Council, (ii) Impugned Order dated 10.8.2006 issued by Respondent No.4 herein being Exhibit "M" Collectively to this Writ Petition;

17. Rule is made absolute in the aforesaid terms. No costs.

18. The Civil Application would not survive. It is accordingly disposed of.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)