

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4735 OF 2013

- 1. Municipal Corporation of Greater Mumbai**
- 2. The Municipal Commissioner
for Greater Mumbai.**
- 3. Madhav Sangle, or his Successor,
The Additional Municipal Commissioner (E.S.)**
- 4. Rajendra Vale or his Successor
The Deputy Municipal Commissioner
(General Administration)**
- 5. R.B.Dhas or his successor/s
The Chief Accountant (Finance) MCGM**
- 6. K.S.Pilankar or his Successor/s
The Chief Accountant Water Supply
& Sewerage Department MCGM.
All having Offices, at Municipal
Head Offices, Mahapalika Marg,
Mumbai - 400 001.**

.. Petitioners

V/s.

**Mumbai Mahanagarpalika Karyalayeen
Karmachari Sanghtana,
Municipal Head Office,
Mahapalika Marg, Mumbai - 400 001**

.. Respondent

**WITH
INTERIM APPLICATION NO.14599 OF 2024**

SHABNOOR
AYUB
PATHAN

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SHABNOOR AYUB
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**Mumbai Mahanagarपालिका Karyalayeen
Karmachari Sanghatana**
Municipal Head Office, Mahapalika Marg,
Mumbai – 400 001.

.. **Applicant**

In the matter between:

- 1. Municipal Corporation of Gr. Mumbai**
- 2. The Municipal Commissioner**
for Gr. Mumbai
- 3. Madhav Sangle, or his Successor,**
The Additional Municipal Commissioner
(E.S.)
- 4. Rajendra Vale or his Successor**
The Deputy Municipal Commissioner
(General Administration)
- 5. R.B.Dhas or his successor/s**
The Chief Accountant (Finance) MCGM
- 6. K.S.Pilankar or his Successor/s**
The Chief Accountant Water Supply
& Sewerage Department MCGM.

All having Offices, at Municipal
Head Offices, Mahapalika Marg,
Mumbai - 400 001.

... **Petitioners**

V/s.

Mumbai Mahanagarपालिका Karyalayeen
Karmachari Sanghtana,
Municipal Head Office,
Mahapalika Marg, Mumbai - 400 001

... **Respondent**

Mr. Ram S. Apte, Senior Advocate with Mr. D. R. Kawale, for petitioner-MCGM.

Mr. Prakash Devdas with Ms. Vidula Patil, for Respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 7, 2026

PRONOUNCED ON : MARCH 26, 2026

JUDGMENT:

1. By the present Petition instituted under Article 227 of the Constitution of India, the Petitioners, who were the original Respondents before the Industrial Court, call in question the legality and correctness of the Judgment and Order dated 15 January 2013 passed by the Industrial Court in Complaint (ULP) No. 225 of 2009. The said complaint had been instituted by the Respondent, who was the original complainant, under Section 28 read with Items 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The impugned judgment having been rendered against the Petitioners, they have invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution seeking interference with the said order.

2. The circumstances giving rise to the present Petition may briefly be stated. According to the Petitioners, the Municipal Corporation of Greater Mumbai is a statutory body constituted

under the provisions of the Mumbai Municipal Corporation Act, 1888. The Corporation discharges various statutory duties and public functions in accordance with the mandate of the said enactment. Its primary responsibilities include providing civic amenities and essential municipal services to the residents of the metropolitan city. Among its several statutory obligations are duties connected with the maintenance and regulation of essential public services. The Petitioners contend that, being both a public authority and an employer engaged in public utility services, the Corporation is required to take such administrative measures as may be necessary to ensure the efficient functioning of the municipal administration and the proper discharge of its statutory responsibilities. The Petitioners further state that certain employees who had successfully cleared the departmental examination conducted for the post of Head Clerk or Senior Audit and Accounts Assistant in the years 1990, 1992 and 1998 were placed in a waiting list for appointment. During the relevant period, vacancies had arisen in posts reserved for candidates belonging to backward class categories. These vacancies occurred on account of retirement, death and other service contingencies. However, such reserved posts could not be filled since eligible candidates belonging to the backward class categories were not available. It is stated that the Municipal Corporation strictly follows the reservation policy formulated by the Government in respect of backward classes. Owing to the continued vacancy in these posts, the administration faced considerable difficulty in the

conduct of routine work and day to day municipal administration. In these circumstances, since certain employees belonging to the open category had already passed the requisite departmental examination and were otherwise available for appointment, such employees were appointed on a purely ad hoc basis to the posts of Senior Audit and Accounts Assistant against the vacancies which were originally meant for backward class candidates. It is further the case of the Petitioners that since the aforesaid appointments were purely ad hoc in nature, administrative practice required that such employees be given a break in service after every six months. However, due to an inadvertent lapse, such break was not given, and the employees concerned continued to work on the said posts without interruption. In view of this situation, the administration subsequently took a policy decision that whenever clear vacancies in the open category became available, the services of these ad hoc appointees would be regularised against such vacancies by granting them a technical break of one day. Acting upon this decision, necessary administrative steps were taken and the same were implemented with retrospective effect.

3. The Petitioners further contend that these employees were otherwise not entitled to promotion at the relevant time, as there were no clear vacancies available in the open category. The only vacancies which had arisen were in the posts reserved for backward class candidates. Nevertheless, with a view to ensuring that the functioning of the administration was not adversely affected, the said employees were granted ad hoc promotions.

According to the Petitioners, had the reserved posts continued to remain vacant due to the non availability of eligible candidates from the backward class categories, these employees would not have obtained promotion to the posts of Head Clerk or Senior Audit and Accounts Assistant. It is also their case that the employees concerned have derived financial advantage by virtue of the ad hoc promotions granted to them. Subsequently, when clear vacancies arose in the open category, these employees were given a technical break of one day and were thereafter promoted to the available posts in accordance with the applicable service rules.

4. The Petitioners further submit that the posts of Head Clerk or Senior Audit and Accounts Assistant are supervisory and administrative in nature. The officers occupying these posts exercise supervisory control over clerks and other subordinate staff working under them. Their duties are predominantly supervisory in character. A number of clerks, peons and other Class IV employees function under their control and supervision. It is stated that a Head Clerk possesses authority to recommend leave and to maintain confidential reports of clerks, peons and other Class IV employees. Having regard to the nature and character of these functions, the Petitioners contend that the post of Head Clerk cannot be regarded as falling within the definition of “workman” as contained in Section 2(s) of the Industrial Disputes Act, 1947. It is further stated that after hearing the parties, the learned Industrial Court proceeded to pass the impugned Judgment and Order dated 15 January 2013 in Complaint (ULP) No. 225 of

2009. Being aggrieved by the said decision and disputing its correctness, the Petitioners have invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

5. Mr. Apte, learned Senior Advocate appearing on behalf of the Petitioners, submits that the learned Industrial Court failed to properly appreciate the factual and legal position governing the case. According to him, the employees concerned in the complaint were granted promotions only on an ad hoc basis to posts which were otherwise reserved for candidates belonging to reserved categories. At the relevant time, eligible candidates from the reserved categories were not available. In such circumstances, employees belonging to the open category were temporarily promoted to those posts purely as an administrative arrangement so that the work of the department did not suffer. It is contended that such promotions were intended to operate only until candidates from the reserved categories became available or until vacancies arose in the open category against which the said employees could be regularly promoted. Learned Senior Counsel further submits that all the 47 employees were eventually promoted in accordance with the availability of vacancies. In view of this position, the said employees cannot claim continuity of service on the promotional post from the date of their initial ad hoc promotion until the date on which regular promotion was granted. It is further submitted that the learned Industrial Court has failed to consider that the concerned employees have already

been granted the benefit of regular promotion and permanency as and when vacancies became available. According to the Petitioners, once such benefits have been extended in accordance with the applicable service rules, the employees cannot seek to claim continuity of service on the promotional post from the date of their initial appointment on an ad hoc basis. It is contended that such a claim would run contrary to the arrangement under which the ad hoc promotions were granted.

6. The learned Advocate for the Petitioners further submits that the learned Industrial Court committed an error in holding that the Petitioners had engaged in an unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. According to him, the Industrial Court wrongly concluded that by not granting promotion with retrospective effect from the date of the initial ad hoc appointment to the post of Head Clerk or Senior Audit and Accounts Assistant, and by allegedly failing to implement the terms of the Award in Reference (IT) No. 19 of 1996, the Petitioners had violated the provisions of the said Act. It is contended that such a conclusion is not supported either by the facts on record or by the governing service rules.

7. Learned Senior Counsel further submits that all the employees who were parties to the complaint had been granted ad hoc promotions against posts reserved for candidates belonging to reserved categories. Since suitable candidates from the reserved

categories were not available at the relevant time, the employees belonging to the open category were temporarily placed on those posts purely on an ad hoc basis. These arrangements continued either until eligible candidates from the reserved categories became available or until posts in the open category became available for regular promotion. It is reiterated that all the 47 employees were subsequently promoted in accordance with the availability of vacancies. Therefore, according to the Petitioners, the employees cannot claim continuity of service on the promotional posts from the date of their initial ad hoc promotion until the date when regular promotions were actually granted.

8. It is further argued that under the prevailing administrative procedure, while granting such ad hoc promotions, it was necessary to provide a one day technical break in service. However, due to an inadvertent lapse, the said break was not given and the employees continued to work on the promotional posts without interruption. According to the Petitioners, when this fact came to the notice of the administration in the year 2009, a decision was taken to introduce a one day break with retrospective effect for the period between the years 2004 and 2006. It is submitted that in reality no direction had been issued by this Court requiring such continuity, and the employees were permitted to continue only because the break had not been implemented earlier. It is further contended that the employees involved in the complaint have already been granted the benefits of permanency as and when the posts became vacant. However, merely for the purpose of claiming

continuity of service, they cannot assert a right to treat their initial ad hoc appointment as regular promotion from the very beginning.

9. Per contra, Mr. Devdas, learned Advocate appearing on behalf of the Respondent, submits that the Industrial Court has rightly appreciated the material placed on record and has correctly concluded that the Petitioners have indulged in an unfair labour practice within the meaning of Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. On that basis, the Industrial Court directed the Municipal Corporation of Greater Mumbai to treat the promotions of the concerned employees as effective from the date of their initial appointment to the posts of Head Clerk or Senior Audit and Accounts Assistant. The Industrial Court also directed that the said employees be granted continuity in service on the promotional posts along with consequential seniority. It is further submitted on behalf of the Respondent that the period of service rendered by the concerned employees from the date of their initial promotion on an ad hoc basis until the date of their regularisation is required to be treated as qualifying service. According to the Respondent, such service ought to be counted for the purpose of extending benefits under schemes such as Time Bound Promotion as well as other service related benefits available to the employees.

10. Learned Advocate for the Respondent further submits that the concerned employees had been granted regular annual increments and other service benefits applicable to the

promotional posts during the period they were discharging duties on those posts. According to him, the only dispute that survives relates to the determination of the effective date of promotion. The issue for consideration is whether the promotion of the employees ought to be reckoned from the date on which they were initially placed on the promotional posts on an ad hoc basis. It is further submitted that there is no dispute regarding the eligibility of the concerned employees for promotion to the posts of Head Clerk or Senior Audit and Accounts Assistant. All the employees had successfully passed the requisite departmental examinations as prescribed under the applicable rules. It is also an admitted position that they discharged their duties continuously on the promotional posts without any break in service. Learned Advocate for the Respondent also places reliance on the judgment of this Court in Writ Petition No. 8711 of 2007, wherein it has been held that the Model Standing Orders are applicable to the employees of the Municipal Corporation of Greater Mumbai. It is contended that the classification under the Model Standing Orders does not recognise any category described as ad hoc. Consequently, even if the promotions were described as temporary, once the employees had been appointed and had discharged duties on those posts in accordance with the applicable rules, they would be entitled to be treated as regular employees from the initial date of such promotion.

11. It is further submitted that the learned Industrial Court has rightly observed that the decision of the Petitioners to impose a

one day artificial break in the year 2009 with retrospective effect from the year 2004 is illegal and arbitrary. According to the Respondent, such a course of action is contrary to settled principles of service jurisprudence, particularly when the concerned employees had already been granted all benefits attached to the promotional posts. It has also been noted that the employees are not claiming any monetary benefits arising from such promotions.

12. Learned Advocate for the Respondent further submits that the principal relief sought by the employees is limited in nature. According to him, the employees only seek recognition of their temporary service on the promotional posts as qualifying service for the purpose of obtaining second promotions under the Time Bound Promotion Scheme, also referred to as the Assured Career Progression Scheme. It is submitted that the said scheme was introduced by the Standing Committee and thereafter approved by the General Body of the Municipal Corporation of Greater Mumbai with effect from 1 August 2001. It is lastly submitted that a demand had earlier been raised for removal of anomalies that arose as a consequence of the implementation of the Sixth Pay Commission recommendations applicable to the employees of the Municipal Corporation of Greater Mumbai. For addressing such issues, an Anomaly Removal Committee was constituted under the Chairmanship of Ramanath Jha. One of the issues considered by the said Committee was whether temporary or ad hoc service rendered by employees ought to be treated as qualifying service. The Committee made its recommendations in that regard, which

were subsequently accepted by the Municipal Corporation, and the benefits arising therefrom were extended to the employees.

13. In support of the aforesaid submissions, learned Advocate for the Respondent has placed reliance upon the judgment of the Delhi High Court in the case of *S. C. Kohli and others v. M.C.D. and others*, decided on 29 September 2000. Reliance is also placed upon the judgments of the Supreme Court in *Dwijen Chandra Sarkar v. Union of India*, (1999) 2 SCC 119, *Union of India v. V. N. Bhat*, (2003) 8 SCC 714, and *Union of India v. M. Mathivanan*, (2006) 6 SCC 57.

REASONS AND ANALYSIS:

14. I begin with the nature of the ad-hoc appointments which lie at issue in the present dispute. The Petitioners themselves state that the concerned employees were placed on the promotional posts only on an ad-hoc basis. The reason for this arrangement is also not in dispute. The posts in question were reserved for candidates belonging to backward class categories. At the relevant time, suitable candidates from those reserved categories were not available. Because of this situation the posts remained vacant for some period. The administration of the Municipal Corporation was therefore faced with a practical difficulty. These posts were connected with day to day functioning of the department. If they remained vacant for a long time, the work of the department would suffer and essential municipal services could be affected. It was therefore decided to appoint employees belonging to the open

category on an ad-hoc basis. Such an arrangement was clearly taken as an administrative measure so that public work does not stop. However, the appointments were described as ad-hoc and temporary. They were expected to continue only till reserved category candidates became available or till vacancies arose in the open category which could be filled by regular promotion. Still, merely placing the label of ad-hoc on an appointment does not automatically decide the legal consequences of that appointment.

15. The real effect of a temporary or ad-hoc appointment depends upon how the employer actually treated the employee during that period. It also depends upon what kind of duties were performed and what benefits were granted to the employee while holding that post. When the record of the present case is examined, it becomes clear that the employees actually worked on the promotional posts for long periods without interruption. They discharged the same duties which a regularly promoted employee would perform. The material also shows that they were granted annual increments and other service benefits attached to the promotional posts. Their pay was fixed accordingly and they received financial advantage because of the higher post. When an employee continuously performs duties of a higher post and is also given benefits attached to that post, the administration cannot later rely only on the description of the appointment as ad-hoc to deny the effect of such service.

16. The Petitioners have strongly relied upon the reservation policy. According to them, the posts were reserved and therefore the ad-hoc arrangement was only a temporary stop-gap arrangement. The purpose of reservation is to ensure adequate representation of backward classes in public employment. Therefore, the administration was justified in not permanently filling those posts with open category candidates when the posts were reserved. To that extent the action of the Corporation cannot be faulted. The Petitioners have also pointed out that, as a matter of administrative procedure, a one day technical break is normally given when an ad-hoc employee is subsequently regularised. According to the Corporation, such a break creates a formal separation between temporary service and regular service. The record however shows that this break was not given at the relevant time. The employees continued to work on the promotional posts without any interruption. It is only later that the administration attempted to introduce a one day break with retrospective effect for the period between 2004 and 2006. When employees have already worked for several years and have been granted benefits of the post, can the administration later impose a technical break retrospectively in order to deny them continuity of service.

17. The Industrial Court considered this aspect in detail. After examining the evidence, the Industrial Court came to the conclusion that the retrospective imposition of a one day break was arbitrary. The Industrial Court noticed that the employees had in fact worked continuously on the promotional posts. They were

paid increments and other benefits attached to those posts. They were treated by the administration as if they were holding the promotional posts. In such circumstances the Industrial Court found that the attempt to introduce a retrospective break after several years was contrary to law. The Industrial Court also recorded that the employees were not claiming additional monetary benefits on account of the retrospective date of promotion. Their primary grievance was regarding continuity of service and seniority. The absence of a claim for large financial benefit shows that the employees were not attempting to take undue advantage. At the same time, even if monetary benefits were not claimed, the legal issue regarding continuity and seniority still required proper adjudication.

18. Another aspect which requires consideration is the role of the Anomaly Removal Committee. The record indicates that after the implementation of the Sixth Pay Commission recommendations, certain service anomalies arose in the Municipal Corporation. In order to examine those issues, a committee was constituted under the chairmanship of Ramanath Jha. One of the issues considered by the committee was whether temporary or ad-hoc service should be treated as qualifying service for certain benefits. The committee made recommendations in that regard and those recommendations were later accepted by the Municipal Corporation itself. The acceptance of these recommendations shows that the Corporation recognised the need to treat certain temporary service as qualifying service. This decision therefore

supports the view that, in the municipal establishment, service rendered in a temporary capacity may in appropriate circumstances be recognised for service benefits. When the employer itself adopts such a policy, it becomes difficult to deny similar treatment to the employees concerned in the present case.

19. The Petitioners have also emphasised that reservation policy must be protected and that the reserved posts cannot be permanently occupied by open category candidates. I fully accept that reservation is an important constitutional policy. The Corporation was justified in ensuring that the reserved posts were not permanently diverted. The temporary arrangement adopted by the Corporation was therefore understandable from an administrative perspective. However, the existence of reservation policy does not permit the employer to act unfairly towards employees who have actually performed duties on those posts for many years. The purpose of reservation is to ensure representation of backward classes. It is not intended to create a situation where employees who have worked continuously are deprived of legitimate dues of their service.

20. The concept of one day technical break also needs to be viewed in its proper perspective. Such a break is usually introduced as a device so that the period of ad-hoc service and the period of regular service are kept legally distinct. In ordinary situations this may be a formality. But when such a break is imposed retrospectively after employees have worked continuously

for many years, the situation becomes different. Retrospective application of such a method may result in denial of continuity of service and loss of seniority. In the present case the break was not given at the relevant time. It was introduced later when the dispute arose. The Industrial Court therefore found that the retrospective break was arbitrary. On the material available on record, that conclusion appears justified.

21. The employees have already been regularised and are holding the promotional posts. The dispute now concerns the effective date from which their service on those posts should be recognised. The record clearly shows that the employees had passed the required departmental examinations. They actually performed the duties of the promotional posts. They received increments and other benefits attached to those posts. Subsequently the administration itself recognised their position by granting regular promotions and by accepting the recommendations of the Anomaly Removal Committee. All these circumstances indicate that their service on the promotional posts was continuous service.

22. For these reasons, the facts of the present case support the view that the period during which the employees worked on the promotional posts from the date of their initial ad-hoc appointment should not be ignored completely. That service deserves recognition at least for limited purposes such as determination of seniority and consideration under schemes like

Time Bound Promotion or Assured Career Progression. Such recognition does not disturb the reservation policy. In the circumstances, the reasoning adopted by the Industrial Court appears consistent with the material placed on record.

23. For the reasons recorded hereinabove, the Petition fails and is accordingly dismissed.

24. The Judgment and Order dated 15 January 2013 passed by the Industrial Court in Complaint (ULP) No. 225 of 2009 is hereby confirmed.

25. The Petitioners shall carry out necessary corrections in the service records of the concerned employees and extend consequential service benefits, if any, in accordance with the applicable rules within a period of three months from the date of this order.

26. There shall be no order as to costs.

27. In view of disposal of the writ petition, the interim application stands disposed of.

28. At this stage, learned Advocate for the petitioners seeks stay of the judgment and order. However, for the reasons stated in the judgment, the request for stay is rejected.

(AMIT BORKAR, J.)