

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1050 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SHANTABEN DEVABHAI MAKWANA

Versus

PALANPUR NAGARPALIKA

Appearance:

1. Special Civil Application No. 1050 of 2003
MR TR MISHRA for Petitioner No. 1-2
MR HS MUNSHAW for Respondent No. 1
RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 30/01/2004

ORAL JUDGEMENT

The petitioner who has been rendering service to
the respondents since 1978 is required to knock the doors

of this Court to ventilate her grievance that despite many years of service it has not been regularized nor she has been paid salary on the basis of a regular employee. According to her, all throughout she had been diligently and sincerely performing her duties. It appears that the petitioner on earlier occasion had approached this Court with the same grievance. The said petition was disposed of by the learned Single Judge of this Court (Coram : R.K. Abichandani, J.) vide order dated 10th November, 2000, whereby, the petitioner was directed to make a representation to the concerned authority and upon receipt of such representation, the Nagar Palika i.e. the concerned authority was required to decide the same within four weeks. It was also observed by this Court that as and when such representation was made, it would be considered sympathetically by the Nagar Palika. Pursuant to the said direction, the petitioner made a representation. However, this Court is informed that till date no decision has been taken on the said representation. It is very unfortunate that the direction of this Court has not been complied with. Be that as it may, now that the petitioner has again approached this Court, her grievance is required to be reconsidered by this Court and if found fit, to redress the injustice that has been caused to her.

2. Heard Mr. T.R. Mishra learned advocate for the petitioner and Mr. H.S. Munshaw learned advocate for the respondents.

2.1. According to Mr. Mishra, since the petitioner has put in more than 24 years of service, it is incumbent upon the respondent - Nagar Palika to absorb her on regular basis in the establishment of Nagar Palika and to make available to her all the benefits including the pay-scale which had made available to a permanent employee of the same post. Mr. Mishra has placed reliance on certain decisions of the Apex Court, reference to which will be made in due course.

2.2. As against that Mr. Munshaw has submitted that the petitioner, for the same grievance alongwith other daily wagers and temporary employees has approached the Tribunal and she, therefore, cannot be granted any relief in this petition, when she has already availed of the alternative remedy. He has further submitted that the say of the petitioner is not true, that her juniors have been regularized and her claim has not been considered. The Nagar Palika has also filed affidavit-in-reply to the petition, wherein it is stated that the service record of the petitioner is not available from 1981 to 1990.

However, in the affidavit no dispute is raised with regard to the fact that petitioner had been working with the respondent - Nagar Palika atleast since 1981 to 1982.

2.3. The question that requires to be considered by this Court is whether the petitioner is entitled to receive all the benefits in respect of the salary which are made available to the regular employee and whether her claim for regularization is required to be granted.

2.4. It is clear from the affidavit filed by the respondent - Nagar Palika that a Reference bearing No. 225 of 1998 filed by the "Safai Kamdar Sangh" is pending before the Industrial Tribunal. It also appears that in the said Reference, this very issue with regard to regularization of the temporary workers is raised. Mr. Munshaw has shown to this Court a list of the temporary employees who have joined the said Reference as party, and the petitioner is one of them.

3. In that view of the matter, when on this issue the petitioner has resorted to the alternative remedy, it is not proper for this Court to entertain this petition on that ground and decide the issue frustrating the Reference which is already pending before the appropriate forum. In that event, the petitioner will have to wait till the aforesaid Reference is decided by the Tribunal.

3.1. So far as the second dispute with regard to wages and other incidental benefits is concerned, reliance can be placed on the decision rendered by the Apex Court in the case of U.P. Income Tax Department Contingent Paid Staff Welfare Association v. Union of India & Ors., reported in 1988 (56) F.L.R. 121. In the case before the Apex Court, the question with regard to regularization and the entitlement of the daily workers to equal emoluments as paid to the regular employees was under consideration. The contingent paid staff in the Income Tax department had been rendering service as Class-IV employees for large number of years. However, they were not being absorbed as members of the Class-IV service and they were being paid wages as daily rated labourers lower than the salary and allowances which were drawn by Class-IV employees. Further taking into consideration only relevant circumstances, the Apex Court opined that contingent paid staff was required to be absorbed on regular basis. It, therefore, directed that suitable scheme be framed for such purpose. However, till the scheme was framed and implemented, the Apex Court thought it fit to make all the monetary benefits available to the members of the contingent paid staff on

the line they were made available to the Class-IV employees who were working in the Income Tax department on regular basis. The Apex Court has in the following paragraph given such direction :-

"The facts and circumstances of the present case are similar to the facts and circumstances of the case relating to the daily rated labour in the Posts and Telegraph Department. We have carefully considered the pleas in the counter-affidavit. The Government orders providing for the absorption of the contingent paid staff are hedged in by a number of conditions. We also find that many such employees have been working on daily wages for nearly eight years and more. We are not satisfied with the scheme which is now in force. We are, therefore, of the view that in this case also we should issue the same directions as in the above decision for the reasons given by the Court in the above decision. We accordingly allow this Writ Petition and direct the respondents to pay wages to the workmen who are employed as the contingent paid staff of the Income Tax Department throughout India, doing the work of Class-IV employees at the rates equivalent to the minimum pay in the pay-scale of the regularly employed workers in the corresponding cadres, without any increments with effect from 1st December, 1986. Such workmen are also entitled to corresponding Dearness Allowance and Additional Dearness Allowance payable thereon. Whatever other benefits which are now being enjoyed by the said workmen shall continue to be extended to them. We further direct the respondents to prepare a scheme on a rational basis for absorbing as far as possible the contingent paid staff of the Income Tax Department who have been continuously working for more than one year as Class-IV employees in the Income Tax Department.

The petition is accordingly disposed of with no order as to costs."

4. In view of the aforesaid, in my opinion, ends of justice will meet if the following directions are given:-

- (i) without entering into the merits of the issue, with regard to regularization of the petitioner, the Industrial Tribunal

is directed to decide Reference No. 225 of 1998 pending before it as expeditiously as possible preferably before 30th April, 2004;

- (ii) the respondent - Nagar Palika is directed to pay to the petitioner equivalent to the minimum pay in the pay-scale of regularly employed workers of "Safai Kamdar" (Sweeper) working in the Nagar Palika on regular basis. Nagar Palika is also directed that the petitioner will be paid dearness allowance payable thereon. The Nagar Palika is also directed to pay all other benefits which are being enjoyed by the Sweeper on the regular basis.

With these directions, the petition is partly allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

[AKSHAY H. MEHTA, J.]

/phalguni/