IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7949 OF 2025

Pradip Ramesh Shinde .. Petitioner
Versus
Malegaon Municipal Corporation, Malegaon .. Respondent

WITH
WRIT PETITION NO. 8004 OF 2025

Bhushan Suresh Thakre .. Petitioner
Versus
Malegaon Municipal Corporation, Malegaon .. Respondent

WITH
WRIT PETITION NO. 7951 OF 2025

Sunil Ananda Bagul .. Petitioner
Versus
Malegaon Municipal Corporation, Malegaon .. Respondent

WITH
WRIT PETITION NO. 7954 OF 2025

Sheikh Javid Sheikh Rashid .. Petitioner
Versus
Malegaon Municipal Corporation, Malegaon .. Respondent

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- Ms. Pavitra Manesh, Advocate for Petitioners.
- Mr. S.S. Patwardhan, Advocate for Respondent - Corporation.

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CORAM : MILIND N. JADHAV, J.
DATE : SEPTEMBER 30, 2025.

JUDGMENT:

1. Heard Ms. Manesh, learned Advocate for Petitioners and Mr. Patwardhan, learned Advocate for Respondent - Corporation.

2. This is a group of four Writ Petitions which are decided by this common judgment. By consent of parties, Writ Petitions are heard and disposed of finally. Facts are almost identical in all four cases concerning Petitioners - Employees and Respondent - Malegaon Municipal Corporation (for short '**the said Corporation**').

3. Facts in Writ Petition No.7949 of 2025 and Writ Petition No.8004 of 2025 concerning Pradip Ramesh Shinde and Bhushan Suresh Thakre, who were both appointed as Driver on daily wages by appointment order dated 27.02.2017 are identical.

4. Facts in Writ Petition No.7951 of 2025 and Writ Petition No.7954 of 2025 concerning Sunil Ananda Bagul and Sheikh Javid Sheikh Rashid, who were both appointed as Firemen on daily wages by appointment order dated 07.04.2017 are identical.

5. Save and except the aforesaid distinction, all other facts are absolutely identical right upto filing of the present Writ Petitions by Petitioners. Hence for the sake of brevity detailed facts in the case of Writ Petition No.7949 of 2025 shall be referred to and relied upon in this judgment. Pursuant thereto the distinct facts pertaining to the remaining three Petitions shall also be adhered to, if so required.

6. Brief facts pertaining to appointment of Petitioners either as Driver or Firemen on and from 2017 onwards leading to filing Complaint (ULP) No.35 of 2019, continuation of the Petitioners in

services of Corporation and subsequent dismissal of their ULP Complaints and subsequent termination of Petitioners by order dated 02.07.2025 despite pendency of the present Writ Petitions are as under:-

6.1. Petitioners namely Pradip Ramesh Shinde and Bhushan Suresh Thakre were appointed as Driver in the services of the Corporation by appointment order dated 27.02.2017 for a period of six months with effect from 01.03.2017 to 31.08.2017 on payment of Rs.7,000/- per month stipulating various conditions. There is no dispute about the fact that since then these Petitioners have continued working with the Corporation continuously as Driver until their services were terminated on 02.07.2025. Their services were thereafter extended and continued by further appointment orders dated 11.01.2019 and 06.01.2020 for period six months at a time with increased salary @ Rs.8,000/- per month.

6.2. Record also indicates and finding are returned by the learned Industrial Court that right from date of their initial appointment i.e. 27.02.2017 services of Petitioners were continued all throughout by issuance of appointment orders intermittently after every six months until Petitioners filed ULP Complaints before Industrial Court in the year 2019 seeking permanency in service. There is no dispute about this fact which is also an admitted fact which is not denied in the

Affidavit-in-Reply filed by the Corporation in the above cases. Affidavit-in-Reply shall be adverted to while recording the submissions made by the learned Advocate for the Corporation.

6.3. The ULP Complaint as filed by Petitioners was decided at interim stage by order dated 04.11.2019 whereby the learned Industrial Court arrived at an affirmative finding on *prima facie* case made out by Petitioners observing that appointment of Petitioners was on the basis of four appointment orders viz. 27.02.2017; 18.09.2017; 11.01.2019 and 20.07.2019 as Driver in the Fire Department of the Corporation. Their appointment was therefore directed to be continued with the Corporation till final disposal of the main complaint. Before Industrial Court, Petitioners led evidence and were duly cross-examined by Advocate for Corporation. Corporation did not lead any evidence in rebuttal. By virtue of judgment dated 06.05.2025 delivered separately in above Petitions, main ULP Complaints under Section 28 read with Item Nos.6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short '**the said Act**') were dismissed.

6.4. However, services of Petitioners were directed to be continued and ad-interim protection was granted to them by the learned Industrial Court until 01.07.2025 to enable Petitioners to take recourse to this Court. That order of ad-interim protection to the

Petitioners is appended at Exhibit 'F' - page No.53 of Writ Petition No.7949 of 2025. However though present Petitions were filed by Petitioners on 13.06.2025 Petitions could not have moved for obtaining or continuation of ad-interim / interim relief. Since Petitioners could not obtain ad-interim / interim relief before 01.07.2025 despite the Petitions being filed, Respondent - Corporation by order dated 03.07.2025 terminated services of all four Petitioners. Thus challenge in present Petitions is to dismissal of the main Complaint of Petitioners by virtue of the impugned judgment dated 06.05.2025 and also to the order of termination dated 03.07.2025.

6.5. I permitted Petitioners to amend the Petitions when this was brought to my notice on 16.07.2025 by learned Advocate for Petitioners for the first time when all four Writ Petitions reached hearing before this Court.

6.6. Similarly in the remaining two Petitions namely Writ Petition No.7951 of 2025 and Writ Petition No.7954 of 2025, Petitioners namely Sunil Bagul and Sheikh Javid were both appointed in an identical fashion as Firemen in the Fire Department of the Corporation by appointment order dated 07.04.2017. Thereafter after every six months they were issued further appointment orders intermittently and their services were continued in the same manner as stated in the case of the other Petitioners who were appointed as Drivers herein

above. They both filed ULP Complaints, led evidence and were granted interim relief and their services were continued but ultimately by virtue of the impugned judgment dated 06.05.2025 passed separately in all cases, their Complaints were dismissed, resultantly leading to filing of present Petitions.

7. Mr. Patwardhan, learned Advocate appears on behalf of Respondent - Malegaon Municipal Corporation. Four separate Affidavits-in-Reply all dated 15.09.2025 have been filed by Corporation in support of the impugned orders and to oppose the Writ Petitions on various grounds.

8. Ms. Manesh, learned Advocate on behalf of all four Petitioners has made the following submissions:-

8.1. She would submit that all Petitioners have been working with the Corporation either as Fireman or Driver since 2016 - 2017 pursuant to their appointment by Corporation. She would submit that Petitioners have been working in essential category posts in challenging environment and have been admitted to have worked continuously with technical breaks on paper only.

8.2. She would submit that Petitioners have been working alongside permanent - regular employees of the Corporation and performing the same nature and duty of work as regular employees of the Corporation. She would submit that continued employment of

Petitioners on contract basis when admittedly there is acute inadequacy of sanctioned and vacant posts virtually amounts to exploitation of Petitioners. She would submit that as a result Petitioners are clearly deprived of benefit of permanency and all statutory benefits for years together.

8.3. She would submit that Petitioners have been employed continuously for past 9 years in the services of the Corporation which justifies the need and adequacy for filling up the sanctioned posts. She would submit that State Government's Resolution dated 14.01.2016 approved the staffing pattern for Respondent - Corporation, but directed restraint on expenditure to not exceed above 35% of the establishment expenses.

8.4. She would submit that due to the above restraint continued exploitation of Petitioners cannot be continued for ever. She would submit that reason given by Respondent in their Affidavit-in-Reply that administrative expenses of Corporation have crossed 45% of the total expenses of establishment cannot be held as a reason against granting permanency to Petitioners. She would submit that in the light of the aforesaid facts and continuous employment of Petitioners, they are entitled to permanency as their services could not be continued indefinitely on contractual basis.

8.5. She would submit that Petitioners have worked continuously for more than 240 days consequently for more than 5 years. She would submit that even according to Respondent - Corporation, the posts against which Petitioners are working are vacant posts which are yet to be filled in. She would submit that act of Respondent - Corporation terminating services of Petitioners on 02.07.2025 during pendency of the *lis* between the parties and more so when present Petitions were already instituted in this Court is an act of complete defiance against several rulings of this Court which cannot be sustained and therefore in the interest of justice not only the impugned order deserves to be set aside, but the subsequent termination of Petitioners during pendency of present Petition also deserves to be quashed and set aside. She would urge the Court to pass appropriate orders accordingly.

9. ***PER CONTRA***, Mr. Patwardhan, learned Advocate appearing on behalf of Corporation has drawn my attention to the Affidavits-in-Reply filed by Corporation in all four Writ Petitions. Grounds contained in the Affidavits-in-Reply in all four Petitions are identical and therefore they are considered together. Affidavit-in-Reply is filed by Nutan Balasaheb Khade, Additional Commissioner of Corporation. He would submit that according to Respondent - Corporation, 3760 posts were proposed by Corporation according to the staffing pattern as on 02.12.2014 out of which Government sanctioned staffing pattern of 2673 posts, comprising of the then existing 1436 posts and further

newly created 1247 posts by virtue of Government Resolution dated 14.01.2016.

9.1. He would submit that the aforesaid staffing pattern was approved subject to certain conditions wherein one of the important conditions pertain to incurring establishment expenditure within 35% limit of the annual revenue. Such defence is enumerated in paragraph Nos.5 and 6 of the Affidavit-in-Reply. He would submit that in that view of the matter, Respondent - Corporation is completely helpless to make fresh appointments in terms of sanctioned staffing pattern considering that it has already breached the 35% mark sanctioned by Government in its Government Resolution and since for the year 2024 - 2025 the expenditure on establishment is 49.20% of the annual revenue. He would therefore submit that it is virtually impossible for Corporation to even abide by the conditions in the Government Resolution for submitting of fresh proposal to Government in such a scenario. He would submit that such power is given to Corporation to submit fresh proposal to Government but it is subject to establishment expenses being within the prescribed limit of 35% as stated in the Resolution. He would submit that it is therefore not possible for the Corporation to appoint Petitioners against sanctioned posts or regularise their services and therefore their employment is / was continued on contract basis all throughout.

9.2. Hence he would submit that the impugned order deserves to be upheld since Respondent - Corporation is completely powerless to make any fresh appointment in terms of the sanctioned staffing pattern.

10. I have heard Ms. Manesh, learned Advocate for Petitioners and Mr. Patwardhan, learned Advocate for Respondent - Corporation. Submissions made by the learned Advocates at the bar have received due consideration of the Court.

11. In the facts and circumstances of the present case at the outset I would like to what the learned Single Judge of the Punjab and Haryana High Court at Chandigarh has quoted in the case of ***Harbhan Singh & Ors. v. Bhakra Beas Management Board & Ors.***[1] which in my opinion applies to the Petitioners' case before me. The learned Single Judge in his recent judgent delivered on 09.09.2025 held that law, in its finest expression, is not a rigid instrument but a compassionate force that must respond to the human condition. He further quotes that Petitioners before the Court are not faceless names in a file but human beings who have served a public institution with diligence and dignity (for over three decades) and hence to ignore this fact is to make justice blind to lived realities.

1 CWP-6843-2020 (O&M) decided on 09.09.2025

12. What this essentially means is that while considering facts and circumstances of the present case equity must not be a casualty in the hands of executive convenience and Article 14 of Constitution of India not only demands equality before law but also fairness in state action. In the present case, the four workmen (Petitioners) were employed as drivers and firemen in 2016-17 with the Corporation. They have given the best years of their life (precisely 9 years to date) in the service of the Corporation. They have served along side permanent and regular employees of the Corporation and more so in essential services i.e. in the fire-brigade department of the Corporation Their services are unblemished till date. Record shows that they were appointed over six months intermittently by issuing appointment letters on a fixed salary per month which initially began with Rs. 7000/- per month and subsequent escalated further. Until 02.07.2025 all 4 Petitioners were in service of the Corporation when the impugned action of termination was taken by the Corporation. Response of the Corporation is contained in Affidavit-in-Reply which is filed by the Additional Commissioner. All that the Corporation states in the affidavit is that Respondent Corporation is powerless and continues to be powerless to make fresh appointments in terms of sanctioned staff pattern except in certain exempted categories such as Safai Kamgar and the appointments expressly recommended or sanctioned by the State Government. Respondent's stand is that Petitioners' posts of

drivers and firemen do not fall in either of the aforementioned two exempted categories and therefore they have been terminated. This submission of Respondent Corporation *prima facie* cannot be countenanced for the simple reason that even according to Corporation it had proposed a staffing pattern comprising of 3760 posts on its establishment as far back as on 02.12.2014 and in exercise of powers under Section 51(4) of the MMC Act, 1949 State Government sanctioned staffing pattern of 2673 posts comprising of then existing 1436 post and creating 1247 posts by Government Resolution dated 14.01.2016. Appointment of Petitioners is in the year 2016-17 as alluded to herein above. Thus, *prima facie,* their appointment was in fact against the newly created 1247 posts envisaged by Government Resolution dated 14.01.2016. However their services have been continued to be on temporary basis that is on daily wages continuously from that point of time. Thus on the ground of non-availability of sanctioned posts, case of Corporation cannot be accepted. Secondly according to Corporation sanctioned staffing pattern is expressly made subject to certain conditions and one of such condition contained in clause (e) of the said Government Resolution dated 14.01.2016 is that if the Corporation needs additional posts, such proposal can be submitted to the Government only if the establishment expenses are within the limits and the limits as prescribed is that the establishment expenditure is within 35% of the total annual revenue. Corporation

has pleaded that in 2024-25, total percentage of the establishment expenditure was 49.2% of the total annual revenue and therefore there was no scope for the Corporation to make a proposal for additional posts.

13. On both the aforesaid grounds the case of the Corporation cannot be accepted. Firstly if the Corporation has power if there are certain exempted categories such as safai kamar and appointments expressly recommended or sanctioned by the State Government, then the Corporation goes out of way to appoint them but the same benefit is not extended to the categories of drivers and firemen. In the present case, Court is dealing with appointment of two drivers and two firemen who are before the Court. They have served the Corporation diligently for nine years. The nature of their services is in the essential category. Hence there is clear dichotomy in not considering the service of drivers and firemen at par with services of Safai Kamgar so as to give them the benefit of exempted category. If the same stand continues forever, Petitioners' services will be employed on temporary basis at all times. Today during pendency of the present Petitions on 02.07.2025 Respondent Corporation has terminated services of Petitioners despite they having been protected by the Labour Court. Even that is under challenge in the present Petitions. Once it is seen that the alleged condition in Government Resolution dated 14.01.2016 about percentage of expenditure of establishment has to be within

35% of the annual revenue or else proposal for additional posts cannot be submitted then Corporation does not have the power to appoint personnel in the exempted categories. That Respondent Corporation has pleaded and argued that Petitioners' services have been continued pursuant to interim order dated 04.11.2019 and therefore benefit of continuous services for more than 240 days in a year should not be extended to the Petitioners. This argument deserves to be rejected on the face of record because admittedly even according to the Corporation's record, Petitioners have served the Corporation from 2016-17 continuously on the Corporation issuing at least four appointment letters to the Petitioners and continuing their services without any break over that period upto 2019. Even after 2019 they have continued in the employment of the Corporation in view of the interim order dated 04.11.2019 passed below Exhibit U-2 in Complaint (ULP) No. 35/2019. It is only on 06.05.2025 when the said Complaint is dismissed and upto the filing of the present Petitions since no order was passed for continuation of protection to the Petitioners, the Corporation on 02.07.2025 terminated the services of Petitioner. In my opinion such an act of the Corporation is *prima facie* arbitrary and high handed act when it was to the knowledge of the Corporation that present Petitions were filed on 18.06.2025. Be that as it may, I am considering the present Petitions along with the challenge to the termination orders also.

14. Admittedly Petitioners have been working continuously without any break and involved in essential services shoulder to shoulder with the permanent employees of the Corporation. Admittedly there has been no break in service whatsoever in the services rendered by the Petitioners save and except artificial break on paper every six months when they were issued fresh appointment letters which are alluded to herein above. Once this is the scenario, they cannot be discriminated as their continuous employment as on temporary basis without implementing various social security measures and granting them benefit of permanency would *prima facie* amount to depriving them benefit, status and privilege of permanent worker. The reason given in the impugned Award if accepted would amount to continuation of exploitation of Petitioners had they been in service without granting them benefit of permanency when they are entitled to the same. The rational that there are no sanctioned permanent posts vacant or available for making them permanent cannot be accepted since the Government Resolution gives power to the Corporation to apply for additional posts as per their requirement. The need and requirement of the Corporation is based on the fact that services of Petitioners have been continuously for the past nine years.

15. Before the learned Labour Court, Respondent Corporation did not lead any evidence in rebuttal whereas Petitioners led oral and documentary evidence. There is also no dispute about the fact that

each of the Petitioners have complete 240 days in service for the past nine years until their services were terminated which is established from the evidence on record and is not even disputed by the Respondent Corporation. Respondent Corporation has not given any other reason than what has been discussed herein above for not making the services of Petitioners permanent. Respondent Corporation has helplessly stated in paragraph No.6 of its affidavit-in-Reply as under:-

> *"**6.** I say that the expenditure on establishment of the Respondent Corporation is always above the 35% mark post 14.01.2016. For the year 2024-2025 the expenditure on establishment is 49.20% of the revenue. I thus say that after 14.01.2016, the Respondent Corporation is powerless and continues to be powerless to make fresh appointments in terms of the sanctioned staffing pattern, except certain exempted categories such as "Safai Kamgars" and appointments expressly recommended or sanctioned by the State Government. I say that the Petitioner's post does not fall in either of the two exempted categories above."*

16. From the above it is seen that Respondent Corporation has expressed helplessness and stated that it is powerless and continues to be powerless in view of the conditions in the Government Resolution about expenditure of establishment being above 35% of the total annual revenue. Over a period of time and with the passage of time, the condition contained in the Government Resolution cannot be held as a yardstick for depriving benefit of permanent status to the workmen when in the same breath Corporation has the power to appoint Safai Kamgars and all those appointments expressly

recommended and sanctioned by the State Government. Thus denial of substantive right of Petitioners would be arbitrary and high handed. Petitioners cannot be expected to be exploited as badli, casual or temporary workers for years together and that would amount to depriving them of status and privilege of permanent employee. In this regard, attention is drawn to the decision in the case of ***Conservator of Forests and Anr. v. Savala Dhondiba Pise***[2]. In this context, paragraph No.9.6 of the said decision is relevant and reproduced below for enabling adjudication in the present case:-

> *"**9.6** In this regard, I would like to draw sustenance from the decision in the case of Conservator of Forests & Anr. Vs. Savala Dhondiba Pise (supra) passed by the learned Single Judge (Coram : Smt. Nishita Mhatre, J.) of this Court, the ratio of which squarely covers the present case. The issues involved in those bunch of cases were of similarly placed workers and agitated by the Respondent – Sangh as well as many individual workers independently. The learned Single Judge considered all objections which were advanced by Mr. Vanarase on behalf of Petitioners therein and decided them on merits by confirming the judgment passed by the learned Industrial Court in the case of identically and similarly placed co-workers who were found to be eligible. Findings returned in paragraph Nos. 11, 12, 13, 18, 19, 20, 21, 22 to 25 are directly relevant and answer the issues and grounds raised by Petitioners herein. In fact Mr. Vanarase has argued the same proposition in the present Writ Petition before me which have been dealt with and decided by this Court earlier on merits. The above paragraphs are reproduced below for reference:-*
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> > *"11. It is true that such workmen may not have a fundamental right as observed by the Supreme Court. However, the Court has not dealt with the statutory rights of an industrial worker in either of the aforesaid judgments. The MRTU & PULP Act is a statute which deals with unfair labour practices. Under Industrial jurisprudence, which is based on welfare legislations, certain rights have been bestowed on the workmen. The workers cannot be divested of these statutory rights by the judgement in Umadevi's case (supra). Nor does the*

2 Writ Petition No. 3274 of 2002 decided on 08.09.2010

judgement in the case of Umadevi (supra) say so. To read the judgement in the case of Umadevi in a manner so as to deprive the workmen of their statutory rights, would do violence to the language of the judgement. Therefore, it is not possible to accept the submission of the learned AGP that merely because of the judgement in the case of Umadevi (supra), the rights conferred on a workman under the Industrial Disputes Act or the MRTU & PULP Act or the other labour legislations are to be ignored.

12. In The State of Maharashtra & Anr. vs. Pandurang Sitaram Jadhav, Letters Patent Appeal No.14 of 2008, the Division Bench of this Court (Swatanter Kumar, C.J. and A.P. Deshpande, J.) considered a case where the Industrial Court found that the workman in that case had been engaged on daily wages for years together. The Industrial Court held that each of the workmen had completed 240 days in service and had not been made permanent, in breach of the standing orders applicable. The Industrial Court therefore granted permanency to the complainants from the date they completed 240 days in service and extended all benefits of permanency. The Single Judge of this Court upheld the view of the Industrial Court by observing that the judgement in Umadevi's case (supra) would not apply to the facts in that case, as the Supreme Court had not dealt with an industrial establishment to which the Industrial Employment (Standing Orders) Act applies. The Division Bench of this Court, after quoting certain passages from the judgement in Umadevi's case (supra), held that the provisions of the Model Standing Orders by themselves do not confer any right of permanency unless the two prerequisites are satisfied namely (i) the appointment is in conformity with the Rules relating to appointment and (ii) permanent sanctioned vacant posts being in existence. The Court therefore held that the provisions of Model Standing Orders are subject to the rules regulating selection and appointment so also subject to the constitutional scheme of public employment. I am informed at the bar that the judgement of the Division Bench has been challenged in the Supreme Court.

13. In The Conservator of Forests & anr. v/s. Shri Bajarang Popat Kale (supra) a learned Single Judge of this Court (Chandrachud, J.), while dealing with similar writ petitions in the case of employees working in the Junnar Forest Range held that the recruitment of the workmen was not in accordance with regular process of selection. The workmen were employed on the Employment Guarantee Scheme and were provided some work as a form of livelihood. It is in these circumstances the learned Judge, by relying on the judgement in Umadevi's case (supra) and the aforesaid judgement in the Letters Patent

Appeal held that, in the absence of sanctioned and vacant posts and particularly because the complainants were not appointed after following the regular process the relief granted by the Industrial Court was not warranted. The Writ Petitions were therefore allowed. In the present case, the workmen were employed for years together on work which was of a perennial nature and not on the Employment Guarantee Scheme. Thus this judgement is clearly distinguishable from the facts and circumstances in this matter.

18. What emerges from this conspectus of decisions is:

(i) the High Courts acting in their writ jurisdiction under Article 226 of the Constitution of India, cannot regularise the services of a person who is appointed illegally in any public employment.

(ii) regular appointments are those which have been made in consonance with the recruitment rules and against sanctioned posts.

(iii)irregular appointments are not always illegal appointments and can be regularised.

(iv) regularisation of irregular appointments can be ordered only when sanctioned posts are available and not merely because the employees have been in service for a long number of years.

(v) the powers conferred on the Industrial Court and the Labour Court under the labour legislations have not been abrogated by the decision in Umadevi's case.

(vi) the provisions of the legislations governing industrial jurisprudence have not been denuded of their status by the decision in Umadevi's case.

19. Bearing in mind these principles, it would be necessary to consider some relevant provisions of law. A workman has been defined as follows in section 2(s):

> *2(s). "workman" means any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-"*

20. The section does not draw a distinction between a workman who is employed on wages payable at a daily rate and another being paid on a monthly rate or on piece rate or time rate. A person may be a workman, regardless of the manner in which he is remunerated or paid wages. Only those persons who are mentioned in the exclusive part of the definition are not considered as workmen. Nor does the definition distinguish between those workmen who are appointed against sanctioned posts and others who are not. A distinction has been drawn in the status of the workmen, under the model standing orders framed under the Industrial Employment (Standing Orders) Act,1946. The workmen who are doing manual or technical work can be classified as (a) permanent (b) probationers (c) badlis or substitutes (d) temporary (e) casual and (f) apprentices. The categories are dependent on the nature of work performed by these workmen and not on the manner in which they are paid wages. In my opinion, the learned AGP has attempted to draw an invidious distinction between temporary and casual workmen and those who are paid wages at a daily rate. This distinction is misconceived and unsustainable.

21. Undoubtedly, the Petitioners are an industry as held in Chief Conservator of Forests & anr., etc. etc. vs. Jagannath Maruti Kondhare, 1996 I CLR 680. In this case, the Supreme court was dealing with the employees working in the Forest Department of the State of Maharashtra where they had been continued as temporary/casual workers for years together. Complaints had been filed before the Industrial Court complaining of unfair labour practices under Item 6 of Schedule IV of the MRTU & PULP Act. The facts were similar to the circumstances in the present case. The Supreme Court held that depending on the facts in a particular case it would be possible to infer that the mere fact that the workmen had been employed as casual / temporary workers for years together indicated that the intention was to deprive them of the status of permanent employees. The judgement in Kondhare's case (supra) has not been overruled and still holds the field. The nomenclature used by the petitioners for classifying the workmen cannot deprive them of their rights under the labour legislations. Besides, as observed by the Supreme Court in the case of MSRTC & Anr. vs. Casteribe Rajya Parivahan Karmchari Sanghatana (supra), the powers of the Labour Court and the Industrial Court acting under the MRTU & PULP Act are not denuded by the judgement of the constitution bench in the case of Umadevi (supra).

22. There is no dispute that each of the workers have completed 240 days in service and that each of them were employed from 1990 and had worked for at least 7 years

before their services were terminated. There is sufficient evidence on record to indicate that these workmen were employed for work which was perennial in nature despite which they had not been accorded the status of permanent workmen. The Industrial Court in my view, has not committed any error while declaring that the Petitioners had indulged in an unfair labour practice under Item 6 of Schedule IV. The submission of the learned AGP, that though a declaration has been granted that the Petitioners had committed unfair labour practices under Item 6, the Industrial Court could not have granted any consequential relief as the workmen had not sought a prayer for permanency, is without any substance. Once such a declaration is granted the Petitioners would naturally have to be directed to treat them as permanent workmen and to pay wages and other benefits in consonance with their status. Section 30 of the MRTU and PULP Act empowers the Industrial Court to take such affirmative action as is necessary, including payment of compensation, in order to effectuate the policy of the Act, once it finds that any person has indulged in or is engaging in an unfair labour practice.

23. The learned AGP had contended that the recruitment of these workmen was not in accordance with the procedure for selection. However, this is not borne out from the pleadings and evidence on record. In fact the pleadings in the written statement indicate that there were no rules for recruitment of these workmen for the nature of work that they were performing. The witness for the Petitioners also concedes that there are no such rules. Thus the contention of the learned AGP is unsustainable. If there are no rules for recruitment of the workmen such as the present respondents, it cannot be contended that there recruitment was not made in consonance with the rules. A contention, similar to the one raised by Mr. Vanarase was argued by the Corporation in the MSRTC's case (supra). The Supreme Court has observed that the employees had been exploited by the Corporation for years together by engaging them on piece rated basis and it was too late in the day for the Corporation to urge that the procedure for recruitment had not been followed and that consequentially its employees could not be given the status and privileges of permanency. In the present case, the workmen had been recruited without there being any recruitment rules in place. The petitioners had extracted work from them for years together without bothering whether their appointments fulfilled the conditions for recruitment. The unlawful acts of the Petitioners in appointing employees for years together as casual and temporary workmen without affording them the benefits of permanency cannot be permitted to be perpetuated when the MRTU and PULP Act has been enacted

specifically to prevent such eventualities and to prohibit unfair labour practices. The argument of Mr.Vanarase, if accepted, would only mean that an unfair labour practice indulged in by the Petitioners was being encouraged or in any event being condoned by this Court. The policy of the Act must be effectuated and the Court cannot be expected to be a mute spectator while the Forest Department of the State flouts the law. Therefore this submission is untenable.

24. In any event the appointment of these workmen cannot be termed as illegal, per se. At best, it may be possible to contend that the recruitment was irregular. However such recruitment can always be regularised as held in para 53 of Umadevi's case. In fact the G.R. of 1996 has been issued towards this end.

25. The next issue which I shall advert to is whether there were sanctioned posts when the complaint was filed. As stated earlier, permanency cannot be denied to a workman on the specious contention that there are no sanctioned posts. This is because the MRTU & PULP Act provides that denying a workman the status and privileges of a permanent workman for years together amounts to an unfair labour practice. In any event though it has been strenuously argued by Mr. Vanarase that there are no sanctioned posts available, there is not even a whisper to that effect in the written statement filed by the petitioners in the Industrial Court; nor is there any evidence led to substantiate this argument. Indeed, there was not even a suggestion put to the workman by the Petitioners while cross-examining him. Therefore, the argument is baseless. Thus the Petitioners have committed an unfair labour practice by not paying the wages and other benefits to the workmen which they would be entitled to receive as permanent workmen. As stated earlier, the G.R. of 1996 stipulates the number of posts required for the absorption of the forest labourers was 10160 out of which 8038 supernumerary posts were created by the State for absorption of those who had completed 5 years in service as on 1.11.1994 and had worked for 240 days in each year. Admittedly, the workmen had not completed 5 years of service on 1.11.1994. However, clause 12 of this G.R. stipulates that the Chief Conservator of Forests is expected to review the position of the number of workers employed after filling in the posts with those who had completed 5 years in service up to 1.11.1994 and for creating additional posts for the remaining workers. There is no material on record as to whether this exercise was carried out by the Chief Conservator of Forests at all. Thus there can be no dispute that there is a violation of this Government Resolution which forms a part of the terms and conditions of employment."

17. From the above, it is clear that if Corporation's argument is accepted, it would amount to enslavement of the Petitioners as bonded labourers and Court cannot be a mute spectator to such a situation. In the present scheme of things, continuation of Petitioners until their termination on temporary basis *prima facie* amounted to exploitation of Petitioners when the nature of their duty is such that they are engaged for performing the tasks alongside permanent / regular employees of the Corporation. Once this facet is proven, Petitioner deserve permanency. Sadly in the present case during pendency of Petition on 02.07.2025 services of Petitioners were terminated. The evidence led by Petitioners before the learned Labour Court is such that it needs to be accepted. Corporation has chosen not to lead any evidence in rebuttal. In that view of the matter, the findings arrived at by the learned Labour Court in the impugned judgment dated 06.05.2025 passed separately in all cases cannot be held to be sustainable. The documentary evidence produced by Petitioners has been placed on record and considered by the learned Labour Court. However rejection of Complaint (ULP) is merely on the basis that expenditure of Respondent Corporation is above 35% of the annual revenue and therefore they are unable to award permanency as stated in paragraph No.16 of the impugned judgment. If this is the reason for rejection then services of Petitioner cannot be allowed to be continued as daily wagers on temporary basis forever. Said reasoning is directly

in the teeth of the decision of this Court in the case of *Conservator of Forests & Anr. (supra).*

18. Respondent – Corporation is a public institution and when it depends day after day on the same hands to perform permanent tasks, equity demands that those tasks are placed on sanctioned posts and those workers are treated with fairness and dignity. This is the opening statement of the recent Judgment delivered on 19.08.2025 by the Supreme Court in the case of ***Dharam Singh and Ors. Vs. State of U.P. and Anr.***[3] in absolutely identical circumstances.

19. The question before the Supreme Court was whether the High Court erred in failing to adjudicate Appellants' principal challenge to the State's refusals to sanction posts and treating the matter as a mere plea for regularization and if so, given the Appellants' long and undisputed service, what appropriate relief ought to follow from the Supreme Court. The same situation exists in the present case.

20. Though Respondent – Corporation is empowered to file proposal for additional posts which are already sanctioned, but due to embargo of 35% establishment posts, Respondent – Corporation is unable to do so. The Supreme Court has held that a non-speaking rejection in such a matter on a generic plea of "financial constraints", ignoring functional necessity and the employer's long-standing reliance

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on daily wagers to discharge regular duties does not meet the standard of reasonableness expected of a model public institution. It has held that even though creation of posts is primarily an executive function, the refusal to sanction posts cannot be immune from judicial scrutiny for arbitrariness.

21. In the present case, Respondent – Corporation has cited the restraints contained in the Government Resolution dated 14.01.2016 as one of the primary reason for not making the proposal for additional posts. Resultantly what happens in the bargain is that services of the employees / Petitioners herein are continued on daily wages for unreasonably long period of time. It is undisputed fact that nature of work performed by Petitioners namely as Fireman and Driver has been continuous and integral to Respondent – Corporation's functioning since their engagement in 2016 – 2017. It is also seen that 3760 posts were proposed by Corporation according to staffing pattern as on 02.12.2014 out of which Government sanctioned staffing pattern of 2673 posts. Petitioners were recruited immediately thereafter. However their services have been continued intermittently after giving them artificial break after every six months and fresh appointment letters to continue such work for unreasonably long period of time while pleading want of sanctioned strength is a position that cannot be sustained.

22. In this regard, what the Supreme Court held in the case of *Dharam Singh and Ors.* (*3rd supra*) in paragraph No.11 is directly relevant. The Supreme Court considers the decision in the case of ***Secretary, State of Karnataka & Others Vs. Umadevi & Others*** [4] and distinguishes the same on the basis of facts and circumstances before the Court. Paragraph No.11 reads thus:-

> *"11. Furthermore, it must be clarified that the reliance placed by the High Court on* ***Umadevi (Supra)*** *to non- suit the appellants is misplaced. Unlike* ***Umadevi (Supra)****, the challenge before us is not an invitation to bypass the constitutional scheme of public employment. It is a challenge to the State's arbitrary refusals to sanction posts despite the employer's own acknowledgement of need and decades of continuous reliance on the very workforce. On the other hand,* ***Umadevi (Supra)*** *draws a distinction between illegal appointments and irregular engagements and does not endorse the perpetuation of precarious employment where the work itself is permanent and the State has failed, for years, to put its house in order. Recent decisions of this Court in* ***Jaggo v. Union of India***[5] *and in* ***Shripal & Another v. Nagar Nigam, Ghaziabad***[6] *have emphatically cautioned that* ***Umadevi (Supra)*** *cannot be deployed as a shield to justify exploitation through long-term "ad hocism", the use of outsourcing as a proxy, or the denial of basic parity where identical duties are exacted over extended periods. The principles articulated therein apply with full force to the present case. The relevant paras from Shripal (supra) have been reproduced hereunder:*
>
> > *"**14.** The Respondent Employer places reliance on Umadevi (supra) to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are "illegal" and those that are "irregular," the latter being eligible for regularization if they meet certain conditions. More importantly, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged*

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5 2024 SCC Online SC 3826
6 2025 SCC Online SC 221

asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.

15. *It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records-despite directions to do so-allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this juncture, it would be appropriate to recall the broader critique of indefinite "temporary" employment practices as done by a recent judgment of this Court in Jaggo v. Union of India in the following paragraphs:*

> *"22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.*
>
> *.....*
>
> *25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:*

> • *Misuse of "Temporary" Labels: Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labelled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*
>
> • *Arbitrary Termination: Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*
>
> • *Lack of Career Progression: Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*
>
> • *Using Outsourcing as a Shield: Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.*
>
> • *Denial of Basic Rights and Benefits: Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure decades. This lack of spans social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.""*

23. Further submission of the Respondent – Corporation that services of Petitioners have been extended and continued only by virtue of interim orders also does not advance their case any further. The Supreme Court in the aforesaid case of *Dharam Singh and Ors.*

(*supra*) in paragraph No.13 has held as under which *prima facie* answers the case of Respondent:-

> *"13. As we have observed in both* ***Jaggo (Supra)*** *and* ***Shripal (Supra)****, outsourcing cannot become a convenient shield to perpetuate precariousness and to sidestep fair engagement practices where the work is inherently perennial. The Commission's further contention that the appellants are not "full-time" employees but continue only by virtue of interim orders also does not advance their case. That interim protection was granted precisely because of the long history of engagement and the pendency of the challenge to the State's refusals. It neither creates rights that did not exist nor erases entitlements that may arise upon a proper adjudication of the legality of those refusals."*

24. The observations of the Supreme Court in paragraph Nos.17 to 19, in my opinion, virtually seals the case of Petitioners before me in their favour. The Supreme Court has held that the State is not a mere market participant but a constitutional employer and it cannot balance budgets on the backs of those who perform the most basic and recurring public functions. It is further held that where work recurs day after day and year after year, the establishment must reflect that reality in its sanctioned strength and engagement practices and long-term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. The Supreme Court has held that though financial stringency certainly has a place in public policy, but it is not a talisman that overrides fairness, reason and the duty to organise work on lawful lines.

25. It has further held that “ad-hocism” thrives where administration is opaque and the State Departments must keep and produce accurate establishment registers, muster rolls and outsourcing arrangements, and they must explain, with evidence, why they prefer precarious engagement over sanctioned posts where the work is perennial.

26. The Supreme Court has categorically held that similarly placed workers cannot be treated differently and it does not align with Articles 14, 16 and 21 of the Constitution of India. It has also held that sensitivity to the human consequences of prolonged insecurity is not sentimentality, but it is a constitutional discipline that should inform every decision affecting those who keep public offices running.

27. Taking into account the overall circumstances, the impugned judgments, in my opinion therefore cannot be sustained. They deserve to be quashed and set aside. Resultantly, impugned orders dated 06.05.2025 passed separately in the case of all four Petitioners before me are quashed and set aside. All four Writ Petitions succeed.

28. As a consequence of the impugned judgments having been set aside, the further action of the Corporation of terminating the Petitioners by separate orders dated 02.07.2025 are unsustainable in law and they are also accordingly quashed and set aside. Resultantly as a consequence thereof all four workers are directed to be taken back

and reinstated into employment of the Corporation forthwith and in any event within a period of one week from today in the same posts in which they were employed at the time of their termination.

29. It is also directed that Petitioners shall be entitled to continuity in service and shall also be entitled to backwages for the period from 02.07.2025 until they are reinstated and all benefits of permanency from the date of this judgment onwards.

30. All four Writ Petitions are allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

Ajay

AJAY TRAMBAK UGALMUGALE

Digitally signed by AJAY TRAMBAK UGALMUGALE
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