



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

WRIT PETITION NO. 2644 OF 2020

Sarva Shramik Sangh (Union),
Neelkanth Apartment, Mahagiri,
Thane – 400 601.

.. Petitioner

Versus

1. The Commissioner,
Thane Mahanagar Palika, Panchpakhadi,
Thane – 400 602.

2. The Dean, Chhatrapati Shivaji Maharaj
Hospital, Kalwa Belapur Road,
Kalwa, Thane – 400 605.

3. M/s. Khankal Enterprises,
Chhatrapati Shivaji Maharaj Hospital,
Kalwa Belapur Road,
Kalwa, Thane – 400 605.

.. Respondents

WITH

WRIT PETITION NO. 10432 OF 2023

1. The Commissioner, Thane Mahanagar
Palika, Through the Commissioner, S/at:
Mahapalika Bhavan, Panchpakhadi,
Thane (West).

2. The Dean, Chatrapati Shivaji Maharaj
Hospital, Belapur Road, Kalwa, Thane.

Petitioners

.. (Orig. First Party)

Versus

1. Sarva Shramik Sangh
S/at: Neelkanth Apartment,
Mahagiri, Thane.

2. M/s. Khankal Enterprises,
Chatrapati Shivaji Maharaj Hospital,
Kalwa Belapur Road, Kalwa, Thane.

Respondents

(Respondent No.1 –

.. Orig. Second Party)

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- Ms. Jane Cox, Advocate i/by Ms. Karishma Rao a/w. Mr. Vinayak Suthar and Mr. Pranav Pawar, Advocates for Petitioner in Writ Petition No.2644 of 2020 and Respondent No.1 in Writ Petition No.10432 of 2023.

- Mr. R.S. Apte, Senior Advocate i/by Mr. Ajit Pitale and Mr. Siddharth Pitale, Advocates for Petitioners – Thane Municipal Corporation in Writ Petition No.10432 of 2023 and Respondents in Writ Petition No.2644 of 2020.

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 07, 2025.

JUDGMENT:

1. Heard Ms. Cox, learned Advocate for Petitioner in Writ Petition No.2644 of 2020 and Respondent No.1 in Writ Petition No.10432 of 2023 and Mr. Apte, learned Senior Advocate for Petitioners – Thane Municipal Corporation in Writ Petition No.10432 of 2023 and Respondents in Writ Petition No.2644 of 2020.

2. This is a group of two cross Writ Petitions which challenge the Award dated 25.04.2019 passed by the Industrial Tribunal in Reference (IT) No.41 of 2005. Writ Petition No.2644 of 2020 is filed by Union representing and espousing the cause of 53 workmen whereas Writ Petition No.10432 of 2023 is filed by the Municipal Corporation to challenge the Award. The Award dated 25.04.2019 is appended at Exhibit ‘A’ – page No.23 of Writ Petition No.2644 of 2020.

3. Briefly stated, Corporation is running and maintaining the Municipal Corporation namely Chhatrapati Shivaji Maharaj Hospital, Kalwa (for short ‘**the said Hospital**’). The said Hospital is attached to Rajiv Gandhi Medical College, Thane run by the Corporation.

Petitioner – Corporation is a registered Trade Union and the concerned workmen who were its members employed in the Hospital as Sweepers, Aayas and Ward boys. It is the case of Corporation that the workmen were appointed and engaged by a Contractor appointed by the Corporation. Therefore when the workmen sought permanency in service, they were denied the same resulting in the Union filing Complaint (ULP) No.281 of 1995 in the Industrial Court at Thane under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short '**MRTU & PULP Act**') seeking permanency in service for them. The Complaint was disposed of for want of jurisdiction on the basis of the judgment of the Supreme Court in the cases of M/s. Cipla Limited and Kalyani Steel at the then time. Union thereafter espoused the cause of workmen seeking their reinstatement with full backwages and continuity of service. The demand of the Union was admitted in conciliation. However, Conciliation Officer submitted his failure report dated 17.09.2004. The State Government by order dated 27.05.2005 referred the said demand for adjudication to the learned Industrial Tribunal.

3.1. According to the Union, the workmen were employed as Aayas, Ward Boys and Sweepers in the Hospital run by the Corporation on regular work on day to day basis and they were fully integrated with the activities of the Corporation and the Hospital. It is their case

that despite they having been worked in the Hospital alongside permanent workers; they were denied status of permanency even though when they were doing the same amount of work. It is their case that there are 15 wards in the Hospital and work is assigned to workers in different wards and their work is supervised. It is their case that in the respective wards, the Ward Attendance Registers / Ward Work Registers depicted their name alongwith other permanent workers of the Corporation employed in the Hospital.

3.2. The Union pleaded that these workmen were in continuous service of the Corporation and had put in more than 240 days in each respective year for several years and the act of oral termination of these workmen without offering them any notice and retirement benefit as required under the Industrial Disputes Act, 1947 resultantly leading to the dispute between the parties.

4. Ms. Cox, learned Advocate appearing on behalf of Petitioner in Writ Petition No.2644 of 2020 would submit that the learned Industrial Tribunal while answering the Reference referred to by the Government framed the following 5 issues for adjudication:-

1. Whether the II Party, Ms. Lata Ujale and other 52 workmen, prove that they were the employees of Thane Municipal Corporation?
2. Whether the II Party, Ms. Lata Ujale & others prove that their services were terminated illegally and without

following the due process of law?

3. Whether the II Party, Ms. Lata Ujale & others are entitled for reinstatement with full back wages?
4. Whether the Ist Party Hospital proves that the said workers were provided by Ist Party No.3 M/s. Khankal Enterprises, a Contractor, for rendering the services in the Hospital run by the Thane Municipal Corporation?
5. Whether the I Party No.3, M/s. Khankal Enterprises prove that he was holding a valid license as a contract under the Contract Labour (Regulation & Abolition) Act?

4.1. She would submit that the Issue Nos. 1 and 2 are answered in the affirmative whereas Issue Nos. 3, 4 and 5 are answered in the negative. She would submit that once the Industrial Tribunal has come to the definite conclusion that the Union proved that the 53 workmen were employees of the Corporation and their services were terminated illegally without following the due process of law, then in that case denial of reinstatement, backwages and other benefits to the workmen is a grave error on the part of Tribunal in adjudicating the dispute. She would submit that though lumpsum compensation of Rs. 1 Lakh is offered to them as solace in lieu of the above benefits, but the reasons for arriving at this decision is wholly unacceptable and illegal for no fault on the part of these workmen.

4.2. She would submit that findings of Issue Nos.4 and 5 go to the root of the matter in as much as the Corporation failed to prove whether the workmen were employed by the alleged Contractor for rendering services in the Hospital run by the Corporation and whether the Contractor was holding a valid license or contract under the Contract Labour (Regulation & Abolition) Act, 1970. She would submit that once the Tribunal concluded that there was no incriminating material on record to prove Corporation's case with respect to Issue Nos. 4 and 5, then denial of the relief of reinstatement with full backwages is a grave travesty of justice meted out to the workmen.

4.3. She would submit that there was overwhelming evidence presented before the Industrial Tribunal in the form of oral as well as documentary evidence on the basis of which the learned Tribunal arrived at the findings to the aforesaid 5 issues. She would therefore submit that once the learned Tribunal concluded answers to Issue Nos.1 and 2 in the affirmative then answering Issue Nos. 4 and 5 in the negative would entail the workmen to reinstatement with full backwages and therefore a substantive challenge is maintained to the adjudication of Issue No.3 which is decided against the workmen. She would persuade the Court to consider the findings returned in paragraph Nos. 14 to 25 of the Award dated 25.04.2019 passed by the Industrial Tribunal and overturn the conclusion and result of Issue No.

3 to the extent of the challenge maintained in the present Writ Petition.

5. *PER CONTRA*, Mr. Apte, learned Senior Advocate has vehemently opposed the submissions made by Ms. Cox and would submit that the Corporation desires to oppose the adjudication of the learned Industrial Tribunal for holding the workmen as employees of the Corporation and the fact that their services were terminated without following the due process of law.

5.1. He would submit that in the first instance the Reference itself was not maintainable and Tribunal had no jurisdiction to decide the same. He would submit that the workmen were infact appointed by the Contractor appointed by the Corporation and they had no nexus with the Corporation and could not be deemed to be in employment of the Corporation and thus could not claim permanency in service. He would submit that the contract awarded by the Corporation to Contractor expired on 12.08.2005 and therefore the Reference was infructuous.

5.2. He would submit that none of the workers were given any appointment letters nor recruited by the Corporation as they were appointed by the Contractor as his employees. He would deny that the said workers worked as Aayas, Ward boys and Nurses (Sweepers) in the Hospital and their services and work was fully integrated with the

activities of the Corporation in the Hospital. He would submit that primary work of these workmen was of cleaning and sweeping which was separate and segregated from the main activities of the employees of the Corporation related to running the Hospital.

5.3. He would submit that the Contractor appointed by the Corporation viz; M/s. Khankal Enterprises - Respondent No. 3 engaged about 70 workers for carrying out cleaning and sweeping work in the Hospital premises and the same was governed by the Agreement executed with the concerned Contractor. He would submit that all work done by these workmen claiming to be the Members of the Union was supervised by the Contractor and their wages and all benefits were paid by the Contractor directly to them. He would submit that once the employment of these workmen was not effected through recruitment procedure under the provisions of the Bombay Provincial Municipal Corporations Act, 1949, the concerned workmen cannot be deemed to be employees of the Corporation as there is no nexus or privity of contract between the Corporation and the workmen.

5.4. He would submit that in that view their oral termination was duly valid. He would submit that there were no sanctioned posts available for appointing them or for granting them permanent status since granting permanent status depended upon availability of sanctioned posts. He would submit that in so far as their presence and

work done in the Hospital is concerned, the same was supervised by the Contractor and he maintained a separate muster roll and attendance register for them. He would submit that it was necessary for the Corporation to also keep their attendance registers and ward work registers in the respective wards in order to monitor their availability and work as these workmen were bound to work alongside the permanent employees of the Corporation because their primary work involved maintaining cleanliness in the Hospital.

5.5. He would therefore submit that the learned Tribunal has come to an incorrect conclusion while deciding Issue Nos.1 and 2 in favour of the workmen by holding that they had proved that they were employees of the Corporation and their services were terminated illegally without following the due process of law.

5.6. He would submit that the decision arrived at in so far as Issue Nos.4 and 5 is concerned is also incorrect in as much as the learned Industrial Tribunal has come to the conclusion that the Corporation has not proved that the said workers were appointed and provided by the Contractor. Hence, he would submit that Writ Petition No. 2644/2020 be dismissed and Writ Petition No. 10452/2023 be allowed and the decision in the impugned Award adjudicating Issue Nos.1, 2, 4 and 5 be overturned.

6. None appears for Respondent No. 3, M/s. Khankal Enterprises the Contractor despite being served.

7. I have heard Ms. Cox, learned Advocate espousing the cause of workmen and Mr. Apte, learned Senior Advocate appearing on behalf of the Corporation and perused the record of the case. Submissions made by both the learned Advocates at the bar have received due consideration of the Court.

8. At the outset, it is seen that there are 53 workmen and the list of the said workmen is appended in the Petition. It was also placed before the Industrial Tribunal and marked as Exhibit. The oral and the documentary evidence led by the Union before the Industrial Tribunal assumes significant importance in this case to determine the status of the workmen. It is seen that the Union examined its first witness Mr. Mohan Malusare, who has deposed that he joined the services of the Corporation in the year 1993 as a Ward Boy on the basis of an advertisement published in a Marathi local newspaper for recruitment of Ward Boys and Aayas. It is seen that on the basis of the said advertisement, he approached the Hospital and met Mr. Patnaik, the Health Officer who after holding a brief interview directed him to make an Application in response to the notice displayed on the notice board of the Hospital for recruitment of Ward Boys and Aayas and join duty from the following day. This evidence has not been dislodged in

rebuttal by any incriminating material. The contention of Corporation that the workmen were employed through the Contractor M/s. Khankal Enterprises cannot be accepted as there is no material placed on record to prove this fact. Despite this I have given adequate time to the Corporation pursuant to hearing of present Writ Petitions on 12.09.2023 and the following order being passed on 12.09.2023:-

“1. Heard learned Advocates appearing for the parties.

*2. This is a group of two Writ Petitions. Writ Petition No. 2644/2020 has been filed by Petitioner – Sarva Shramik Sangh (for short “**Union**”) taking exception to the Award dated 25.04.2019 passed by the Industrial Tribunal, Thane in Reference (IT) No. 41 of 2005. It is the case of the Union that the Reference has been partly answered in the affirmative and there is dichotomy in respect of the decision given on the issues that have been framed by the learned Industrial Court.*

3. Ms. Cox, learned Advocate for the Union would argue that bare perusal of the finding on Issue Nos. 1 and 2 which is in the affirmative would clearly imply that the finding on Issue No. 3 has to be in the affirmative as it is a consequential issue to Issue Nos. 1 & 2.

*4. Writ Petition No. 10432 of 2023 has been filed by the Corporation (employer) taking exception to the same Award dated 25.04.2019 passed by the Industrial Tribunal. Mr. Apte, learned Senior Advocate appears for Thane Municipal Corporation (for short, “**Corporation**”). Essentially Corporation-employer is aggrieved with the findings returned on Issue Nos. 1 and 2. Though this Writ Petition was filed on 06.01.2020, it is registered only in the year 2023.*

5. Both Writ Petitions challenge the same Award and are taken up for hearing at the request of the learned Advocate appearing for the Union.

6. Briefly stated, learned Industrial Tribunal was called upon to decide the Reference whether to reinstate in service Smt. Lata Prakash Ujale and 52 others with continuity of service and total financial damages. Learned Industrial Tribunal in its wisdom framed the following issues to decide the Reference:-

(i) Whether Smt. Lata Prakash Ujale & 52 others prove that they were the employees of Thane Municipal Corporation?

(ii) Whether Smt. Lata Prakash Ujale & 52 others prove

that their services were terminated illegally and without following due process of law?

- (iii) Whether Smt. Lata Prakash Ujale & 52 others are entitled for reinstatement with full back wages?*
- (iv) Whether the employer / hospital proves that the said workers were provided by M/s. Khankal Enterprises, a Contractor for rendering the services in the Hospital run by the Thane Municipal Corporation?*
- (v) Whether M/s. Khankal Enterprises prove that he was holding a valid license as a contract under the Contract Labour (Regulation & Addition) Act?*

7. As delineated herein above and observed by this Court, once Issue Nos. 1 and 2 were decided in the affirmative, finding on Issue No. 3 which prima facie is a consequential issue can never be answered in the negative. Be that as it may, certain facts are necessary to be reproduced to understand the grievance of the Union before the Court. After Reference was made by the State Government to Industrial Tribunal it came to be decided. It is the Union's case that the 53 workmen were employed in the Kalwa Municipal Hospital as Aayas, Wardboys and Sweepers. This Hospital is run by the Corporation. Work was assigned to these 53 workmen in 15 different wards of the Hospital. Their work was supervised by Nurses, Matrons and Supervisors who were employees of the Corporation. It is the Union's case that names of these 53 workmen were entered into the Ward Attendance Registers and Ward Work Registers along with the names of permanent workmen employed in the Hospital. Though it is fairly submitted by the Union that distribution of wages to these 53 workmen was done by the Contractor once a month, however except distribution of wages, the Contractor played no other role whatsoever and they were directly given work under supervision of the Hospital staff. It is Union's case that the alleged Contract with the Contractor was a sham and bogus arrangement and did not hold any valid registration as the Contractor held no licence under the statute. It is Union's case that between 01.02.1995 and 06.03.1995, all 53 workers were terminated without serving any notice or retrenchment compensation as required under the Industrial Disputes Act, 1947 (for short, "the Act").

8. Ms. Cox, learned Advocate has invited my attention to the affidavit-in-reply filed by the Union dated 06.09.2023 in Writ Petition No. 10432/2023, which is the Petition filed by Corporation. She would submit that during the period from 1991 to 1995, there were clear vacancies for more than 457 vacant posts of Safai Kamgars, 34 vacant posts of Aayas and 29 posts of Wardboys. She would submit that in support thereof, the Principal Information Officer of the Corporation has provided the necessary information under the Right to

Information Act to the representative of the Union which is at Exh. "B", Page Nos. 61-62 of Petition. She would therefore submit that in view of the above position, appointment of these 53 workmen were made by the Corporation. In all fairness, she would next submit that 7 out of 53 workers have already expired according to the information available with the Union. Next she would submit that out of the balance 46 workers, only 21 workers, considering their date of birth and present age will be in a position to join employment and work in the hospital until superannuation in the event if Union succeeds in its Petition. This would necessarily mean that the remaining 25 workers, considering their date of birth and present age would have crossed their superannuation. It is also stated by Union that in respect of at least 13 out of 53 workmen, details of their date of birth and present age are not known to the Union. Averments to that effect are made in paragraph No. 3 of the affidavit-in-reply dated 06.09.2023 filed by the Union in Writ Petition No. 10432/2023.

9. I have also heard Mr. Apte, learned Senior Advocate briefly and have called upon the Corporation to firstly place on record the contract with the Contractor who had employed these workmen, according to the Corporation. He is also impressed upon to confirm the vacancy position which has been informed by the Corporation to the Union during the years 1991 to 1995. Mr. Apte would submit that he would have to take instructions on the same. That apart, I have impressed upon Mr. Apte and drawn his attention to the reasons returned by the learned Industrial Tribunal in the Reference which has been answered in so far as Issue Nos. 1 and 2 are concerned. I have read the first 3 Issues together with Mr. Apte in order to impress upon him that in so far as Issue No. 3 is concerned, it is a consequential issue and not an independent issue. Parties have led evidence before the learned Industrial Tribunal which has been considered by the said Tribunal. Consideration and findings on appreciation of evidence are recorded in paragraph Nos. 15 to 19 of the Award in so far as the members of the Union are concerned. These are the workers who had actually worked in the Hospital who have deposed. It is seen that in so far as the alleged contractor M/s. Khankal Enterprises is concerned, none has appeared for the said Contractor before the learned Industrial Tribunal. Findings have been returned by the learned Industrial Tribunal in paragraph Nos. 24 to 26 of the impugned Award and after considering the legal position, Reference is answered partly in the affirmative. Undoubtedly considering the above timeline, it would be a difficult proposition to grant reinstatement and back wages as opined by the learned Industrial Tribunal. This aspect will have to be considered only after hearing Mr. Apte, learned Senior Advocate for the Corporation. However according to the pleadings and findings one thing is clear that the workers have completed more than 240 days continuous service in employment of the Hospital / Corporation and there is no dispute on this aspect. Mr. Apte, learned Senior Advocate is

therefore directed to obtain appropriate instructions and submit to the Court on the next adjourned date accordingly.

10. *This group of Petitions shall be treated as “Part-Heard”. Stand over to 10th October, 2023 at 2:30 p.m.”*

9. Even today when the Writ Petitions are heard by me finally, I asked Mr. Apte to produce on record evidence of the Contract Agreement between the Corporation and Respondent No. 3 - the concerned Contractor or any correspondence or documentary evidence to show that the workmen were employed through the Contractor. Corporation has not produce any such evidence whatsoever before the Tribunal neither it has produced any evidence before me. In that view of the matter, the answers to Issue Nos.4 and 5 in the negative by the learned Individual Tribunal cannot be faulted with. The said answers deserve to be upheld and confirmed.

10. Next it is seen that according to the deposition of the witnesses of the workmen, the nature of the work of these employees was such that they were directly employed for carrying out regular work for the Hospital and were working in the day to day activities of the Hospital. It is seen that from the deposition that the Nurses, Matrons, Mukadams and Superintendent of the Hospital used to supervise their work and their attendance was marked in the work attendance register along side with other permanent workers. That apart their work was supervised, verified and ratified by the supervisory employees of the Corporation. It is seen from evidence on

record that these workers were employed in different shifts in day to day activities of the Hospital and it is proved they have put in 240 days of work in each calendar year and were in continuous service prior to their termination. The evidence placed on record before the Industrial Tribunal in the Reference *prima facie* shows that the Corporation did not produce any record of the year 1993 to 1995 of these workmen whereas the workmen had produced the Inspection Report of their shift schedules during the year 1994-1995 to prove their employment.

11. It is seen that Union led evidence of 3 witnesses before the Industrial Tribunal and all 3 witnesses deposed on the basis of their own appointment as well as documentary evidence pertaining to their work of having worked in the Hospital. The documentary evidence is discussed by the Tribunal in paragraph Nos.14 to 21 of the Award.

12. It is also seen that none of the witnesses of the Union were discredited and Corporation was unable to lead any evidence in rebuttal or place on record any incriminating material to disprove their case. In so far as Corporation is concerned, it examined Dr. Rajeev R. Korde as witness but he was not in a position to place on record any documentary evidence of the Contractor's appointment or any correspondence to that effect to prove that the workers were appointed as employees by him.

13. In cross-examination of the Corporation's witness, he has infact admitted the work carried out by these workmen was integrated work alongwith other permanent employees of the Corporation. He has deposed that the said workmen were working as Ward Boys, Aayas and Sweepers and were routinely monitored by the Nurses, Matrons, Mukadams and Supervisors of the Hospital and their work was of a permanent and perennial nature. Incidentally the witness of the Corporation has himself deposed that he did not know who M/s. Khankal Enterprises was and doubted existence of the Contractor which is *prima facie* clinching evidence.

14. In so far as work carried out by the workmen is concerned, witness of the Corporation has categorically deposed they worked in the Hospital and carried out the work of the same cadre as that of regular permanent employees of the Hospital qualitatively and quantitatively and their attendance was marked in the ward and attendance register alongwith the regular employees.

15. The aforesaid deposition of Corporation's witness is considered by the learned Industrial Tribunal in paragraph No.23 of the Award. Considering the aforesaid material qua the deposition of the witnesses on behalf of the Union as discussed in paragraph Nos.14 to 21 and deposition of Corporation's witness in paragraph Nos.22 and 23, the learned Industrial Tribunal has discussed the documentary

evidence on record in paragraph No.24 onwards and answered the issues accordingly.

16. Sum and substance of the discussion of the documentary evidence when read clearly shows that the workmen had produced adequate documentary evidence to show that they had worked in the Hospital along side other permanent workers as Ward Boys, Aayas and Sweepers.

17. The learned Industrial Tribunal has returned a positive finding that the Corporation has not produced the alleged contract between the Corporation and the Contractor M/s. Khankal Enterprises whereas juxtaposed to the inspection report and record files which *prima facie* showed that the workers were employed in different shifts and were also provided uniform by the Corporation.

18. The discussion by the learned Tribunal in paragraph No.14 onwards while answering the issues has led to the inevitable conclusion that the workmen proved that they worked as employees of the Corporation and their termination was illegal and without following the due process of law. Further case of the Corporation was also negated in it having claimed that there was a contract between the Corporation and the alleged Contractor M/s. Khankal Enterprises who was the real employer of the workmen. Once the learned Tribunal concluded in answering the Issue Nos.1, 2, 4 and 5 in the affirmative

and negative, then answer to Issue No.3 became a consequential proposition. In that regard, learned Tribunal held that though the said employees were in continuous service for more than 240 days in each calender year, but the said workmen had worked only for a mere 2 years with the Corporation and the alleged termination had taken place in the year 1995 and much time was spent in deciding the Reference. The learned Tribunal has therefore concluded that in so far as the grant of relief of reinstatement and full backwages is concerned, considering this aspect and the fact that Reference itself remained pending for more than 14 years after the alleged termination in the year 1995 and the fact that condition of the Hospital run by the Corporation is not good, in these facts and circumstances has instead of granting reinstatement and backwages granted lumpsum compensation of Rs.1 lakh to each worker in lieu of reinstatement continuity of service and backwages which was directed to be paid within a period of two months from the date of the Award.

19. It is seen that the Award was passed on 25.04.2019 and if the Corporation was serious it should have paid the amounts to the workmen by 24.06.2019. The Corporation has not paid the same instead it has also filed Writ Petition No.10432 of 2023 in the year 2020 and kept the said Writ petition under objections until the year 2023. Writ Petition was numbered only in the year 2023 after removal of office objections.

20. Taking an overall view of the peculiar facts and circumstances of the present case, it is seen that merely because the Reference remained pending before the Industrial Tribunal for almost 14 years, the learned Tribunal has held that much water has flown below the pool and therefore considering this situation lumpsum compensation is awarded. In my opinion, such a conclusion is not warranted in law. I am of the opinion that once the Industrial Tribunal has come to the definite conclusion while answering Issue Nos.1, 2, 4 and 5 then as a sequitur of the said conclusion, Issue No.3 ought to have been answered accordingly, rather by awarding relief of meagre lumpsum compensation in terms of money to each worker it has not done justice to the cause. This is because pendency of the Reference before the Industrial Tribunal cannot be held against the workmen. Delay in the legal system cannot be held against granting of appropriate relief to the workmen. This would mean to say that if the said Reference would have been decided within one year of its filing then in all probability the Tribunal would have come to a different conclusion and awarded them reinstatement with continuity in service and backwages on the strength of overwhelming evidence.

21. Delay in deciding the Reference cannot be held in the way of grant of appropriate relief to which the workmen are entitled to in law. Once the Tribunal has come to the definite conclusion that these workmen are employees of the Corporation; that they performed work

alongwith all other permanent employees of the Corporation; that they were inducted in the work of the Hospital; that their attendance was marked alongwith other regular permanent employees of the Corporation; that their work was supervised by the Nurses, Mukadams and Supervisors of the Corporation; that their services were terminated illegally and without following the due process of law; that the Corporation failed to prove that they were appointed and employed by a Contractor; that the Corporation and the Contractor both failed to place on record the valid license of the Contractor under the Contract Labour (Regulation & Abolition) Act, 1970, then as a sequitur of this whole the workmen cannot be reinstated and payment of compensation would be adequate, that too meagre compensation of Rs.1 lakh each only because the Reference was decided 14 years after it was filed and much water had passed below the pool in my opinion is not a correct decision.

22. I am of the clear opinion that justice should not only be done, but also seen to be done. The conclusion in the present case has been arrived at only because of the delay in deciding the Reference and nothing else. There is no other reason whatsoever to preclude the Court to deviate from granting appropriate relief.

23. Hence, I am not inclined to accept the reasoning given by the learned Industrial Tribunal in paragraph No.30 of the impugned Award

while answering Issue No.3 in the negative and the same is not sustainable and calls for interference of this Court. Answers given to Issue Nos.1, 2, 4 and 5 are upheld and confirmed.

24. In view of the above, the following order is passed:-

- (i) All workmen whose names are appended to the ULP Complaint by the Union are directed to be reinstated forthwith and shall join services in the Hospital in any event within a period of one (1) week from today;
- (ii) The workmen who will join shall not be entitled to any back-wages or continuity in service but shall be entitled to or retirement benefits in accordance with law;
- (iii) Joining of the above workmen shall be confirmed, scrutinized and verified by the Dean of the Rajiv Gandhi Medical College and Chhatrapati Shivaji Maharaj Hospital, Kalwa;
- (iv) Union shall inform the names and details of those workmen who have either passed the superannuation age or have expired in the interregnum to the Thane Municipal Corporation alongwith all details of the said workmen. After due scrutiny by the Corporation of such workmen who have either crossed the age of

superannuation or have expired in the interregnum, such workmen or either their legal heirs shall be entitled to lumpsum compensation determined by this Court at the rate of Rs.2 Lakhs per workman. The determination of legal heirs shall be done by Corporation on the basis of appropriate documentation submitted by them; and

- (v) The order of payment of lumpsum compensation of Rs.1 lakh stands deleted and substituted by the above order and directions.

25. Rest of the Award dated 24.05.2019 is upheld and confirmed, save and except the aforesaid modification with respect to answering Issue No.3 therein.

26. Resultantly Writ Petition No.2644 of 2020 partly succeeds. Writ Petition No.10432 of 2023 fails.

27. Both the Writ Petitions are disposed in the above terms.

[MILIND N. JADHAV, J.]

28. After the judgment is pronounced in open Court, Mr. Apte, learned Senior Advocate for Thane Municipal Corporation has requested the Court to stay the judgment to enable the Corporation to test validity of the judgment in the Superior Court. His request for stay

is granted. Present judgment is stayed for a period of four weeks from the date of uploading of this judgment.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
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by AJAY
TRAMBAK
UGALMUGALE
Date: 2025.08.07
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