

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4 OF 2016

Anil Aadhar Gawale,
Age : 40 years, Occupation : Service,
R/o Wadi Bhokar Road,
Indra Nagar, Dhule,
Taluka and District Dhule.

...PETITIONER

-VERSUS-

- 1 Dhule Municipal Corporation.
Dhule.
Through its
Municipal Commissioner.
- 2 The State of Maharashtra.
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.

...RESPONDENT

**WITH
WRIT PETITION NO.5 OF 2016**

Baburao Khandu Salve,
Age : 45 years, Occupation : Service,
R/o Gurukripa Nagar, Dhule,
Taluka and District Dhule.

...PETITIONER

-VERSUS-

- 1 Dhule Municipal Corporation.
Dhule.
Through its
Municipal Commissioner.
- 2 The State of Maharashtra.

Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.

...RESPONDENT

**WITH
WRIT PETITION NO.6 OF 2016**

Suresh Somnath Chavan,
Age : 45 years, Occupation : Service,
R/o Vadi Bhokar Road,
Daithankar Nagar, Dhule,
Taluka and District Dhule.

...PETITIONER

-VERSUS-

- 1 Dhule Municipal Corporation.
Dhule.
Through its
Municipal Commissioner.
- 2 The State of Maharashtra.
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.

...RESPONDENT

**WITH
WRIT PETITION NO.7 OF 2016**

Suklal Jagannath Garud,
Age : 40 years, Occupation : Service,
R/o Gurukripa Nagar, Dhule,
Taluka and District Dhule.

...PETITIONER

-VERSUS-

- 1 Dhule Municipal Corporation.
Dhule.
Through its

Municipal Commissioner.

- 2 The State of Maharashtra.
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.

...RESPONDENT

**WITH
WRIT PETITION NO.8 OF 2016**

Kandu Savlaram Pawar,
Age : 40 years, Occupation : Service,
R/o Wadi Bhokar Road,
Daithankar Nagar, Dhule,
Taluka and District Dhule.

...PETITIONER

-VERSUS-

- 1 Dhule Municipal Corporation.
Dhule.
Through its
Municipal Commissioner.
- 2 The State of Maharashtra.
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.

...RESPONDENT

**WITH
WRIT PETITION NO.9 OF 2016**

Shobha Milind Sardar,
Age : 45 years, Occupation : Service,
R/o Gurukripa Nagar, Dhule,
Taluka and District Dhule.

...PETITIONER

-VERSUS-

- 1 Dhule Municipal Corporation.

Dhule.
Through its
Municipal Commissioner.

- 2 The State of Maharashtra.
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.

...RESPONDENT

**WITH
WRIT PETITION NO.10 OF 2016**

Dnyaneshwar Pitambar Bhambare,
Age : 40 years, Occupation : Service,
R/o S.R.Patil Gotur Road, Devpur, Dhule,
Taluka and District Dhule.

...PETITIONER

-VERSUS-

- 1 Dhule Municipal Corporation.
Dhule.
Through its
Municipal Commissioner.
- 2 The State of Maharashtra.
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.

...RESPONDENT

**WITH
WRIT PETITION NO.11 OF 2016**

Nitin Vilas Yewale,
Age : 40 years, Occupation : Service,
R/o Moglai Ramapati Chowk, Dhule,
Taluka and District Dhule.

...PETITIONER

-VERSUS-

- 1 Dhule Municipal Corporation.
Dhule.
Through its
Municipal Commissioner.
- 2 The State of Maharashtra.
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.

...RESPONDENT

**WITH
WRIT PETITION NO.12 OF 2016**

Laxmi Nandu Akhade,
Age : 45 years, Occupation : Service,
R/o Gurukripa Nagar, Dhule,
Taluka and District Dhule.

...PETITIONER

-VERSUS-

- 1 Dhule Municipal Corporation.
Dhule.
Through its
Municipal Commissioner.
- 2 The State of Maharashtra.
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.

...RESPONDENT

**WITH
WRIT PETITION NO.13 OF 2016**

Kailash Dhansing Ahire,
Age : 40 years, Occupation : Service,
R/o Station Road, Near Saibaba Mandir,
Dhule, Taluka and District Dhule.

...PETITIONER

-VERSUS-

- 1 Dhule Municipal Corporation.
Dhule.
Through its
Municipal Commissioner.
- 2 The State of Maharashtra.
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.

...RESPONDENT

**WITH
WRIT PETITION NO.14 OF 2016**

Ranjana Ravindra Sonavane,
Age : 45 years, Occupation : Service,
R/o Railway Station Road,
Wadkar Chawl, Dhule,
Taluka and District Dhule.

...PETITIONER

-VERSUS-

- 1 Dhule Municipal Corporation.
Dhule.
Through its
Municipal Commissioner.
- 2 The State of Maharashtra.
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.

...RESPONDENT

**WITH
WRIT PETITION NO.15 OF 2016**

Sangita Arun Sonavane,
Age : 45 years, Occupation : Service,
R/o Railway Station Road,
Wadkar Chawl, Dhule,

Taluka and District Dhule.

...PETITIONER

-VERSUS-

1 Dhule Municipal Corporation.
Dhule.
Through its
Municipal Commissioner.

2 The State of Maharashtra.
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.

...RESPONDENT

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Advocate for Petitioners : Shri Waramaa B.R..

Advocates for Respondent No.1/ Municipal Corporation : Shri Mukul S.
Kulkarni, Shri S.P.Shah, Shri N.N.Desale and Shri A.S.Sawant.

AGP for Respondent 2 : Shri N.T.Bhagat.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 30th November, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 In all these matters, the Petitioners, who are identically
placed in the same Respondent No.1/ Dhule Municipal Corporation, are
aggrieved by the judgment and order of the Industrial Court dated

14.08.2015 by which Complaint (ULP) Nos.23 to 34 of 2010 have been dismissed.

3 I have considered the strenuous submissions of the learned Advocates for the litigating sides and have gone through the petition paper books with their assistance.

4 There is no dispute that all these Petitioners have been working as "Badli Workers" with the Respondent/ Corporation. It is claimed that they have been working for about two decades. There is no dispute that the Respondent Corporation maintains the list of Badli Workers and those Badli Workers, who are allotted the work on account of temporary absence of regular employees, are issued Badli Passes. The certified copy of the list of Badli Workers was produced before the Industrial Court and the said document was exhibited. Similarly, the Badli Passes were also produced and exhibited before the Industrial Court.

5 The learned Advocate for the Petitioners has strenuously submitted that some of these Badli Workers could succeed in getting some posts created/ sanctioned at the level of the State Government earmarked specifically for them.

6 The learned Advocates for the Respondent Corporation submit that several permanent employees working with the Respondent Corporation have still not been regularized on specific posts since the said posts are not available.

7 My attention is drawn by the learned Advocates to the affidavit in reply filed by the Respondent Corporation to indicate that by order dated 21.10.2016 passed by the State Government, the Commissioner of the Municipal Corporation is informed that the establishment expenditure/ administrative expenses with regard to the employees has risen to 50.72% which is much beyond the permissible limit of 35%, which is settled by the Government Resolution dated 04.05.2006. Hence, the proposal for creation of posts is rejected.

8 It is settled law that Badli Workers do not have a right to claim permanency or regularization since they are not working consistently on a particular vacant permanent post. The concept of Badli Workers is purely based on such a worker being allotted the work temporarily on a particular day or days during the temporary absence of a regular/ permanent employee. A given Badli Worker may once work temporarily on the post occupied by Mr.X and on another occasion, he may be deployed to work temporarily in relation to an employee Mr.Y who

may be temporarily absent. The peculiarity of the work, therefore, disentitles him to seek regularization and therefore, the right is not created in him.

9 Nevertheless, considering the facts of these cases wherein these Badli Workers, with a hope of being taken on regular rolls of the Respondent Corporation, have been making themselves available to work as and when the work is available since around 1994, these cases will have to be looked at differently.

10 There is no dispute that creation of posts is a continuous process and as the posts are created and become available, those persons who are awaiting regularization on the basis of their seniority and are in queue, are absorbed on such posts. Considering that the municipal limits of Dhule town are ever growing and with growing population, the services in the Health and Sanitation Department are expanding, the Respondent Corporation will then have to cater to the necessities of the population by absorbing more people on regular establishment depending on vacancies or creation of posts.

11 In the above backdrop, the direction to the Respondent Corporation to maintain the seniority list of Badli Workers, offer them

work as and when it is available by following the consistent practice in the Corporation and consider them as and when the occasion arises for regular engagement rather than opting for fresh hands or new faces in Class-IV category, would meet the ends of justice.

12 In the light of the above, these Writ Petitions are partly allowed with the following directions which shall be followed by the Respondent/ Corporation in true spirit:-

- (a) The Respondent/ Corporation shall continue to maintain the list of Badli Workers based on their seniority which is to be prepared considering the first date of their engagement.
- (b) The Respondent/ Corporation shall continue to offer the work as and when it is available to these Badli Workers based on their seniority.
- (c) Insofar as the Health, Sanitation and similar Departments are concerned, the Respondent/ Corporation shall refrain from recruiting or engaging fresh hands/ new faces in Class-IV category by ignoring these Badli Workers.
- (d) As and when the situation and occasion may arise wherein the Respondent/ Corporation may require more hands to be engaged for regular work in the Health, Sanitation and similar Departments in Class IV category, they shall give

preference to the Badli Workers whose names are mentioned in the list on the basis of their seniority.

- (e) The impugned judgments of the Industrial Court, therefore, stand modified in the above terms.

13 Rule is made partly absolute in the above terms.

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(RAVINDRA V. GHUGE, J.)