

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9251 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

BHANNABEN B NAIYARAN - Petitioner(s)

Versus

GANDEVI NAGAR PANCHAYT & ORS & 1 - Respondent(s)

Appearance :

MR VB GHARANIYA for Petitioner(s) : 1,
 MR LR POOJARI, AGP for Respondent(s) : 1,
 RULE SERVED for Respondent(s) : 2,

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 05/05/2006

ORAL JUDGMENT

- The petitioner has filed this petition under Article 226 of the Constitution of India praying for the direction to the respondent Nagar Panchayat to offer the work to the petitioner first thereafter, offer the work to

the junior Safai Kamdars and also prayed for further direction to the respondent to pay the salary to the petitioner as per the regular cadre of Safai Kamdar.

2.It is the case of the petitioner that the petitioner was appointed as daily wager safai kamdar in the respondent Nagar Panchayat in the year 1988. The petitioner was offered work continuously upto 1991 and the petitioner has completed 240 days in one calender year. The respondent Nagar Panchayat has appointed fresh daily wager Safai Kamdars in the year 1991 and those Safai Kamdars were the relatives of Mukadams. The respondent Nagar Panchayat offered the work to the said juniors - fresh daily wager Safai Kamdars 26 days in a month whereas the petitioner was offered only 5 to 7 days work from the year 1991. It is also the case of the petitioner that the petitioner was

given Rs.20 per day whereas the regular cadre Safai Kamdar was getting Rs.80 per day. It is, therefore, stated that the petitioner was discriminated and hence the petitioner's services should be regularized and regular pay should be paid to the petitioner.

3. The petition is filed without any enclosure and/or any document. Only the memo of petition is filed. There is no evidence in support of the averments made by the petitioner. The petition is not affirmed by the petitioner and the prayer with regard to dispensation of the affidavit is made.

4. This Court has issued notice on 18.7.1994. It appears that firstly, notice was issued on 15.7.1994. The Court thereafter passed an order on 28.7.1995 directing the office to place this matter after service of notice on

the respondent. The Court thereafter issued rule on 14.8.1996. However, the process has not been paid by the petitioner. Office has therefore raised objection and the Court has granted time upto 4.9.1996 for payment of process fees. It is admitted that the petitioner has not paid the process fees. The petition could have been dismissed on the ground of non payment of process fees.

5. However, even on merits the relief sought for by the present petitioner cannot be granted in view of the full bench decision of this Court in the case of Amreli Municipality v/s. Gujarat Pradesh Municipal Employees Union, reported in 2004(2) GLH 692, wherein it is held (a) No regularization or permanency can be effected de hors the statutory provisions or the guidelines. (b) Long service put in by the workmen itself may not be a ground to

regularise services of ad hoc/temporary workmen against the sanctioned set-up without following statutory procedure of recruitment. At the most, Labour Court/Industrial Tribunal can issue direction for consideration of absorption subject to availability of posts on the establishment. (c) To avoid nepotism and corruption, no backdoor entry in service; (d) Financial capacity of the local body to have additional burden is a relevant consideration to be kept in mind while ordering regularization or absorption. The Constitution Bench of the Hon'ble Supreme Court has taken the view that prayer for regularization cannot be granted if the appointment is not made in accordance with rules and regulations or in accordance with law.

6. In the above view of the matter, the petition is accordingly dismissed. Rule is discharged

without any order as to costs.

kks

(K. A. PUJ, J.)