

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/LETTERS PATENT APPEAL NO. 509 of 2024
In R/SPECIAL CIVIL APPLICATION NO. 22957 of 2022**

With

**CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/LETTERS PATENT APPEAL NO. 509 of 2024**

With

R/LETTERS PATENT APPEAL NO. 556 of 2024

In

R/SPECIAL CIVIL APPLICATION NO. 307 of 2023

With

**CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/LETTERS PATENT APPEAL NO. 556 of 2024**

In

R/SPECIAL CIVIL APPLICATION NO. 307 of 2023

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JAMJODHPUR NAGAR PALIKA

Versus

JAMNAGAR JILLA MAJDOOR SANGH

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Appearance:

**MR DHAVAL VYAS, SENIOR ADVOCATE FOR M/S.VYAS
ASSOCIATES(1559) for the Appellant(s) No. 1
for the Respondent(s) No. 1**

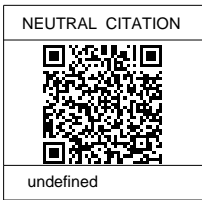
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**CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE**

Date : 19/06/2024

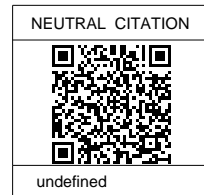
**ORAL ORDER
(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)**

1. Both these appeals, under clause 15 of the Letters Patent have been filed by the Jamjodhpur Municipality. Both these appeals arise out of a common order passed by the learned Single Judge on 19.03.2024 in the



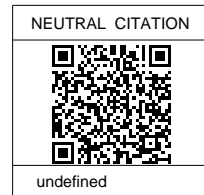
captioned writ petitions. While Special Civil Application No. 22957 of 2022 filed by the municipality challenging the award of the Industrial Tribunal dated 29.04.2022 was rejected, the petition namely Special Civil Application No. 307 of 2023 filed by the workman was partly allowed.

2. Facts in brief indicate that the respondent workman approached the Industrial Tribunal, Jamnagar. An industrial dispute was raised to the effect that since the respondent workman was working with the appellant municipality as a daily wager in the Water Works department of the municipality, he should be regularized in service. A statement of claim was filed at Ex. 7 wherein it was contended by the respondent workman that he was working with the appellant municipality since July 1999; that no muster rolls were maintained and salary slips were given whereas he was carrying out nature of duties similar to the ones carried out by Class-IV employees of the municipality. A statement was filed by the appellant municipality at Ex. 11 denying the stand



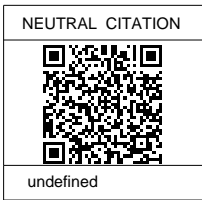
of the respondent workman with regard to the duration of his work from the year 1999 till 2018 when the industrial dispute was raised.

2.1 The Tribunal after perusing the documents on record and the attendance register produced at Ex. 34 from 2003 onwards found that it was undisputed that the respondent workman had continuously worked for a period from 2003 to 2018 for 240 days in each year of service. The workman had given his deposition in the form of an affidavit at Ex. 22 whereas the Chief Officer, Mr. Ashwinkumar Vyas was examined at Ex. 30 through an affidavit. On assessment of evidence, the Tribunal found that apart from the fact of the respondent workman having completed 240 days for over a period of 15 years of service, it was evident from the examination of the Chief Officer that the set up of the municipality had not been revisited from the year 1975-76. Therefore, the stand of the municipality that the respondent workman was not engaged through a regular mode of recruitment

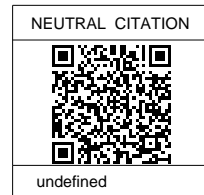


and was not on the set up was not believed. The Tribunal found that there was no evidence coming on record denying the fact that the respondent workman had continuously worked for over a period of 240 days for 15 years and carrying out duties which were perennial in nature inasmuch as working in the Water Works department of the municipality. In fact from the cross examination of the Chief Officer, the Tribunal found that the workman had worked for over a period of 15 years with the Water Works department. In absence of any denial on the question of the post not being on the set up, the Tribunal on the question of law found that it was an unfair labour practice directed that the respondent workman be regularized. However, the regularization was granted with effect from 2008-09.

2.2 This compelled both the municipality as well as respondent workman to file petitions before this court which were accordingly disposed of by the order under challenge.



3. Mr. Dhaval Vyas, learned Senior Counsel appearing with Mr. Deepak Kubchandani, learned advocate for the appellant municipality would submit that the learned Single Judge committed an error in directing regularization of the workman whose appointment was not through regular mode of recruitment. He would submit that admittedly when there was no set up with the municipality, the direction to regularize the services of the respondent workman was contrary to law. He would place reliance on a decision of the Apex Court in the case of **A. Umarani vs. Registrar, Cooperative Societies and Others [(2004) 7 SCC 112]**. Pressing into service paragraph no. 39 of the said decision, Mr. Vyas would submit that regularization is not and cannot be the mode of recruitment by any State and therefore the order of the learned Single Judge directing such regularization was bad. He would also assail the order by which the respondent workman's petition was partly allowed inasmuch as the prayer of the workman to grant



regularization with effect from 2001 was accepted.

4. Having considered the submissions made by the learned Senior Counsel and having perused the award of the Tribunal as well as the order of the learned Single Judge, it is undisputed from the evidence on record that the respondent workman was working with the appellant municipality in the Water Works department from the year 1999. Evidence had come on record through the wage register that from the year 2001-02 to 2017-18, he was working as a daily wager continuously and therefore the finding of fact arrived at by the Tribunal and so far by the learned Single Judge that the respondent had completed 240 days in each year of service cannot be faulted. Assessment of evidence especially Ex. 30 i.e. the deposition of the Chief Officer also indicated that in the cross-examination it was admitted by him that the respondent was carrying out same nature of duties as was carried out by the Class-IV employees. No evidence with regard to the establishment or the set up was produced



before the Tribunal. In fact, it has come on record that from the year 1976-77, the municipality has not made any demand for increase of set up. It therefore would not lie in the mouth of the learned Senior Counsel appearing on behalf of the municipality to submit that the appointment of the respondent who had been engaged for over a period of 25 years can be said to be irregular or illegal particularly when he was carrying out duties in the Water Works department for which no essential qualification was necessary. In light of this, the judgement of the Apex Court which has been relied upon by learned senior counsel for the appellant would be of no avail.

5. In view of the above, present appeals are dismissed without any order as to costs.

(BIREN VAISHNAV, J)

(NISHA M. THAKORE, J)

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