

SUPREME COURT OF INDIA**Bench: Justices A.S. Bopanna and Sanjay Kumar****Date of Decision: 15th May 2024**

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 9127-9132 OF 2018

CIVIL APPEAL NO. 9133 OF 2018

SOLAPUR MUNICIPAL CORPORATION ...APPELLANT**VERSUS****SHANKARRAO GOVINDRAO PATIL AND OTHERS ...RESPONDENTS**

Subject: Civil appeals arising from the merger of Majarewadi Gram Panchayat with Solapur Municipal Corporation and the subsequent employment status of the Gram Panchayat employees.

Headnotes:

Municipal Corporation – Regularization of Employees – Appeals against High Court’s decision granting regularization of service from the date of merger – Issue of whether employees of the erstwhile Gram Panchayat, merged with Solapur Municipal Corporation, should be treated as regular employees from the date of merger or from the date of their formal regularization by the Corporation – High Court ruled in favor of employees, treating their service as regular from the merger date based on sanctioned posts and statutory provisions – Supreme Court found new documents, not considered by the High Court, questioning the regularity of appointments – Matter remanded to High Court for fresh consideration with direction to permit additional documentary evidence – Appeals allowed, High Court’s judgment set aside, writ petitions restored for reconsideration. [Paras 1-14]

Employment Status – Statutory Interpretation – Bombay Provincial Municipal Corporations Act, 1949 – Section 493(5)(c) – Whether employees of merged Gram Panchayats automatically become regular employees of the Corporation – High Court relied on sanctioned posts and statutory provisions deeming prior service as regular – Supreme Court highlighted the need for

verification of new documents indicating possible irregularities in initial appointments – Matter requires detailed examination of facts by High Court. [Para 5-10]

Decision – Appeals Allowed – High Court judgment set aside – Matters remanded to High Court for fresh consideration – Directions issued for permitting additional evidence – High Court requested to prioritize and expedite disposal of the case. [Para 13-14]

Referred Cases: None.

J U D G M E N T

SANJAY KUMAR, J

1. Solapur Municipal Corporation, Solapur, preferred six appeals aggrieved by the judgment dated 31.07.2013 passed by a Division Bench of the High Court of Judicature at Bombay, in effect, allowing Writ Petition Nos. 197 of 2012, 2011 of 2003 and 2432 of 2003, and also the later order dated 08.08.2014 passed by the Division Bench, dismissing its review petitions filed in the aforesaid three writ petitions. Thereafter, another Division Bench of the High Court of Judicature at Bombay followed the judgment dated 31.07.2013 and allowed W.P. No. 2463 of 2010 filed by another employee similarly situated to the petitioners in the other three writ petitions on 09.03.2017. Assailing this order, Solapur Municipal Corporation filed Civil Appeal No. 9133 of 2018.

2. By order dated 24.04.2015, this Court stayed the operation of the impugned judgment dated 31.07.2013 till the next date of hearing. Thereafter, while granting leave on 24.08.2018, the interim order was made absolute.

3. The issue for consideration in these appeals is as to the status of the respondents herein, viz., the petitioners in the four writ petitions before the High Court, who were engaged in the service of Majarewadi Gram Panchayat, which was merged with Solapur Municipal Corporation (hereinafter, 'the Corporation') along with ten other gram panchayats with effect from 05.05.1992. On 25.03.2003, the respondents herein, along with others, were regularized in the service of the Corporation with effect from 01.02.2003. Their claim before the High Court, however, was that they should be treated as having been absorbed in the service of the Corporation from 05.05.1992

itself, in view of the provisions of Section 493(5)(c) of the Bombay Provincial Municipal Corporations Act, 1949. On the other hand, the Corporation contended that they were continued on daily wage basis till 01.02.2003 and, therefore, their employment from 05.05.1992 could not be treated as regular service.

4. The Division Bench placed reliance on the affidavit filed by a Section Officer of the Urban Development Department, Government of Maharashtra, confirming that 300 posts had been sanctioned in the Corporation to accommodate the employees of the erstwhile gram panchayats which had merged with it from 05.05.1992, and held that it followed therefrom that the employment of such persons by the Corporation stood regularized with effect from 05.05.1992. The Division Bench, accordingly, disposed of the three writ petitions directing that the services rendered by the writ petitioners before 05.05.1992 with the gram panchayat till 05.05.1992 shall be treated as regular service rendered to the Corporation; that the services rendered by them from 05.05.1992 till 01.02.2003 shall also be deemed to be regular service rendered to the Corporation; and that, in view of the above, all service benefits as well as retirement benefits should be extended to them, on the footing that the services rendered by them from their respective dates of appointment by the gram panchayat till 01.02.2003 shall be deemed to be services rendered to the Corporation. The Corporation, thereupon, preferred review petitions but the same were dismissed by the Division Bench on 08.08.2014. The said order reflects that the Bench found no error apparent on the face of the record, warranting review of its judgment, and dismissed the review petitions. The order passed in the fourth writ petition thereafter was on the same lines as the earlier judgment.
5. The main issue for consideration before us is as to the employment status of the respondents herein in the service of Majarewadi Gram Panchayat. Pertinent to note, the respondents claim to be the regular employees of the said gram panchayat as on the appointed date, i.e., 05.05.1992. If so, they would be entitled to claim the benefit of Section 493 of the Maharashtra Municipal Corporations Act, 1949 (hitherto, known as the Bombay Provincial Municipal Corporations Act, 1949). Section 493 states that the transitory provisions in Appendix IV shall apply to the constitution of the Corporation and other matters specified therein. Clause 5 in Appendix IV is titled "Continuation of appointments, taxes, budget estimates, assessments, etc." and, under sub-clause (a), to the extent relevant for our purpose, it states that

any appointment made under the Maharashtra Municipalities Act, 1965, or any other law in force in any local area constituted to be a city immediately before the appointed day, shall, in so far as it is not inconsistent with the provisions of the Act, continue in force until it is superseded by any appointment made under the Act or any other law as aforesaid, as the case may be. Clause 5(c) states that all officers and servants in the employ of the said municipality or local authority immediately before the appointed day shall be officers and servants employed by the Corporation under the Act and shall, until other provision is made in accordance with the provisions of the Act, receive salaries and allowances and be subject to the conditions of service to which they were entitled to on such date. The first *proviso* thereto states that the service rendered by such officers and servants before the appointed day shall be deemed to be service rendered in the service of the Corporation.

6. In the light of the above statutory setting, the employment status of the respondents in Majarewadi Gram Panchayat assumes great significance. It is only if they were regular employees of the said gram panchayat that they would be entitled to seek protection of Clause 5 in Appendix IV to the Maharashtra Municipal Corporations Act, 1949. The Division Bench proceeded on the footing that they were regular employees of the gram panchayat or, at least, treated them as such upon the sanction of 300 posts by the Government of Maharashtra. However, we find that in a similar writ petition, *viz.*, W.P. No. 228 of 1996, when the employees were referred to by the High Court in its interim order as 'part-time employees of the gram panchayat', the employees union filed a special leave petition before this Court, aggrieved by that nomenclature. The special leave petition was dismissed, observing that the status of the employees would have to be decided on its own merits at the stage of the final hearing of the writ petition.
7. A copy of Resolution No. 98 dated 31.08.2002 passed by the Corporation is placed before us and it reflects that the 300 employees who were brought in due to boundary expansion of the Corporation were resolved to be made permanent from the date of approval, but any amount of earlier difference would not be permissible. It was further resolved that their services with the Corporation would be considered for pension and gratuity. It was also stated that, for including these 300 employees in permanent service from the date of Government approval, the Resolution was approved. Acting upon this Resolution, the Government sanctioned 300 posts on 25.03.2003 and consequential proceedings of regularization were issued by the Corporation,

stating that the daily wage workers were appointed with effect from 01.02.2003 and clarifying that they would not be entitled to get any arrears in respect of their service in the Corporation prior to that date.

- 8.** The bone of contention between the Corporation and the respondents is whether the respondents were daily wage workers in the service of Majarewadi Gram Panchayat or whether they were its regular employees, whereby they could be straightaway treated as servants of the Corporation under Clause 5(c) in Appendix IV to the Maharashtra Municipal Corporations Act, 1949.
- 9.** It is an admitted fact that no material was produced by the respondents before the High Court to establish that they were regular employees of Majarewadi Gram Panchayat before the appointed date. However, before us, a photocopy of Majarewadi Gram Panchayat's Resolution No. 83(8) dated 20.03.1992, in Marathi along with an English translation, has been produced. Therein, it is stated that all the employees working with Majarewadi Gram Panchayat till the end of 31.03.1992 were permanently appointed on regular salary, together with dearness allowance and other allowances. The names of such employees, their designations and their salaries were set out thereafter. Apart from this document, original orders of appointment in Marathi issued by Majarewadi Gram Panchayat, along with English translations, to some of the respondents have also been produced. The orders of appointment are all dated 20.03.1992. These documents appear to be genuine, on the face of it, and are duly authenticated by the officials concerned.
- 10.** The Corporation, on the other hand, would refer to Resolution No.83(9) passed by Majarewadi Gram Panchayat on 20.03.1992, whereby several appointments of seasonal nature were made on a temporary basis. Details of some of the appointments so made are also produced. It appears that, in all, 48 such appointments were made on that day. A copy of the Resolution, filed as Annexure A-7, however indicates that the appointments of those persons were to come into effect only from 01.04.1992. Notably, Resolution No.83(8) was earlier than Resolution No. 83(9), though both were passed on the same day, viz., 20.03.1992. By Resolution No. 83(8), all the employees working with the gram panchayat till 31.03.1992 were permanently appointed whereas Resolution No. 83(9) specifically stated that the 48 temporary appointments made thereunder were to come into effect only on 01.04.1992. Therefore, those 48 appointees were not entitled to claim the benefit of Resolution No. 83(8).

- 11.** It is further contended by the Corporation that some of the so-called regular appointments are open to doubt and question. It is pointed out that one Ilahibaksh Maqbool Bhagwan was only sixteen years of age when he was appointed on 01.12.1990 as a 'water man' in the service of the gram panchayat. Reference is also made to the Draft Notification dated 01.11.1991, reflecting the details of the proposed merger of the gram panchayats with the Corporation, issued by the Government of Maharashtra long before the happening of the events in Majarewadi Gram Panchayat in March, 1992, and it is contended that the entire exercise of the gram panchayat, even if true, was not a bonafide one and that no benefit could be extended to the respondents on the strength thereof.
- 12.** Given the above controversy, we are conscious of the fact that the High Court had no occasion to consider it, as the documents in question were produced before us for the very first time. Though, ordinarily, we would not allow documentary evidence to be produced belatedly at the last stage, we are also mindful of the fact that the rights of several workmen are at stake and the issue for consideration would invariably turn upon the conclusions that are to be drawn from these new documents. We are, therefore, of the view that minute verification and examination of these documents would necessarily have to be undertaken. Such an exercise would be more appropriate before the High Court rather than this Court. Further documentary evidence may have to be led, perhaps, in relation to these new documents and that is not a task that we would normally undertake in exercise of jurisdiction under Article 136 of the Constitution.
- 13.** *Ergo*, we are of the opinion that the matter would have to be reconsidered by the High Court of Maharashtra at Bombay in the light of and on the strength of the new documents.
- 14.** The appeals are accordingly allowed, setting aside the judgment dated 31.07.2013 in Writ Petition Nos. 197 of 2012, 2011 of 2003 and 2432 of 2003 and the order dated 08.08.2014 passed in the review petitions filed therein along with the order dated 09.03.2017 passed in W.P. No. 2463 of 2010 and remanding the matter to the High Court for reconsideration. The writ petitions shall stand restored to the file of the High Court. Both parties may be permitted to bring on record such documentary evidence as is deemed fit and necessary by the High Court, for proper reconsideration of the case. The entire matter is left open for adjudication afresh by the High Court. Given the antiquity of this matter, we would request the High Court to give it due priority and dispose it of as expeditiously as possible.

In the circumstances, the parties shall bear their own costs.

Pending applications, if any, shall stand disposed of.

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