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LABOUR COMMISSIONER IS SLEEPING ON BBMP AS POURAKARMIKAS WERE NOT MADE PERMANENT WITH SPECIAL RECRUITMENT RULES



By: M.S.Yatnatti: Editor and Video Journalist Bengaluru: Labour commissioner is sleeping without any action on BBMP . About 32652 "Pourakarmikas (Sanitation workers)) were not made permanent who are on the biometric rolls of BBMP since 01-01-2018 for about two years despite labour department gave them two years time to regularize their services within two years with special recruitment rules which was one of the condition prescribed by labour department while giving exemption from labour Act. The two years' time given is coming to an end on 27-10-2019 and BBMP need to regularise at one go all 32652 "Pourakarmikas (Sanitation workers). Instead of regularizing and recruiting 32652 pourakarmikas as per orders 3300 were removed and advertisement issued for recruitment of only 4000 pourakarmikas instead of 32652 pourakarmikas and discriminatory orders were issued on 01-08-2019 to place permanent pourakarmikas who are not on biometric attendance to supervise contract pourakarmikas who are on Biometric attendance. Request is made to withdraw order dated 01-08-2019 and 11-10-2019 by JC West. About 32652 "Pourakarmikas (Sanitation workers)) were not made permanent who are on the biometric rolls of BBMP since 01-01-2018 about two years despite labour department gave them two years time to regularize their services within two years with special recruitment rules which was one of the condition prescribed by labour department while giving exemption from labour Act as per Government order UDD 126 BMS 2016 Bengaluru dated 07-08-2017 and Labour Department order Notification LD 92 LDWA 2017 Bengaluru dated 27-10-2017 and Commissioner BBMP Order dated 21-12-2017 to directly appoint them on BBMP rolls on contract basis instead BBMP removed 3300 "Pourakarmikas (Sanitation workers) without any notice and without any proof stating that they did not have two years of prior service and issued an advertisement number PR/53& 54 2015-16 Dated 27-08-2019 for recruitment of 4000 "Pourakarmikas (Sanitation workers) instead of regularizing 32652 "Pourakarmikas (Sanitation workers) as per Government order at the scale of Rs 9600-14550 for "Pourakarmikas (Sanitation workers). The two years' time given is coming to an end on 27-10-2019 and BBMP need to regularise at one go all 32563 "Pourakarmikas (Sanitation workers) as they are on BBMP Rolls . Seeking to end years of exploitation by contractors, the State government has decided to absorb outsourced pourakarmikas working for various urban local bodies in the State. The State Cabinet, which met on May 4, has decided to absorb all the contract pourakarmikas in city corporations, city municipal councils, town municipal councils and town panchayats by April 2017, virtually drawing curtains on the contract system of garbage clearance across the State. The Cabinet has also decided to ensure the payment of salaries to the contract pourakarmikas directly from urban local bodies till they are absorbed by the government. "There were complaints that contractors were not giving their full salary and were not paying their Provident Fund (PF) and Employee State Insurance (ESI) dues".

The Apex Court held that policies to create artificial parameters to deny fruits of labour to an employee engaged for the same work cannot be countenanced in a welfare state. Such an action, besides being demeaning, shocks of the very foundation of the human dignity, as one who is compelled to work on lesser wages does not do so voluntarily. The Apex Court observed that such action constitute an act of exploitation emerging from a dominant position. Reliance was also placed on Article 7 of the International Covenant on Economic, Social and Cultural Rights 1966, to which India is signatory having ratified the same on 10 April 1979. Under this convention the India has recognized the right of every one to the enjoyment of just conditions of work, healthy working conditions, leisure, reasonable limitations of working hours, periodical holidays and pay. About 32652 "Pourakarmikas (Sanitation workers)) were not made permanent who are on the biometric rolls of BBMP since 01-01-2018 about two years despite labour department gave them two years time to regularize their services within two years with special recruitment rules which was one of the condition prescribed by labour department while giving exemption from labour Act as per Government order UDD 126 BMS 2016 Bengaluru dated 07-08-2017 and Labour Department order Notification LD 92 LDWA 2017 Bengaluru dated 27-10-2017 and Commissioner BBMP Order dated 21-12-2017 to directly appoint them on BBMP rolls on contract By the Award, the Concerned workers need to be declared to be permanent workers of the Corporation. They will have to be given benefits on par with the other permanent workers. These 32652 workers are working shoulder to shoulder with 2514 odd permanent workers engaged in keeping the City clean. While the permanent workers are accorded all the facilities and security of tenure, the working and living conditions of the concerned workers, are pitiable. The way they have to live , the manner in which they are made to work ,is below human dignity. Many have no permanent shelter, hardly any access to medical treatment, washrooms, toilets, changing rooms, which facilities the permanent workers enjoy. Many workers get injured on duty while handling the garbage ,develop illnesses, and are left to fend for themselves ,with almost no medical care. They have to manually remove excrement, rotting animals, ride on the trucks carrying garbage, rotting carcasses. These workers work throughout the year, barring four days. One does not have to go through years of such sub-human existence to complain of exploitation. The various ameliorative measures contemplated by the State for this class, their extreme backwardness tied up with the caste system, the lowly menial work they are forced to engage into by a public body which is bound to follow the ideals of the Constitution of India, makes the case of the concerned workers sui generis and cannot be compared to any other contract labour dispute. The Corporation is under a mandate to keep the City clean. Residents of the City have a fundamental right to a clean environment. This fundamental right and the mandatory duty, cannot be achieved by subjugating the fundamental rights of the workers to basic human dignity. The anxiety to find innovative ways to maintain a clean city can be understood, but in a welfare state, cleanliness for one class of citizens cannot be achieved by engaging in 'slavery' of the others. These 32652 workers, working round the year, provide the foundation on which the City functions. Instead of acknowledging this importance and giving them stability of permanent tenure to improve their living conditions, the Corporation, a public body, has taken advantage of its dominant position to exploit these lowest strata of the community, disregarding various welfare measures suggested by the State by not making their services permanent despite government orders to do it within two years. It is submitted that provisions of "Employment of Manual scavengers and construction of Dry Latrines (Prohibition) Act, 1993" and "The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013" and placed reliance on the full bench decision of the Apex Court in Safai Karmachari Andolan & others vs. Union of India & others reported in (2014) 11 SCC 224.

It is submitted that the persons who are working as sweepers/ poura Karmikas, Scaengers constitute a separate class for the purpose of classification. They cannot be treated on par with others for the reason that their nature of work, occupation and social background is not the same when compared to others. It is thus permissible for their classification separately without there being any confrontation with Article 14 of Constitution of India. In Budhan Chowdhary V.s state of Bihar (1955) () SCR 1015 at page 1049, the Hon'ble Supreme Court held that 'in order that the classification by a legislature may be upheld by the court as a reasonable classification consonant with the guarantee of equal protection in Article 14 for which, two conditions must be fulfilled, namely (i) That the classification must be founded on an intelligible differentia which distinguishes persons or things that the grouped together from others left out of the group, and (ii) That, that differentia must have a rational relation to the object sought to be achieved by the statutes in question. In the cited order the Court has taken notice that State Government and other authorities have consistently regularized the services of different disciplines in various departments. However, similar effort was not made in respect of this unfortunate section. These persons are serving the State for quite a considerable length of time nearly half a century but they are excluded. Therefore, these persons constitute a separate class for the purpose of consideration. Request is made to regularize 32652 "Pourakarmikas (Sanitation workers) as per Government order at the scale of Rs 9600-14550 for "Pourakarmikas (Sanitation workers) as The two years' time given is coming to an end on 27-10-2019 and BBMP need to regularise at one go all 32563 "Pourakarmikas (Sanitation workers). If BBMP ignore to regularise at one go all 32563 "Pourakarmikas (Sanitation workers) we may be forced to file PIL in apex court or State high court.

Instead of regularizing and recruiting 32652 pourakarmikas as per orders 3300 were removed and advertisement issued for recruitment of only 4000 pourakarmikas instead of 32652 pourakarmikas and discriminatory orders were issued on 01-08-2019 to place permanent pourakarmikas who are not on biometric attendance to supervise contract pourakarmikas who are on Biometric attendance. Several requests were made to Abolish Contract outsourcing of pourakarmika and regularize them as BBMP pourakarmikas employees forth with as these pourakarmikas, are working since several years as contract laborers under filthy conditions. The BBMP alone now has 32,653 pourakarmikas, direct contract with BBMP . More than 90 per cent of pourakarmikas are women, "As per sections of the Contract Regularisation and Abolition Rules, 1971, there should be one pay for one work i.e. equal pay for equal work. These rules have been flouted for so long by the government," the government should address the lack of benefits and facilities to the Contract pourakarmika. Instead of outsourcing and paying more money to garbage contractors instead Contract pourakarmika need to be absorbed in BBMP. Request was made to issue principal secretary or Additional chief Secretary and all commissioner of city corporations directions to regularize the services of daily wage sweepers scavengers or purakarmikas either working on outsource or through contractors within six months from date of order in WP Nos 201021-022/2015 (S-RES) dated 5-06-2015. It is directed by HKHC in WP Nos 201021-022/2015 (S-RES) dated 5-06-2015 to all commissioners of BBMP ,city corporations of Tumkur Shivamogga , Vijayapura Mngalore Belgaum Bellary DFvengere Huballi-Dharwad Kalburgi and Mysuru are directed to take appropriate and immediate steps to regularize the services of daily wage sweepers scavengers or purakarmikas either working on outsource or through contractors within six months from date of order. BBMP Agreed and stopped recruitment of 4000 pourakarmikas to regularize all pourakarmikas .But BBMP commissioner backstabbed by getting the said order set aside on technical ground in Karnataka High Court Bruhath Bangalore Mahanagara ... vs Smt.Ramadevi W/O Late M ... on 23 November, 2016. The high court order 201021-022/2015 dated 05-06-2015 which was set aside in Karnataka High Court Bruhath Bangalore Mahanagara ... vs Smt.Ramadevi W/O Late M ... on technical ground on 23 November, 2016 . Despite the fact that at the same time Bombay High Court Municipal Corporation Of Gr. ... vs Kachara Vahtuk Shramik Sangh on 22 December, 2016 had issued order to regularize all pourakarmikas in Mumbai Corporation .This order was confirmed in Apex court.

BBMP is not paying contract pourakarmika what it pays to its permanent pourakarmika .BBMP has appointed being principal employers it has paermanat pourakarmikas and contract pourakarmikas since 01-01-2018 since two years ..Equal pay for equal work rule is not followed. In civil appeal number 213 of 2013 the issue for consideration of the Hon'ble Supreme Court was as under: "whether temporarily engaged employees (daily-wage employees, ad- appointees, employees appointed on casual basis, contractual employees and the like), are entitled to minimum of the regular pay-scale, along-with dearness allowance (as revised from time to time) on account of their performing the same duties, which are discharged by those engaged on regular basis, against sanctioned posts". The Hon'ble Supreme Court held that: "There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post". In so far as the contract labour is concerned, the Contract Labour (Regulation & Abolition) Act, 1970 and the rules framed thereunder regulate the employment of contract labour. Rule 25(2)(v)(a) of the Contract Labour (Regulation & Abolition) Central Rules, 1971 provides for parity as mentioned below: "in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work". A well-established Central Industrial Relations Machinery (CIRM) is in place to enforce the Contract Labour (Regulation & Abolition) Act, 1970. The country-wide network of Deputy Chief Labour Commissioners (Central) and Regional Labour Commissioners (Central) under the control of Chief Labour Commissioner (Central) is mandated to settle the complaints/claims of the contract workers in terms of the provisions of the said Act and the Rules framed there under. The above information given by the Minister of State for Labour and Employment Shri Bandaru Dattatreya in Parliament on 12.4.2017.

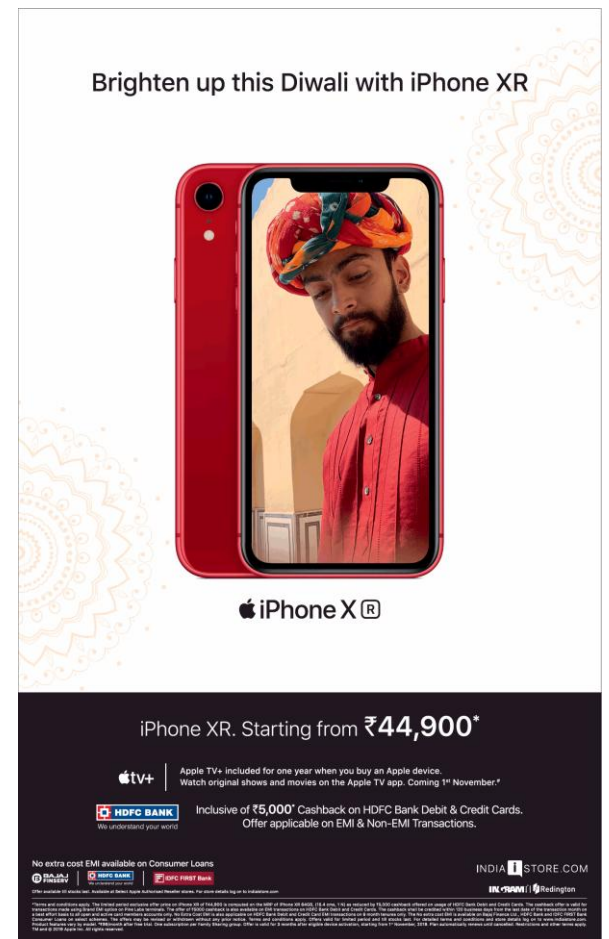
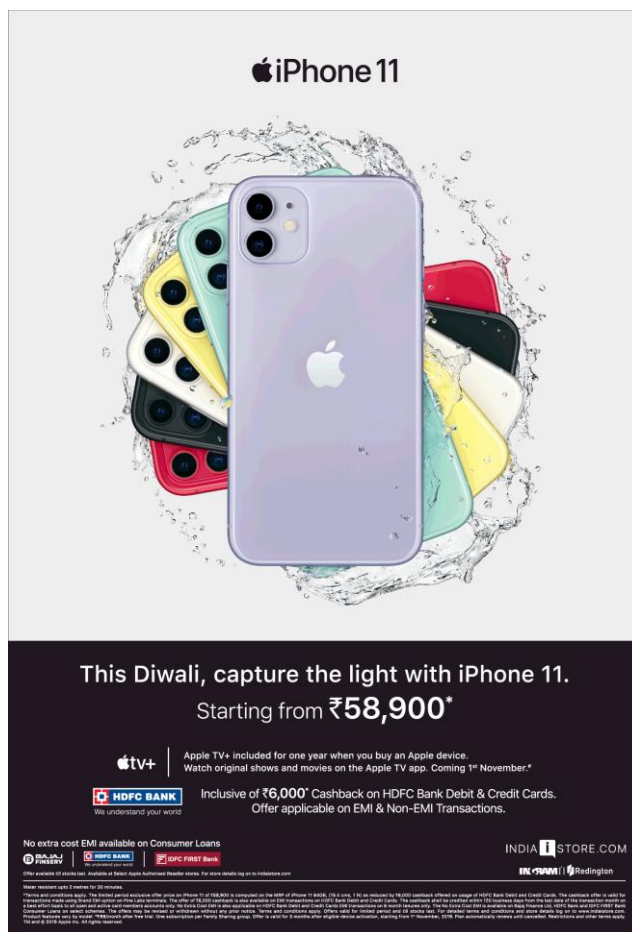
The recent Supreme Court ruling that daily wage workers who have worked for at least 240 days in a calendar year are entitled to be regularised has revived the hopes of many who work in the various departments in the State. Quoting an earlier constitution bench judgment on the issue, the bench comprising Justice A.R. Lakshmanan and Justice Loleshwar Singh Panta said that daily wagers could not claim regularisation if they had not worked for at least 240 days in a calendar year. In citations in Supreme Court of India G.M., O.N.G.C., Shilchar vs O.N.G.C. Contractual Workers ... on 16 May, 2008 it is held that "It was contended by Mr. Dave that this Court in Uma Devi's case (supra) has clearly opined that the contract or casual labour could not claim regularization and he has in particular emphasized that in the light of the admitted position that at some stage, the workmen were indeed contract employees the ratio of the aforesaid was clearly applicable to the facts of the case. We, however, observe that the aforesaid decision was considered by another Bench of this Court in Pandey's case (supra) wherein it has been held that the ratio of any decision must be understood in the background of the facts of that case and that the case is only an authority for what it



logically decides and what logically flows from it. In Pandey's case (supra) the question was as to whether casual employees working in the Electricity Board were entitled to regularization of their services. This is what the Division Bench had to say in paragraphs 16 and 17: "We are constrained to refer to the above decisions and principles contained therein because we find that often Uma Devi's case (supra) is being applied by Courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University's case (supra) and Bharat Petroleum Corporation Ltd.'s case (supra), a little difference in the precedential value of a decision. Hence, in our opinion, Uma Devi's case (supra) cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Uma Devi's case (supra) inapplicable to the facts of that case. The citizens asking the state government to state why it cannot regularize pourakarmikas who are employed on contract as has been done in Gulbarga district. It was earlier brought to the notice of the POURAKARMIKAS that though the government had a proposal to regularise the services of the pourakarmikas all over the state, it was done only in Gulbarga as it was the home district of the then chief minister.

In citations "This is what the Division Bench had to say in paragraphs 16 and 17: "We are constrained to refer to the above decisions and principles contained therein because we find that often Uma Devi's case (supra) is being applied by Courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University's case (supra) and Bharat Petroleum Corporation Ltd.'s case (supra), a little difference in the precedential value of a decision. Hence, in our opinion, Uma Devi's case (supra) cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Uma Devi's case (supra) inapplicable to the facts of that case. Few of the legal experts state that Umadevi SC order is not applicable to pourakarmikas as they have completed more than 240 days of their service and in some cases they have completed more than 10 years of service in contract labour. The Supreme Court ruling says that daily wagers who have worked for at least 240 days in a calendar year are entitled to be regularised. An earlier judgment by the Constitution Bench said that daily wage employees had no right to seek regularization. Justice A.R. Lakshmanan and Justice Loleshwar Singh Panta said that daily wagers could not claim regularization if they had not worked for at least 240 days in a calendar year. The Apex Court held that policies to create artificial parameters to deny fruits of labour to an employee engaged for the same work cannot be countenanced in a welfare state. Such an action, besides being demeaning, shocks of the very foundation of the human dignity, as one who is compelled to work on lesser wages does not do so voluntarily. The Apex Court observed that such action constitute an act of exploitation emerging from a dominant position. Reliance was also placed on Article 7 of the International Covenant on Economic, Social and Cultural Rights 1966, to which India is signatory having ratified the same on 10 April 1979. Under this convention the India has recognized the right of every one to the enjoyment of just conditions of work, healthy working conditions, leisure, reasonable limitations of working hours, periodical holidays and pay. The State government has accepted the proposal of the Karnataka State Safai Karamchari Commission to abolish the contract system and outsourcing of pourakarmikas to private agencies and decision was taken by State government to abolish the contract system and outsourcing of pourakarmikas to private agencies and regularize pourakarmikas in 24 months as per high court order in WP No 6058/2006 (L-RES/PIL) order dated 12-03-2014.

The Apex Court held that policies to create artificial parameters to deny fruits of labour to an employee engaged for the same work cannot be countenanced in a welfare state. Such an action, besides being demeaning, shocks of the very foundation of the human dignity, as one who is compelled to work on lesser wages does not do so voluntarily. The Apex Court observed that such action constitute an act of exploitation emerging from a dominant position. Reliance was also placed on Article 7 of the International Covenant on Economic, Social and Cultural Rights 1966, to which India is signatory having ratified the same on 10 April 1979. Under this convention the India has recognized the right of every one to the enjoyment of just conditions of work, healthy working conditions, leisure, reasonable limitations of working hours, periodical holidays and pay. About 32652 "Pourakarmikas (Sanitation workers)) were not made permanent who are on the biometric rolls of BBMP since 01-01-2018 about two years despite labour department gave them two years time to regularize their services within two years with special recruitment rules which was one of the condition prescribed by labour department while giving exemption from labour Act as per Government order UDD 126 BMS 2016 Bengaluru dated 07-08-2017 and Labour Department order Notification LD 92 LDWA 2017 Bengaluru dated 27-10-2017 and Commissioner BBMP Order dated 21-12-2017 to directly appoint them on BBMP rolls on contract. By the Award, the Concerned workers need to be declared to be permanent workers of the Corporation. They will have to be given benefits on par with the other permanent workers. These 32652 workers are working shoulder to shoulder with 2514 odd permanent workers engaged in keeping the City clean. While the permanent workers are accorded all the facilitates and security of tenure, the working and living conditions of the concerned workers, are pitiable. The way they have to live, the manner in which they are made to work, is below human dignity. Many have no permanent shelter, hardly any access to medical treatment, washrooms, toilets, changing rooms, which facilities the permanent workers enjoy. Many workers get injured on duty while handling the garbage, develop illnesses, and are left to fend for themselves, with almost no medical care. They have to manually remove excrement, rotting animals, ride on the trucks carrying garbage, rotting carcasses. These workers work throughout the year, barring four days. One does not have to go through years of such sub-human existence to complain of exploitation. The various ameliorative measures contemplated by the State for this class, their extreme backwardness tied up with the caste system, the lowly menial work they are forced to engage into by a public body which is bound to follow the ideals of the Constitution of India, makes the case of the concerned workers sui generis and cannot be compared to any other contract labour dispute. The Corporation is under a mandate to keep the City clean. Residents of the City have a fundamental right to a clean environment. This fundamental right and the mandatory duty, cannot be achieved by subjugating the fundamental rights of the workers to basic human dignity. The anxiety to find innovative ways to maintain a clean city can be understood, but in a welfare state, cleanliness for one class of citizens cannot be achieved by engaging in 'slavery' of the others. These 32652 workers, working round the year, provide the foundation on which the City functions. Instead of acknowledging this importance and giving them stability of permanent tenure to improve their living conditions, the Corporation, a public body, has taken advantage of its dominant position to exploit this lowest strata of the community, disregarding various welfare measures suggested by the State by not making their services permanent despite government orders to do it within two years.



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