IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4129 OF 2009

1 The Chief Officer
Pen Municipal Council,
Pen, District Raigad

2 Pen Municipal Council,
Pen, District Raigad ....Petitioners

V/S

1 Shekhar B. Abhang
At Parit Ali, Pen, District Raigad

2 Shri J.P. Limaye,
Member, Industrial Court,
MIDC., New Administrative Office
Complex Bldg., Checknaka
Thane (W). ....Respondents

Mr. Rahul D. Oak for the Petitioners.
Ms. Pavitra Manesh i/b Mr. M.S. Topkar for Respondent No.1.

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 25 APRIL 2024.
PRONOUNCED ON : 06 MAY 2024.

J U D G M E N T

1 Pen Municipal Council has filed this Petition challenging the judgment and order dated 7 March 2009 passed by Member, Industrial Court, Thane in Complaint

(ULP) No.31 of 2004. The Industrial Court has partly allowed the Complaint filed by Respondent No.1 and has directed Petitioners to regularize Respondent No.1 on the post of Tax Inspector from the date of its order with further direction to pay consequential and monetary benefits arising out of such regularization.

2 Briefly stated, facts of the case are that Petitioner is Pen Municipal Council is established under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (the Act). Respondent No.1 was engaged as Clerk to meet exigencies of service in accordance with the resolution adopted by the Municipal Council on 4 December 1997.

3 Respondent No.1 filed Complaint (ULP) No.616 of 1998 in the Industrial Court, Thane, alongwith three other Clerks apprehending the termination of their services. The said Complaint came to be allowed by Industrial Court by judgment and order dated 6 September 2001 directing Petitioner-Municipal Council not to terminate the services of the Complainants. It appears that in pursuance of the said order of Industrial Court services of Respondent No.1 were continued on the post of Clerk.

4 By order dated 30 July 2003, Respondent No.1 came to be appointed as Tax Inspector on the pay scale of Rs.4100-

6000 with effect from 1 August 2003 for a period of six months on temporary basis. According to Petitioner-Municipal Council, Respondent No.1 is not entitled to be appointed on the post of Tax Inspector as he was neither qualified under the rules nor he was selected as a result of regular selection process but his appointment was merely temporary subject to the approval of the Regional Director of Municipal Council Administration. It is further submitted by Petitioner-Municipal Council that he was the juniormost Clerk and could not have been directly appointed as Tax Inspector by ignoring the claims of 14 other Senior Clerks working in the Municipal Council. Petitioner-Municipal Council terminated the services of Respondent No.1 after expiry of period of six months on 31 January 2004 by order dated 23 January 2004.

5. Respondent No.1 approached Industrial Court, Thane by filing Complaint alleging unfair labour practices under Items 5, 6 and 9 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. In his Complaint, Respondent No.1 sought direction to continue him in service. He also sought a prayer not to recruit fresh hands in his place on the post of Tax Inspector, unless sponsored by Selection Board. He also sought a direction for grant of preference for regular appointment on the post of Tax Inspector. By order passed at Exhibit-2 in Complaint (ULP) No.31 of 2004, the Industrial

Court passed interim order not to appoint any other person as Tax Inspector on adhoc basis if work is available by denying opportunity to Complainant.

6 The Complaint was resisted by Petitioner-Municipal Council by filing Written Statement raising specific contention that Respondent No.1 is not qualified to be appointed on regular post of Tax Inspector. That as per the order issued by Director of Municipal Council Administration dated 10 April 2003, Senior Clerk is the feeder post for appointment as Tax Inspector.

7 Respondent No.1 examined himself before the Industrial Court. Petitioner-Council examined Mr. Prabhakar Vishwanath Kamble, Chief Officer of Pen Municipal Council as its witness.

8 After hearing both the sides, Industrial Court proceeded to deliver judgment and order dated 7 March 2009 partly allowing the Complaint and has directed Petitioner-Municipal Council to regularize the Respondent No.1 on the post of Tax Inspector from the date of the judgment and to pay him all consequential and monetary benefits arising out of such regularization. Aggrieved by Industrial Court’s judgment and order dated 7 March 2009 Petitioner-Municipal Council has filed present Petition.

9 This Court admitted the Petition by order dated 8 July 2009. It appears that Respondent No.1 filed Civil Application No.113 of 2012 seeking a direction for his appointment in view of non-grant of interim order by this Court. By order dated 24 February 2012, this Court directed Petitioner-Municipal Council to implement Industrial Court's order on or before 20 April 2012. It appears that in pursuance of order passed by this Court Respondent No.1 is working with Petitioner-Municipal Council during pendency of the present Petition.

10 Mr. Rahul Oak, the learned counsel appearing for Petitioner-Municipal Council would submit that the Industrial Court has erred in directing regularization of services of Respondent No.1 on the post of Tax Inspector by ignoring the fact that he is not qualified to be so appointed. He would submit that the feeder post for promotion to the post of Tax Inspector is Senior Clerk whereas Respondent No.1 was junior most Clerk working on the establishment of the Petitioner-Municipal Council that too on temporary basis. That his appointment was only for a period of six months without conducting regular selection process. That no right accrued in his favour to seek regularization of his services. That though the post of Tax Inspector was sanctioned for Petitioner-Municipal Council, Mr. Bandiwadikar was holding that post and he retired from service with effect from 31 July 1999. That since the post

was not filled for a considerable time, the same lapsed. That the post of Tax Inspector was thereafter revived by the Directorate of Municipal Administration by order dated 10 April 2003 with direction to fill-up the same by following due process of selection. That Respondent No.1 was merely engaged for a period of six months without following due process of selection. That he was not subjected to any interview. That therefore no right got created in favour of Respondent No.1 to seek regularization of his services. He would therefore submit that the order passed by the Industrial Court deserves to be set aside.

11 Per contra, Ms. Pavitra Manesh the learned counsel appearing for Respondent No.1 would oppose the Petition and support the judgment and order passed by the Industrial Court. She would submit that Respondent No.1 was not a backdoor entrant and that his name was sponsored by the Employment Exchange. She would place reliance on letter of District Employment and Self-Employment Guidance Center, Alibag, dated 14 July 2003 in this regard. That therefore he was appointed after following due process of selection. That his appointment was backed by resolution adopted by General Body of the Petitioner-Municipal Council. In this regard she would place reliance on General Body Resolution dated 24 May 2003. In addition to the order dated 10 April 2003 reviving the post of Tax Inspector, Ms. Manesh would also rely upon order dated 30 October 2015 sanctioning

revised staffing pattern of Petitioner-Pen Municipal Council, which reflects one post of Tax Inspector. She would therefore submit that the post of Tax Inspector clearly exists on the establishment of Petitioner-Municipal Council and therefore the Industrial Court has not committed any error in directing regularization of Respondent No.1 in services. She would submit that Respondent No.1 has been working on the post of Tax Inspector for a considerable period of time and that it would be too late in a day to now disturb his appointment by interfering in the judgment and order of the Industrial Court.

12 Rival contentions of the parties now fall for my consideration.

13 Industrial Court's decision directing regularization of services of Respondent No.1 is under challenge in the present Petition. Since the issue involved in the Petition is about regularization of services, ithe discussion on the topic of regularization would be incomplete without making refernce to the land judgment of Constitution Bench in Secretary, State of Karnataka & Ors. vs. Umadevi & Ors., 2006 (4) SCC 1. The Apex Court has held that mere continuance of an employee for a long period does not create any right of regularisation in the service. The Apex Court has however carved out an exception in respect of only those the employees whose appointments were made in an irregular

manner against duly sanctioned vacant posts and where the employees have continued to work for ten years or more, but without the intervention of orders of the courts or of tribunals, the Union of India, the State Governments and their instrumentalities were directed to take steps to regularise their services as a one-time measure. The Apex Court has recorded following findings in paragraph 43, 44, 47, 49 and 53:-

> 43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent

continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of “equal pay for equal work” is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders

issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements Complete justice would be Justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make

> permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.
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> 53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

14. Since Petition arises out of Order passed by the Industrial Court, a brief reference to the powers and jurisdiction of an industrial adjudicator to grant regularisation de horse the judgment of Constitution Bench

in ***Umadevi*** would be necessary. The issue arose before the Apex Court in ***MSRTC Vs. Casteribe Rajya Parivahan Karmachari Sanghatana***, (2009) 8 SCC 556. In ***MSRTC***, the Apex Court held that ***Umadevi*** does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer where the posts on which they have been working exist. It further held that the provisions of MRTU and PULP Act enables an industrial adjudicator to give preventive as well as positive direction to an erring employer. In ***MSRTC*** the Apex Court has held in paragraph 32, 33 and 36 as under:-

> "32. The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.
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> 33. The provisions of the MRTU and PULP Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi (3). As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred to, considered or decided in Umadevi (3). Unfair labour practice on the 9 part of the employer in engaging employees as badlis, casuals or temporaries and to continue them as such for years with the object of

> depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of the Industrial and Labour Courts under Section 30 of the Act did not fall for adjudication or consideration before the Constitution Bench.
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> 36. Umadevi (3) does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and the PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

15. In ***Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India and another***, (2014) 7 SCC 190, the Apex Court took note of its judgments in ***UP Power Corporation*** 2007 5 SCC 755 and ***MSRTC*** and held that in absence of post, regularization cannot be directed. The Apex Court however has carved out certain exceptions to this general principle. The Apex Court in ***Hari Nandan Prasad*** proceeded hold in paragraph 34, 35, 39 and 40 as under :-

> 34 A close scrutiny of the two cases, thus, would reveal that the law laid down in those cases is not contradictory to each other. In U.P. Power Corpn.8, this Court has recognised the powers of the Labour Court and at the same time emphasised that the Labour Court is to keep in mind that there should not be any direction of regularisation if this offends the provisions of Article 14 of the Constitution on which the judgment in Umadevi (3) is primarily founded. On the other hand, in Bhonde case the Court has recognised the

principle that having regard to the statutory powers conferred upon the Labour Court/Industrial Court to grant certain reliefs to the workmen, which includes the relief of giving the status of permanency to the contract employees, such statutory power does not get denuded by the judgment in Umadevi (3) case. It is clear from the reading of this judgment that such a power is to be exercised when the employer has indulged in unfair labour practice by not filling up permanent posts even when available and continuing to employ workers on temporary/daily-wage basis and taking the same work from them and making them do some purpose which was being performed by the regular workers but paying them much less wages. It is only when a particular practice is found to be unfair labour practice, as enumerated in Schedule IV of the MRTP and PULP Act, and it necessitates giving direction under Section 30 of the said Act, that the court would give such a direction.

35. We are conscious of the fact that the aforesaid judgment is rendered under the MRTP and PULP Act and the specific provisions of that Act were considered to ascertain the powers conferred upon the Industrial Tribunal/ Labour Court by the said Act. At the same time, it also hardly needs to be emphasised that the powers of the industrial adjudicator under the Industrial Disputes Act are equally wide. The Act deals with industrial disputes, provides for conciliation, adjudication and settlements, and regulates the rights of the parties and the enforcement of the awards and settlements. Thus, by empowering the adjudicator authorities under the Act to give reliefs such as reinstatement of wrongfully dismissed or discharged workmen, which may not be permissible in common law or justified under the terms of the contract between the employer and such workmen, the legislature has attempted to frustrate the unfair labour practices and secure the policy of collective bargaining as a road to industrial peace.

39. On a harmonious reading of the two judgments discussed in detail above, we are of the opinion that

> when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily-wage worker/ad hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily-wager, etc. may amount to back door entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the worker concerned does not meet the eligibility requirement of the post in question as per the recruitment rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.
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> 40. The aforesaid examples are only illustrative. It would depend on the facts of each case as to whether the order of regularisation is necessitated to advance justice or it has to be denied if giving of such a direction infringes upon the employer's rights.

16. Thus, in ***Hari Nandan Prasad***, the Apex Court ruled that if posts are not available, issuance of directions for regularisation would be impermissible and that such directions cannot be issued only on the basis of number of years put in by a daily wager. However the Apex Court did

carve out some exceptions i. e. where similarly situated workmen are regularised in terms of a scheme. It thus held that by ordering regularization of similarly placed employee the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision. Thus once an employer formulates a scheme for regularization and regularizes similarly placed employees in accordance with that Scheme, it is permissible for an industrial adjudicator to direct regularization of casual/daily wage worker who fulfills the criteria prescribed in the Scheme. However since the right to claim regularization, in such case, flows purely out of the Scheme, it is mandatory that the concerned worker fulfills all the criteria prescribed under the Scheme to the hilt.

17 Very recently in ***Vinod Kumar & Ors. vs. Union of India & Ors***., SLP (C) Nos.2241-42 of 2016, decided on 30 January 2024, the Apex Court had an occasion to once again visit the issue of regularization of service of an government employee. The Apex Court has dealt with case of Accounts Clerks in the office of Divisional Regional Manager, who were appointed to ex-cadre posts after conducting selection process involving written test and viva voce interviews in pursuance of Notification dated 21 February 1991. After putting in considerable period of service, the Appellants approached Central Administrative Tribunal. Their original

applications were dismissed by the Tribunal holding that their appointments were temporary and for specific scheme. After their Writ Petitions were dismissed by the High Court, the Appellants approached the Supreme Court. The Apex Court, after referring to its decision in Umadevi (supra) has held in paragraphs 5, 6, 7, 8 and 9 as under:

> "5. Having heard the arguments of both the sides, this Court believes that the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement. Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status.
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> 6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

> 7. The judgement in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. Paragraph 53 of the Uma Devi (supra) case is reproduced hereunder:
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> 8. In light of the reasons recorded above, this Court finds merit in the appellants' arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations.
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> 9. Accordingly, the appeals are allowed. The judgment of the High Court is set aside, and the appellants are entitled to be considered for regularization in their respective posts. The respondents are directed to complete the process of regularization within 3 months from the date of service of this judgment."

18 Thus in the recent decision in ***Vinod Kumar*** (supra) the Apex Court has held that the essence of employment and the rights thereof cannot be determined merely on the basis of initial terms of appointment when the course of employment evolved for significant period of time. The Apex Court took note of continuous service of the Appellants in

addition to their selection through a process mirroring a regular recruitment and held that the same constitutes a substantive departure from temporary and scheme-specific nature of their initial engagement. The Apex Court further held that reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over considerable period through continuous service. The Apex Court accordingly allowed the Appeals after referring to paragraph 53 of the judgment in ***Umadevi*** (supra) and held that the continuous service of the Appellants akin to permanent employees runs counter to the principles of equity, fairness and the intent behind employment regulations.

19 Reverting to the facts of the present case, Respondent No.1 was working on the post of Clerk in the Petitioner-Municipal Council since the year 1997. He secured a protection for continuation on the post of Clerk by way of judgment and order dated 6 September 2001 passed in Complaint (ULP) No. 616 of 1998.

20 It appears that the General Body of the Petitioner-Municipal Council adopted a Resolution No.56, dated 29 November 1988 for creation of post of Tax Superintendent (Kar Adhikshak) on the establishment of Petitioner-Municipal Council. As per said resolution, the post of Tax Superintendent was to be filled either by direct recruitment

of candidates possessing qualifications of Graduation in Arts and Commerce and LGS/LSGD with five years' experience or by way of promotions for amongst persons working on the post of Senior Clerk or higher post without requirements of age or educational qualifications. Respondent No.1 has placed copy of Resolution No.56, dated 29 November 1988 on record by way of Exhibit-1 to his Affidavit-in-Reply. Though the Resolution refers to the post of Tax Superintendent (Kar Adhikshak) Respondent No.1 has treated the said Resolution for the post of Tax Inspector. Possibly this was the solitary post created for the purpose of handling the work of collection of property taxes.

21 It appears that one Mr. Bandiwadekar was working on the post of Tax Inspector, who retired from service on 31st July 1999. Since the post was not filled after retirement of Mr. Bandiwadekar, the same lapsed albeit after some delay. The General Body of the Petitioner-Municipal Council adopted a Resolution for revival of the post of Tax Inspector by adopting Resolution No.252, dated 31 July 2002. The State Government accepted the proposal of Petitioner-Municipal Council by order dated 10 April 2003 and sanctioned one post of Tax Inspector by order dated 10 April 2003. It was however directed that the post should be filled in either by following the procedure prescribed by the State Government or by promotion.

22 It appears that General Body of the Petitioner-Municipal Council decided not to fill up the post of Tax Inspector through promotions and decided to fill up the same by direct recruitment. It appears that the Petitioner-Municipal Council obtained no objection certificates from senior eligible employees not to fill up the post by way of promotion. In accordance with the said decision of the General Body, it was decided to call for eligible candidates from Employment Exchange. The General Body further decided to fill-up the post on temporary basis for six months after conducting interviews. The interview was to be conducted by District Employment Officer and Integrated Rural Development Project Officer. It was further decided that while filling up the post consideration should be given for employees working in Petitioner-Municipal Council as well as local candidates. Since the post was to lapse if not filled in within six months, it was decided to fill up the post for tenure of six months. Thus, the requisition was sent to the Employment Exchange in accordance with the resolution adopted by the General Body on 24 June 2003. It appears that Respondent No.1 had registered his name with Employment Exchange. Respondent No.1 has placed on record letter, dated 14 July 2003 by which his name was sponsored in pursuance of requisition sent by the Petitioner-Municipal Council for filling up the post of Tax Inspector. In the list of candidates sent by Employment Exchange, it appears that name of only Respondent No.1 was forwarded.

His qualifications were described as B.Com./LSGD course completed.

23 It appears that the official from District Employment and Self Employment Center conducted the interview of Respondent No.1 and after verifying that Respondent No.1 possessed the requisite educational qualifications, he was recommended for appointment to the post of Tax Inspector. However, his appointment was effected only for tenure of six months by order dated 30 July 2003, possibly to save lapsing of the post.

24. It appears that the Deputy Chief Auditor had raised objection about appointment of the Respondent No.1 and had recommended recovery of amount of Rs.52,800/- paid to Respondent No.1. The Deputy Chief Auditor had raised an objection during the course of audit conducted for the years 2002-2003, 2003-2004 that the post of Tax Inspector was not filled in by way of promotion and that it was irregularly filled by appointing Respondent No.1, who was merely working as daily wage Clerk, which was in violation of rules. The Regional Director of Municipal Council Administration-cum-Divisional Commissioner of Konkan Division responded to the objection of Deputy Chief Auditor by letter dated 20 October 2006 and justified the appointment of Respondent No.1. The facts recorded in the

preceding paragraphs are borne out from the said letter dated 20 October 2006.

25 From the above chronology, following things are clear:

i) Appointment of Respondent No.1 was made against sanctioned post of Tax Inspector which was sanctioned by the Directorate of Municipal Administration by order dated 10 April 2003;

ii) Order dated 10 April 2003 directed filling of the sanctioned post of Tax Inspector either by direct recruitment or by promotion;

iii) All senior eligible employees (Senior Clerks) gave their no objection for filling up the post of Tax Inspector by direct recruitment;

iv) General body of Municipal Council therefore decided to send the requisition to Employment Exchange for sponsoring names of eligible candidates for filling up the post of Tax Inspector by direct recruitment.

v) Name of Respondent No.1 was sponsored by Employment Exchange by letter dated 14 July 2003;

vi) Standing Committee had resolved to conduct interviews of eligible candidates through District Employment Office and Integrated Rural Development Project Officer;

vii) For conducting interviews Petitioner-Municipal Council invited District Employment and Self-employment

Centre Alibag and Chief Officer of Tribal Integrated Development Project. However only Officer from District Employment and Self-employment Center, Alibag remained present for conducting interview;

viii) Respondent No.1 was subjected to interview conducted by Officer of District Employment and Self-employment Center, Alibag;

ix) Respondent No.1 possessed necessary educational qualifications for appointment on the post of Tax Inspector;

x) He was recommended for appointment after holding interview.

26 The above factors clearly indicate that initial appointment of Respondent No.1 had all trappings of a regular appointment. Though the Respondent No.1 was virtually appointed on regular basis, his tenure was restricted to six months, possibly on account of baseless apprehension expressed by the General Body of the Municipal Council that the post would lapse if not filled in within six months. This was the only possible reason why the tenure of the appointment was limited to six months, though the same was virtually made on regular basis.

27 The appointment of Respondent No.1 is thus made against the sanctioned vacant post. He was eligible to be appointed on the post and underwent selection process after

his name was sponsored by the Employment Exchange. In my view therefore such appointment cannot be treated as backdoor entry. In addition to initial six months of service Respondent No.1 has been working on the post of Tax Inspector at least since the year 2012. Thus he has put in more than 10 years of service. The sanctioned staffing pattern vide order dated 30 October 2015 indicates one sanctioned post of Tax Inspector. In my view therefore Respondent No.1 clearly made out a case for regularization of his services.

28 Petitioner-Municipal Council raised fallacious defence before the Industrial Court that Respondent No.1 was not qualified to be appointed as Tax Inspector or that only Senior Clerks were eligible to be promoted to that post. The said defence is clearly contrary to the justification provided by the Regional Director, Municipal Administration vide letter dated 20 October 2006. Petitioner-Municipal Council suppressed the fact that it had secured no objections from the other Senior Clerks for filling up the post of Tax Inspector by direct recruitment. This fact is borne out both by way of General Body resolution dated 24 June 2003 as well as letter of Regional Director of Municipal Council Administration dated 20 October 2006. Thus, the defences raised by Petitioner-Municipal Council before Industrial Court were clearly false and the material information was suppressed by them from the Industrial Court.

29 Applying the ratio of recent decision in ***Vinod Kumar*** (supra), in my view denying the relief of regularization to Respondent No.1 would be against the principles of equity and fairness.

30 In my view therefore the Industrial Court has not committed any error in allowing the Complaint filed by Respondent No.1. No serious error can be traced in the impugned decision of the Industrial Court. Its order is unexceptional.

31 Consequently Writ Petition fails. It is dismissed without any orders as to costs. Rule is discharged.

(SANDEEP V. MARNE, J.)