IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 380 of 2016
In SPECIAL CIVIL APPLICATION NO. 10829 of 2003
With
R/LETTERS PATENT APPEAL NO. 100 of 2017
In SPECIAL CIVIL APPLICATION NO. 11342 of 2015
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In SPECIAL CIVIL APPLICATION NO. 16864 of 2014
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In SPECIAL CIVIL APPLICATION NO. 617 of 2013
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In SPECIAL CIVIL APPLICATION NO. 11340 of 2015
With
R/LETTERS PATENT APPEAL NO. 99 of 2017
In SPECIAL CIVIL APPLICATION NO. 11341 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE M.R. SHAH Sd/-
and
HONOURABLE MR.JUSTICE B.N. KARIA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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STATE OF GUJARAT
Versus
GUJARAT MAZDOOR SABHA

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Appearance:
MR KAMAL TRIVEDI, ADVOCATE GENERAL with MS SANGITA VISHEN and MR DHAWAN JAYSWAL, ASSISTANT GOVERNMENT PLEADER(1) for the STATE OF GUJARAT and OTHERS

MR DG CHAUHAN, MR HS MUNSHAW, MR JA ADESHRA, MR KUNTAL A JOSHI, MR MP PRAJAPATI, MR MUKESH H RATHOD, MR MURALI N DEVNANI, MR NK MAJMUDAR, MR TR MISHRA, MR NISARG SHAH, MR HB SINGH, MS KRISHNA RAWAL, MR KARTIK PANDYA, MR SHIVANG SHUKLA, MS NAYANA PANCHAL, MR ANAND SHARMA, MS BHARGAVI THAKAR with MR GUNVANT THAKAR, ADVOCATES for RESPECTIVE ORIGINAL PETITIONERS.

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
HONOURABLE MR.JUSTICE B.N. KARIA

Date : 29/06/2018
COMMON CAV JUDGMENT
(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

[1.0] As common question of law and facts arise in this group of Letters Patent Appeals, all these Letters Patent Appeals are decided and disposed of together by this common judgment and order.

[2.0] The statement showing the particulars of the number of Letters Patent Appeal and the respective Special Civil Application against which the Letters Patent Appeals are preferred is as under:

Sr No.	**LPA No.**	**SCA No.**
1	380/2016	10829/2003
2	753/2017	6019/2001
3	754/2017	757/2003
4	755/2017	5985/2001
5	756/2017	7711/2001
6	757/2017	11504/2001
7	758/2017	10673/2001
8	759/2017	5603/2002
9	760/2017	7732/2001
10	761/2017	752/2003
11	762/2017	5606/2002
12	763/2017	7765/2001
13	764/2017	6017/2001
14	694/2017	14297/2015
15	1430/2016	23/2014
16	1076/2016	6045/2013
17	1081/2016	17223/2012
18	1441/2016	1897/2016
19	1442/2016	1898/2016
20	1443/2016	1899/2016
21	1444/2016	1900/2016
22	1445/2016	1901/2016
23	1446/2016	1902/2016
24	1447/2016	1903/2016
25	1448/2016	2107/2016
26	1449/2016	2108/2016
27	1450/2016	2108/2016
28	1451/2016	2110/2016
29	1452/2016	2111/2016
30	1453/2016	2112/2016
31	1454/2016	2113/2016

32	1455/2016	2114/2016
33	913/2016	6928/2016
34	1322/2017	18385/2013
35	1329/2017	6575/2016
36	1330/2017	18557/2014
37	476/2016	13670/2012
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[3.0] At the outset it is required to be noted that the main judgment is delivered / rendered in Special Civil Application No.10892/2003 dated 04.02.2016 arising out of which the Letters Patent Appeal No.380/2016 has been preferred and in rest of the matters, by and large the decision in Special Civil Application No.10892/2003 has been followed and in terms of the order passed in Special Civil Application No.10829/2003

rest of the petitions are disposed of / allowed. Therefore, Letters Patent Appeal No.380/2016 be treated and considered as a lead matter which is arising out of Special Civil Application No.10829/2003.

[4.0] The facts leading to the Letters Patent Appeal No.380/2016 arising out of Special Civil Application No.10829/2003 in nut-shell are as under:

[4.1] That the private respondents herein – original petitioners were working in the different departments of the State Government either as work charged employees in the work charged establishment past almost 30 years. The main grievance which was voiced in the main special civil application was that though they are in the work charged establishment past almost 30 years, the authorities concerned have not taken any step to put them on the temporary establishment. It was the case on behalf of the original petitioners that as a result of such inaction on the part of the State Government, and/or concerned department, they have been deprived of benefits which an employee otherwise derives working on the temporary establishment. Some of the petitioners complained that although they have been absorbed in the temporary establishment, yet the same was at a very belated stage, rather than absorbing them in the temporary establishment on completion of 5 years of service in the work charged establishment, according to the policy of the State Government, as laid down in the circular dated 16.08.1973. Therefore, the claim put forward by the petitioners was to absorb them in the temporary establishment from the work charged establishment on the basis of the policy of the State Government which was prevailing at a point of time in the form of a resolution dated 16.08.1973 issued by the Public Works Department. It appears that with respect to some of the employees, before the benefit could be given to them of the resolution of the year

1973, the State Government cancelled the same and/or revoked the same vide Government Resolution dated 20.08.2014. That therefore the petitioners more or less prayed for the following reliefs.

> "13(A). Your Lordships be pleased to issue an order, direction and/or writ in the nature of mandamus and/or any other appropriate writ, order or direction, directing the respondents to treat the petitioners on temporary establishment on completion of 5 years of service as workcharge employees and further be pleased to direct the respondents to grant them higher grade on completion of 9, 18 & 27 years of service from the date the petitioners completed 9 years of service on temporary establishment;
> (B) That Your Lordships be further pleased to direct the respondents to convert the petitioners from workcharge establishment to temporary establishment and thereafter grant further benefit of higher grade on completion of 9, 18 & 27 years of service;
> (C) That Your Lordships be pleased to quash and set aside the impugned G.R. dated 20.08.2014 marked ANN.M to this petition, being arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution of India;
> (D) Pending admission and final disposal of this petition, Your Lordships be pleased to direct the respondents to consider the case of the petitioners in the light of the judgment rendered by this Hon'ble Court in SCA No.7464/1996 and LPA No.1360/2011;
> (E) Any other and such further relief as the Hon'ble Court deems fit and proper in the interest of justice;"

[4.2] Before the learned Single Judge the original petitioners heavily relied upon the decision of the learned Single Judge of this Court in the case of **Rashmikaben Trikamlal & Ors. vs. State of Gujarat & Ors.** rendered in **Special Civil Application No.7464/1996** decided on 21.01.2011 which came to be affirmed by the Division Bench and thereafter by the Hon'ble Supreme Court in Special Leave Petition (Civil) (CC) No.17221/2012. It was the case on behalf of the original petitioners that they have been serving in the work charged establishment as work charged employees past almost 3 decades. Therefore, if the State Government though fit to avail the services of the petitioners for a period of almost 3 decades at a stretch, then it could be

said that the nature of work was permanent. It was the case on behalf of the petitioners that they should have been given the benefit of Government Resolution dated 16.08.1973 by absorbing them in the temporary establishment on completion of 5 years' service in the work charged establishment. It was also the case on behalf of the original petitioners that action on the part of the State Government in canceling / revoking the resolution of the year 1973 by way of the resolution of the year 2014 is absolutely highhanded and arbitrary and the same is unconstitutional. It was submitted that it was not permissible in law for the State Government to withdraw the resolution of the year 1973 with retrospective effect. It was also submitted on behalf of the petitioners that the notification of the year 2014 is violative of section 9A of the Industrial Disputes Act, 1947 (hereinafter referred to as "ID Act"). It was submitted that the plea of financial implication is not tenable in law and cannot be the ground to deny the legitimate right of the employees to absorb them in the temporary establishment on completion of 5 years' service in the work charged establishment.

[4.3] It was also the case on behalf of the original petitioners that all of them were recruited in accordance with law through the employment exchange and therefore, their appointments could not be termed as backdoor entry. It was the case on behalf of the petitioners that their recruitment was in accordance with rules and regulations. Making above submissions and relying upon number of decisions of the Hon'ble Supreme Court referred to in para 12 of the impugned judgment and order, it was requested to grant the reliefs as prayed in the petition.

At this stage it is required to be noted that before the learned Single Judge there were three categories of employees. First category was those employees who were serving as work charge in the work charged establishment and claiming the benefit of the resolution of 1973

and to absorb them in the temporary establishment on completion of 5 years of service in the work charged establishment. The second category of employees before the learned Single Judge was those serving in the temporary establishment and/or as temporary employees claiming the permanency / absorption in view of the Government Resolution dated 17.10.1998 and/or claiming the higher pay scale on completion of 5 years, 10 years, 15 years as the case may be on the temporary establishment and the third category of the employees was those who were serving as daily wagers for number of years and claiming the relief of their absorption in the work charged establishment and thereafter on temporary establishment claiming the benefit of higher pay scale and other benefits as per the G.R. dated 17.10.1988.

[5.0] The aforesaid petitions were vehemently opposed by the State. It was the case on behalf of the State before the learned Single Judge that none of the petitioners have any legal or vested right to claim that on completion of 5 years in the work charged establishment they should have been absorbed in the temporary establishment. It was submitted on behalf of the State that the entire claim based on the G.R. of the year 1973 is misconceived.

[5.1] It was the case on behalf of the State that the appointments of the petitioners were not in consonance with the Articles 14 and 16 of the Constitution of India. It was further the case on behalf of the respondent State that way back in the year 1978, the State Government had taken a policy decision not to appoint any person on work charged establishment, but despite such policy decision, the respective departments recruited the petitioners. It was submitted that it is well within the powers of the State Government to change its policy after due deliberations. It was submitted on behalf of the State that in wake of the

G.R. of the year 2014, the petitioners cannot claim for the absorption in the temporary establishment. It was submitted that therefore in view of the G.R. of the year 2014, the decision of the learned Single Judge in the case of Rashmikaben Trikamlal & Ors. (Supra) heavily relied upon by the petitioners shall not be helpful to the petitioners since the G.R. of 1973 no longer remains in existence. It was also the case on behalf of the State that there are highly disputed questions of fact involved in each of the petitions as regards the mode of appointment, qualification etc. and therefore, it was requested not to issue any writ of mandamus upon the State Government to absorb the petitioners in the temporary establishment. It was further submitted on behalf of the State that having regard to the financial implications, it is not feasible for the State Government to absorb the petitioners from the work charged establishment to temporary establishment. It was submitted that the G.R. of the year 2014 could not be termed in any manner as unconstitutional or illegal as it does not take away any vested or legal rights of the petitioners.

Making above submissions and relying upon the decisions of the Hon'ble Supreme Court as well as this Court referred to in para 23 of the impugned judgment and order and relying upon the affidavit in reply filed on behalf of the respondent No.1 duly affirmed through the Under Secretary, R&B Department, Gandhinagar, which has been reproduced in para 24 of the impugned judgment and order, it was requested to dismiss the petitions.

[6.0] That thereafter, after considering the submissions made by the learned Counsel appearing on behalf of the respective parties and considering section 9A of the ID Act, the learned Single Judge has observed and held and had come to the conclusion that the impugned G.R. of 2014 is not liable to be quashed only on the ground of violation

of section 9A of the ID Act. However, thereafter, the learned Single Judge did not accept the objection on behalf of the State of alternative remedy available. That thereafter after considering the object of the G.R. dated 16.08.1973 and the fact that the respective petitioners are continued as work charged employees in the work charged establishment for the years together and after considering the various other decisions of the Hon'ble Supreme Court referred to and discussed in paras 74 to 81 of the impugned common judgment and order and other decisions referred to in paras 88, 89, 92, 93, 96, 99, 100, 104, 105, 109, 110, 113 and 114, in para 120, the learned Single Judge has concluded in para 120 as under:

> "120. To sum up the principle deduced from the long chain of decided cases it can be said to be well settled:
>
> (i) In the matter of Government service normal rule is regular recruitment through prescribed agency, the recruitment of ad hoc or temporary hands is an exceptional leeway permitted due to exigencies of administration. In such a fact situation the endeavour will also be to replace such temporary employee by regular selected employees.
>
> (ii) that law does not favour ad hoc or temporary employment continuing for long spells, as it breeds unhealthy and unreasonable service environment endangering industrial peace perilously affecting dignity and quality of life of those whose security of work is under constant threat.
>
> (iii) Article 14 of the Constitution is embodiment of rule against arbitrariness and unreasonableness in the State action in all spheres of its activities. Article 21 of the Constitution which guarantees protection against deprivation of life and personal liberty includes within it the right to dignified livelihood. Article 39(d) spells out the directive principles of the State policy towards securing equal pay for equal work for both woman and man and Article 42 stipulates the Directive Principles of the State policy in securing just and humane conditions of work.
>
> (iv) equal pay for equal work and security of employment by regularising casual employees of long duration within a reasonable period have been unanimously accepted as Constitutional goal to our policy. To this end, thrust has been

that the management particularly Govt. agencies should not allow workers to remain as casual labourers or temporary employees for unreasonably long period of time.

(v) mere continuation for some period on ad hoc by itself does not give a right to permanency but where for any reason ad hoc or temporary or work charged employees are continued for fairly long spell they have a right to claim regularisation and the authorities are under obligation to consider their case for regularisation in a fair manner.

(vi) regularisation cannot be resorted to by the governmental agencies as mode of fresh recruitment to permit back door entries to frustrate the mandate of Article 16 by making a straight jacket measure of service for regularising the appointment made de hors the rules, unmindful of the circumstances under which the appointment had been made.

(vii) the first condition for laying claim for regularisation is availability of work on reasonably permanent basis. Mere continuance for some time of a casual or ad hoc employee does not give right to presume about need for continued employment or work charged but continuation of casual or ad hoc employee or work charged for a long duration of several years raises a presumption for need for regular permanent employment may be justified.

(viii) Apart from the right to reasonable treatment by the State agencies and security of job emanating from the Constitutional provisions, Industrial Disputes Act is a legislative measure giving effect to the directive principles of State Policy in the field of ensuring equal pay for equal work and ensuring security of job with just and humane conditions by providing prohibition against practising of unfair labour practice both by employers and employees and defining the term unfair labour practice to include practice of engaging workman for long spells characterising them badli, casual, temporary, ad hoc work charged with the object of denying them the status of permanency and benefits and privileges attached thereto.

(ix) A claim by workers, continuing for long spell as casual or temporary or work charged under an employer governed by the Industrial Disputes Act, to permanency is a demand which can be achieved through collective bargaining or a claim giving rise to a industrial dispute which can be enforced through adjudication under the provisions of the I.D. Act.

(x) Adjudication of claim for permanent status as an industrial

dispute which has been made subject matter of reference to the Industrial tribunal is governed by the principles emanating from the provisions of Industrial Disputes Act which by necessary implication involves determination of question whether continued casual or temporary employment is a bonafide administrative exigency simplicitor or amounts to unfair labour practice on the part of the employer, inasmuch as claim to permanency under Industrial Disputes Act directly emanates from prohibition against unfair labour practice adopted by the employer.

(xi) In situation emerging from long spell of ad hoc or temporary or casual employment of daily rated workmen, courts have consistently resorted to issue of directions for framing a scheme for regularisation of such workmen on a just and fair basis to the employer or have also issue of directions for regularising the petitioners before it as the circumstances of the case may warrant but ordinarily in the first instance an opportunity is being given to the employer himself to frame a scheme in a fair and just manner of absorbing such casual workmen on permanent basis whether in one go or in a phased manner and has considered objections thereto, if any, before according its approval to such scheme.

(xii) In considering the question of granting relief as to conferring status of permanency and emoluments and privileges attached thereto, primary consideration is existence of permanent nature of work for such casual employees to be utilised against it and the extent of absorption on regular and permanent basis depends upon the extent of regular work available against which temporary employee can be regularly employed. Regularisation or permanency is not to be resorted in case where the establishment by itself is of temporary nature; where the employment is not with the object of offering employment but for ameliorating financial condition of weaker sections of the society like employment under Jawahar Yojana or where employment has been secured or offered by committing illegalities, irregularities or fraud as in the case of Ashwani Kumar (supra) where the appointments were found to have been given to six thousand persons out of all proportion to the then existing requirement of the project for about 800 persons only, by the Director of the project Mr. Malik by committing illegalities, irregularities and fraud as per the investigation report. In which case the appointments against rules were held to be nullity and void ad initio."

That thereafter after discussing and/or considering the decisions

relied upon on behalf of the State, by impugned judgment and order, the learned Single Judge has concluded finally in para 147 as under:

> "147. My final conclusion is as under:
> (I) The writ applications are maintainable and are not liable to be rejected on the ground of availability of an alternative remedy under the Industrial Disputes Act, 1947 or any other appropriate Legislation.
> (II) The action of the State Government, in not absorbing the writ applicants in the temporary establishment from the work charged on completion of five years of continuous service and fulfillment of other conditions, is contrary to the concept of social and economic justice. The State, as a model employer, should not have guillotined the legitimate aspirations of the employees. It created a situation with hopes ending in despair.
> (III) Section 9A of the Industrial Disputes Act, 1947 has no role to play as such and the issue raised is of no significance.
> (IV) The Government Resolution of the year 2014 impugned in these writ applications being a policy matter is not disturbed, but at the same time, the writ applicants are entitled to the benefits of the earlier policy, more particularly, when such policy remained in force for forty one years and the writ applicants have been serving past almost thirty years."

At this stage it is required to be noted that as such the learned Single Judge has rejected the prayer to declare the resolution of 2014 as *per se* illegal or unconstitutional being a policy matter. However, has observed that when the Government has thought it fit to change the policy decision by revoking the earlier G.R. of 1973, let it be so, but atleast so far as the employees working as on date on the work charged establishment are concerned, they are entitled to the benefits of the earlier policy more particularly when such policy remained in force for 41 years and the petitioners have been serving past almost 30 years. That thereafter, by impugned common judgment and order the learned Single Judge has allowed all the petitions in part and has issued the final directions in para 148 as under:

> "148. In the result, all the writ applications are allowed in part.
> (I) The State Government is directed to absorb the writ applicants in the temporary establishment from the work charged and grant them the benefits as stated below:

> (a) The State Government will first fix the date on which the writ applicants became eligible for being absorbed on the temporary establishment in terms of the earlier policy which was prevailing. Whatever date is fixed in that regard, thereafter nine years period should be considered as having worked on the temporary establishment. To put it in clear terms, say for instance, if an employee was eligible to be absorbed in the work charged establishment in the year 1995, then he would have been entitled to the first higher pay scale after putting in nine years of service on the temporary establishment i.e. 1995 + 9 = 2004. The benefits shall be calculated accordingly.
> (II) So far as the Daily Wagers are concerned, the State Government is directed to absorb them on the work charged establishment from the date they were otherwise eligible to be absorbed. For example, if they would have been absorbed in the year 1995, then the benefits would accrue nine years thereafter i.e. 2004. I expect the State Government, as a model employer, to act accordingly and expeditiously.
> (III) If any of the petitioners have retired/expired, then those petitioners shall also be entitled to the benefits in above terms and they or their legal heirs, as the case may be, shall be paid the amount falling due by virtue of this order expeditiously."

[6.1] Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the learned Single Judge in Special Civil Application No.10829/2003 and other allied Special Civil Applications, the original respondent Nos.1, 2 and 3 – State of Gujarat and others have preferred the present Letters Patent Appeals under Clause 15 of the Letters Patent.

[7.0] Shri Kamal Trivedi, learned Advocate General has appeared with Ms. Sangita Vishen and Shri Dhawan Jayswal, learned Assistant Government Pleaders appearing on behalf of the appellants – State of Gujarat and others and Shri H.S. Munshaw, Shri Nisarg Shah, Shri H.B. Singh, Shri J.A. Adeshra, Shri D.G. Chauhan, Shri N.K. Majmudar, Shri T.R. Mishra, Shri U.T. Mishra, Shri Mukesh Mishra, Shri M.P. Prajapati, Shri Murali Devnani, Shri Mukesh Rathod, Shri Kuntal Joshi, Shri Krishna Rawal, Shri Kartik Pandya, Shri Shivang Shukla, Ms. Nayana

Panchal, Shri Anand Sharma, Ms. Bhargavi Thakar with Shri Gunvant Thakar, learned Advocates have appeared on behalf of the respective original petitioners.

[8.0] Shri Trivedi, learned Advocate General appearing on behalf of the appellants State and others has vehemently submitted that the learned Single Judge has materially erred in directing the State to absorb the respective petitioners – employees working on the work charged establishment, on the temporary establishment in terms of the earlier policy which was prevailing i.e. 16.08.1973 and thereafter to grant them the higher pay scale on completion of 9 years from the date on which they are absorbed on the temporary establishment. It is further submitted that the learned Single Judge has also materially erred in issuing the directions relying upon and/or considering the resolution of 1973 and has materially erred in directing the State to absorb all those employees working on work charged establishment to absorb them on the temporary establishment on completion of 5 years of service as work charged.

[8.1] It is further submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellants that as such the learned Single Judge has not properly appreciated the purpose and object of work charged establishment. It is further submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellants that as such by way of G.R. dated 16.08.1973 initially Government of Gujarat floated a policy of conversion of post of work charged establishment in respect of maintenance and repairs of any works or irrigation management which are either required preliminary or for a very long term basis. It is submitted that therefore the same was only with respect to the establishment in respect of maintenance and repairs. It is submitted that

even as per the said G.R. dated 16.08.1973 there cannot be any automatic conversion from work charged establishment to temporary establishment solely on completion of 5 years of service as work charged. It is submitted that subject to the requirement and availability of posts, of all those work charged employees were required to be considered and converted into temporary establishment. It is submitted that conversion of work charged employees into temporary establishment was not by way of promotion. It is submitted that the same was initiated to satisfy the need of people in establishment. It is submitted that there is more sanctioned posts of temporary establishment and their appointment was based on constant requirement of work. It is submitted that on merely completing 5 years in service as work charge shall not entitle the petitioners to claim benefits of conversion. It is submitted that the same cannot be claimed as a matter of right by the petitioners more particularly when their appointment was by way of back door entry.

[8.2] It is further submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellants that even otherwise on and after February 1987 there was a ban on recruitment on the work charged establishment. It is submitted that by G.R. dated 03.02.1987 a decision was taken that no person to be recruited on work charged establishment. It is submitted that despite the same some of the departments continued to employ / recruit the persons on work charged establishment and that too *de hors* the G.R. dated 03.02.1987. It is submitted that instruction issued in G.R. dated 03.02.1987 was again repeated vide instruction dated 11.07.1988. It is submitted that vide instruction dated 11.07.1988, instruction was issued and the G.R. dated 03.08.1987 was again repeated. It is submitted that thereafter in the year 1989 the circular was issued / re-issued reiterating the same proposition of G.R.

dated 03.08.1987 regarding the ban on conversion to work charged establishment. It is submitted that therefore there is no question of conversion of the employees working on work charged establishment into temporary establishment and/or converting daily wagers into the status of work charged employees thereafter.

[8.3] It is further submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellants that in any case even thereafter in view of the subsequent G.R. dated 17.10.1988, policy of converting daily wagers into the status of work charged employees announced by G.R. dated 04.07.1973 should be deemed to have been substituted more particularly when the State Government came out with the issuance of 3 G.Rs. of 17.10.1988, conferring benefits in different categories of daily wagers having been put in the service of 5 years or more, though vide circular dated 03.02.1987 new recruitment of work charged establishment from daily wagers was already prohibited. It is submitted that therefore since the conversion from daily wagers to work charged employees had already came to be prohibited vide circular dated 03.02.1987 which were repeated time and again, subsequent appointment of the daily wagers as work charged employees after 03.02.1987 and thereafter would be treated as illegal appointments. It is submitted that therefore the learned Single Judge has materially erred in directing the State to absorb all work charged employees in the temporary establishment as per the G.R. dated 16.08.1973 on completion of either 5 years as work charge and consequently the learned Single Judge has materially erred in granting them the benefit of higher pay scale on completion of 9 years from the date on which they are absorbed in the temporary establishment on completion of 5 years as work charge. It is submitted that the directions issued by the learned Single Judge would amount to an *en block* regularization, which is

impermissible in view of the decision of the Hon'ble Supreme Court in the case of Umadevi (3) (Supra).

[8.4] It is further submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellants that even otherwise, automatic conversion of daily wagers into work charged employees as also conversion from the work charged employees to temporary establishment without considering (1) existence of the sanctioned post; (2) present vacancy in the second post; (3) eligibility conditions provided under the respective recruitment rules; (4) ban, if any, on the recruitment in the employment would be illegal and contrary to as per the decision of the Hon'ble Supreme Court in the case of Umadevi (3) (Supra).

[8.5] It is further submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellants that even otherwise the work charged employees are not getting various benefits which are otherwise available to persons working in the temporary establishment and therefore, if on completion of 5 years of service, there is an automatic absorption of work charged employees as persons working in temporary establishment, then in that case, the administration would be saddled with not only enormous administrative responsibility, virtually amounting to impossibility, but also huge financial liability in terms of grant of the benefits viz. (1) grant of placement in the appropriate place in the seniority list with back date; (2) grant of deemed date of promotion; (3) revision of pay scale; (4) grant of higher pay scale if promotion is not available; (5) re-fixation of pay scale in the event of grant of promotion with back date and all the consequential benefits flowing there from. It is submitted that therefore the learned Single Judge has materially erred in issuing the final directions by which there

shall be a heavy financial burden and/or huge financial liability on the State Government.

[8.6] It is further submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellants that on one hand the learned Single Judge has specifically observed and held that the impugned G.R. of 2014 is neither violative of Section 9A of the ID Act nor same is illegal being a policy decision and still on the other hand the learned Single Judge has granted the benefits considering the G.R. of 1973 which can be said to be contradictory in terms.

[8.7] It is further submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellants that while issuing the impugned directions in respect of daily wagers, the learned Single Judge has not at all considered the subsequent G.R. dated 17.10.1988 and/or the effect of the G.R. dated 17.10.1988 by which all earlier circular / resolutions were superseded and the Government came out with a new policy decision in form of the G.R. dated 17.10.1988 by which certain benefits were conferred on such employees on completion of their 5 years, 10 years and/or 15 years as daily wagers working in the work charged establishment.

[8.8] It is further submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellants that as such vide G.R. dated 17.10.1988 issued by the R&B Department of the State Government, subsequently benefits were granted to the daily wagers of three different categories viz. (1) unskilled; (2) semi-skilled and (3) skilled. It is submitted that this was for all practical purposes, in substitution of the earlier G.R. dated 04.07.1973 with reference to absorption of daily wagers on work charges establishment. It is further submitted that

therefore thereafter in view of the issuance of the G.R. dated 17.10.1988, State Government issued circular / instruction dated 31.03.1989, *inter alia* declaring that in absence of there being any provision of appointing daily wager on work charged establishment in the said G.R. dated 17.10.1988, appointment of daily wagers as work charged employees should be totally banned. It is further submitted that thereafter a G.R. dated 05.01.1990 in the R&B Department came to be issued, *inter alia* superseding the earlier G.Rs. dated 04.07.1973, 16.11.1978 and the instructions for converting daily wagers on the work charged establishment in the wake of the policy and the rules announced by the aforesaid three G.Rs dated 17.10.1988, in case of daily wagers.

[8.9] It is further submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellants that even thereafter a G.R. dated 16.08.1994 came to be issued by the R & B Department declaring the grant of benefit of higher pay scale in lieu of promotion on completion of 9, 18 and 27 years with a clarification that the work charged employees are not eligible to get the benefit of higher pay scale in lieu of promotion. It is submitted that thereafter the G.R. dated 02.07.2007 came to be issued superseding the earlier policy for grant of benefit of higher pay scale in lieu of promotion on completion of 9, 18 and 27 years vide new policy for grant of said benefit on completion of 12 – 24 years, wherein clause 1(4) provides that the said policy will not be applicable to the work charged establishment employees. It is further submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellants that therefore the impugned directions issued by the learned Single Judge are just contrary to the aforesaid G.Rs./circulars.

[8.10] In the alternative it is submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellants that the learned

Single Judge has materially erred in issuing the general directions. It is submitted that each case was required to be considered separately as the facts differ. It is submitted that in many of the cases even some of the persons were already put in the work charged establishment and/or were put in the temporary establishment before many years and thereafter no grievance was made by them and thereafter after a long passage of time and belatedly they claimed their absorption from the work charged establishment to temporary establishment on completion of their 5 years as work charged. It is submitted that therefore the learned Single Judge could have restricted the reliefs and/or actual benefits from the date of filing of the petition and/or restricting the actual benefits for the last three years from the date of filing of the petitions.

Shri Trivedi, learned Advocate General has relied upon the decision of the Hon'ble Supreme Court in the case of **Shiv Dass vs. Union of India & Ors.** reported in **AIR 2007 SC 1330** and the decision of the Division Bench of this Court in the case of **Acharya Madhavi Bhavin Rachhadiya Jasminkumar Kantibhai & Ors. vs. State of Gujarat & Ors.** rendered in **Letters Patent Appeal No.1184/2017**.

[8.11] It is further submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellants that the learned Single Judge has materially erred in not applying the law laid down by the Hon'ble Supreme Court in the case of Umadevi (3) (Supra) which has been consistently considered and followed by the Hon'ble Supreme Court in catena of subsequent decisions.

[8.12] It is further submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellants that the learned Single Judge has materially erred in relying upon and/or considering the

decision of the learned Single Judge in the case of Rashmikaben Trikamlal and Others (Supra). It is submitted that considering the controversy in the said petition the learned Single Judge ought not to have followed the said decision while considering the reliefs sought in the petition/s.

Now, so far as the reliance placed upon the decision of the learned Single Judge of this Court in the case of Rashmikaben Trikamlal & Others (Supra) relied upon by the original petitioners and which has been considered by the learned Single Judge is concerned, it is submitted that the said decision can be said to be *per incuriam* and/or the same was not to be treated as a precedent as observed by the Division Bench in Letters Patent Appeal No.1360/2011 arising out of Special Civil Application No.7464/1996.

[8.13] Relying upon the further additional affidavits affirmed by Shri N.K. Patel, Chief Engineer and Additional Secretary, R&B Department and affirmed by Shri K.A. Patel, Special Secretary, Narmada Water Resources, Water Supply and Kalpsar Department, State of Gujarat, it is vehemently submitted by Shri Trivedi, learned Advocate General appearing on behalf of the State that if the directions contained in the common CAV judgment under challenge were to be implemented, then in that case, the financial implication on public exchequer will be in the order of Rs.222 Crores (approximately) apart from recurring financial burden so far as the R & B Department is concerned and approximately Rs.260 Crores and Rs.103 Crores (approximately) for absorption of work charged employees into temporary establishment and daily wagers into work charged establishment respectively apart from recurring financial burden so far as the Narmada Water Resources and Water Supply and Kalpsar Department is concerned. It is submitted that all the daily wagers are being paid the wages in the regular pay scale as

per the G.R. dated 17.10.1988 and as they are governed by the three G.Rs. of 17.10.1988 for unskilled; semi-skilled and skilled workers. It is submitted that work charged employees are not getting various benefits which are otherwise available to the persons working in the temporary establishment and hence, if there is an automatic absorption of work charged employees as persons working in the temporary establishment, then in that case, administration would be saddled with not only enormous administrative responsibility, virtually amounting to not only impossible but also huge financial liability in terms of the grant of various benefits which are available to the persons working in the temporary establishment. It is submitted that there are recruitment rules framed with respect to the various posts in different categories of employment in temporary establishment such as fitter, work assistant, road-roller driver etc. and therefore, any direction to absorb all those work charged employees into temporary establishment solely on completion of their 5 years as work charged shall be violative of Articles 14 and 16 of the Constitution of India and therefore, the same shall not be sustainable in view of the decision of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and Others vs. Umadevi (3) and Others** reported in **(2006) 4 SCC 1** and other subsequent decisions.

[8.14] Shri Trivedi, learned Advocate General appearing on behalf of the appellants has pointed out that the employees working on temporary establishment are as such and virtually permanent employees and they are being given all the benefits which are available to the regular permanent employees. It is submitted that those who are appointed on temporary establishment are appointed after following due procedure and as per the recruitment rules. It is submitted that therefore if the directions issued by the learned Single Judge were to be implemented, in that case the same can be said to be absolutely in

conflict with the decision of the Hon'ble Supreme Court in the case of Umadevi(3) (Supra). It is submitted that even otherwise and even as per the G.R. dated 16.08.1973, the work charged establishment is to be converted into temporary establishment and/or those working on work charged establishment were to be absorbed in the temporary establishment subject to availability of the post only. It is submitted that therefore even considering the G.R. dated 16.08.1973 such persons who are working s work charged can be said to have a right to consider their cases for absorption in temporary establishment and not beyond that.

[8.15] It is further submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellants that as such the learned Single Judge has passed the impugned CAV common judgment and issued directions solely and mainly on the ground that all those working either as daily wagers and/or as work charged for a long period. It is submitted that nothing is on record that all those persons were appointed as work charged on work charged establishment after following due procedure and as per the recruitment rules. It is submitted that therefore mere long period of service alone cannot be a ground to absorb all those work charged employees to temporary establishment which as such can be said to be granting the permanent status and/or to regularize their service as permanent employees.

[8.16] It is further submitted by Shri Trivedi, learned Advocate General appearing on behalf of the appellant that as such so far as the daily wagers are concerned, there is no much discussion by the learned Single Judge more particularly with respect to their status as daily wagers. It is submitted that as per catena of decisions of the Hon'ble Supreme Court as well as this Court, those who are working on daily wage basis have no right to be regularized and/or regularization merely

on the ground that they are working since long. It is further submitted by Shri Trivedi, learned Advocate General that even otherwise all those daily wagers are governed by the subsequent G.R. dated 17.10.1988 and they are being given all the benefits flowing from the G.R. dated 17.10.1988. It is submitted that by the G.R. dated 17.10.1988 all other earlier G.Rs. are superseded and the State Government has come out with fresh policy. It is submitted that therefore the earlier policy prior to 17.10.1988 shall not be thereafter made applicable and all shall be governed by the subsequent G.R. dated 17.10.1988 and other subsequent policy decisions and/or G.Rs./circulars. It is submitted that therefore the impugned decision so far as the daily wagers are concerned, the same cannot be sustained and the same deserves to be quashed and set aside.

Making above submissions and relying upon the following decisions of the Hon'ble Supreme Court as well as this Court it is requested to allow the present Letters Patent Appeals.

1. Decision of learned Single Judge in SCA No.1107/1993, confirmed by the decision of the Division Bench in LPA No.1134/1997

2. Decision of learned Single Judge in SCA No.4726/2004, confirmed by the decision of the Division Bench in LPA No.590/2007

3. Decision of learned Single Judge in SCA No.11393/2000, confirmed by the decision of the Division Bench in LPA No.2626/2010

4. M.I. Isani, Executive Engineer, Surendranagar District Panchayat vs. Surendranagar Jilla Panchayat Bandhakam Majoor Sangh
1989(1) GLR 380

5. K.N. Thanaki and Ors. vs. State of Gujarat and Anr.
1989(2) GLH 254

6. State of Rajasthan vs. Kunji Raman
(1997) 2 SCC 517 (on what is work charged establishment)

7. State of Gujarat and Ors. vs. PWD Employees Union & Ors.
(2013) 12 SCC 417

8. Secretary, State of Karnataka and Others vs. Umadevi (3) and Others
(2006) 4 SCC 1

9. State of Orissa and Anr. vs. Mamata Mohanty
(2011) 3 SCC 436

10. Union Of India & Anr vs Kartick Chandra Mondal & Anr
(2010) 2 SCC 422

[9.0] Shri Shri H.S. Munshaw, Shri Nisarg Shah, Shri H.B. Singh, Shri J.A. Adeshra, Shri D.G. Chauhan, Shri N.K. Majmudar, Shri T.R. Mishra, Shri U.T. Mishra, Shri Mukesh Mishra, Shri H.S. Munshaw, Shri M.P. Prajapati, Shri Murali Devnani, Shri Mukesh Rathod, Shri Kuntal Joshi, Shri Krishna Rawal, Shri Kartik Pandya, Shri Shivang Shukla, Ms. Nayana Panchal, Shri Anand Sharma, Ms. Bhargavi Thakar with Shri Gunvant Thakar, learned Advocates have appeared on behalf of the respective respondents herein in respective Letters Patent Appeals – original petitioners of respective Special Civil Applications.

[9.1] Shri D.G. Chauhan, learned Advocate appearing for Gujarat Water Resources Development Corporation appearing in Letters Patent Appeal Nos.1230/2016, 833/2016 and 618/2016 has, in addition to what learned Advocate General has submitted, relied upon the decision of the Hon'ble Supreme Court in the case of **State of Rajasthan vs. Daya Lal** reported in **(2011) 2 SCC 429** has vehemently submitted that as held by the Hon'ble Supreme Court in the aforesaid decision no mandamus can be issued of regularization. He has also relied upon the decision of the Hon'ble Supreme Court in the case of **Nand Kumar vs. State of Bihar**

reported in **(2014) 5 SCC 300**.

[9.2] Shri Murli Devnani, learned Advocate appearing on behalf of some of the original petitioners has submitted that in the facts and circumstances of the case and considering the fact that the respective original petitioners were working as work charged employees since more than 3 decades, the learned Single Judge has rightly directed the original respondents – appellants herein to absorb them in the temporary establishment on completion of 5 years / 10 years of service as per the G.R. dated 16.08.1973.

[9.3] It is further submitted by Shri Devnani, learned Advocate that in the facts and circumstances of the case the decision of the Hon'ble Supreme Court in the case of Umadevi (3) (Supra) upon which the reliance has been placed by the State shall not be applicable to the facts of the case on hand. It is submitted that as such the directions issued by this Court are in favour of the employees who are working as work charged employees and their appointments can be termed as irregular appointments but not illegal appointments and thereby making them eligible and entitled for benefit of regularization on completion of 5 years of service.

[9.4] It is submitted that even the rules for recruitment for the post of work charged only provides for calling the names from the employment exchange. It is submitted that therefore all the appointments of the work charged employees are as per the rules provided in Rule 92(1)(k), sub-rule (2).

[9.5] It is further submitted that it is required to take into account the fact that the employees appointed as daily wage workers are getting

benefit flowing from the G.R. dated 17.10.1988. Such employees are given certain benefits on completion of 5-10-15 years of service. It is submitted that as per the decision of this Court, daily rated employees are to be treated as regular employees. It is submitted that in the present case majority of the employees are appointed and working as work charged employees since many years and they have retired as work charged employees or have to retire as work charged employees. It is submitted that even though the G.R. dated 16.08.1973 was meant for grant of the benefit of temporary establishment, if work charged employees has worked continuously on work charged establishment for more than 5 years, they are not granted the benefit of absorption in the temporary establishment on completion of 5 years as work charge.

[9.6] It is further submitted by Shri Devnani, learned Advocate appearing on behalf of some of the original petitioners that the authorities have conceded the fact that their appointments are not against a particular projects as contemplated in their policy of employing such employees. It is submitted that thus continuing such a large class of employees as work charged employees for such a long period is nothing but a classic example of exploitation by State Government authorities though the State Government is required to act as a model employer.

[9.7] It is further submitted by Shri Devnani, learned Advocate appearing on behalf of some of the original petitioners that as such the State Government has conceded the fact that employees of the Irrigation Department as well as Panchayat Department are extended such benefits, but the same benefits are extended to them because of the mistake on the part of the State Government authorities and thereby the same cannot be a cause for creation of right in favour of the employees in the present litigation. It is submitted that aforesaid is nothing but an

attempt of eye-wash on the part of the State as majority of such employees have been extended benefit on the basis of various Court's orders in their favour or on the basis of the policy adopted by the Department after careful consideration of all the relevant factors including financial burden, a conscious policy decision were taken by the said Departments which cannot be termed as a wrong decision. It is submitted that had it been so, the appellants would have definitely come forward for withdrawal of such benefits and recovery of the amounts of arrears from the concerned employees.

[9.8] Now, so far as the case on behalf of the State that there shall be huge financial burden if the respective original petitioners are granted the benefit of absorption in the temporary establishment as directed by the learned Single Judge is concerned, it is submitted that the same cannot be a ground to deny the legitimate rights / benefits to such employees. It is submitted that the State cannot be permitted to take the advantage of its own wrong. It is submitted that if the appellants had granted these benefits in time to its employees as per the eligibility and entitlement, there would not be such financial burden for them to bear.

[9.9] It is further submitted by Shri Devnani, learned Advocate appearing on behalf of some of the original petitioners that as such some of the zonal offices have made fresh appointments and some of the offices are entitled to make fresh appointment for filling up certain posts in the cadre of work assistant which would be nothing but an attempt on the part of the State to deprive the legitimate right of the employees working with them for a long period.

[9.10] It is further submitted by Shri Devnani, learned Advocate appearing on behalf of some of the original petitioners that as such the

appellants have not come forward with details and availability of vacancies of different posts in temporary establishment as the same would be a vital factor which may be taken into consideration for redressal of the grievances of the present respondents – original petitioners. Relying upon the decision of the Hon'ble Supreme Court in the case of **State of Punjab & Ors. vs. Jagjit Singh and Ors.** reported in **(2017) 1 SCC 148**, it is vehemently submitted by Shri Devnani, learned Advocate appearing on behalf of some of the original petitioners that even on the principal of "Equal Pay for Equal Work", the impugned decision of the learned Single Judge does not call for any interference.

Making above submissions and relying upon the decision of the learned Single Judge in the case of **Revabhai Bhudarbhai Solanki vs. State of Gujarat** rendered in **Special Civil Application No.2743/2002 with Special Civil Application No.3930/2002**, it is requested to dismiss the present appeals.

[10.0] Shri T.R. Mishra, learned Advocate appearing on behalf of the original petitioners of Special Civil Application No.10308/2012 (respondents herein in LPA No.429/2017) has vehemently opposed the Letters Patent Appeal No.429/2017 and has submitted that in the facts and circumstances of the case the learned Single Judge has not committed any error in issuing the impugned directions directing the State to absorb all those work charged employees into temporary establishment on completion of their 5 years' service as work charged.

[10.1] It is further submitted by Shri Mishra, learned Advocate that he is concerned with about 45 petitions. It is submitted that different petitioners are mentioned working in different offices. It is submitted that issue which has arisen is whether the appointment of these persons were on a particular project; as work charged employees; or it was a

general order appointing these persons on work charged establishment without mentioning any project on which they have been appointed.

[10.2] It is further submitted by Shri Mishra, learned Advocate that there are two type of petitioners; one, who have been appointed as daily wagers initially and after 5, 10 years of service as daily wagers, they were converted as work charged establishment and second, those who have been appointed initially as work charged employees. It is submitted that all these appointments were through employment exchange and those who were initially appointed as daily wagers have been directly recruited from open market. It is submitted that all these daily wagers who have completed 10 years of service have been converted as work charged employee instead of permanent employee, based on the G.R. dated 17.10.1988. It is submitted that after completion of 10 years of service, they ought to have been directly appointed on temporary establishment so that again on completion of 9 years of service, they could have got the benefit of first higher grade.

[10.3] It is submitted that so far as LPA No.429/2017 arising out of Special Civil Application No.10308/2012 is concerned, it is submitted that after all the original petitioners were converted into work charged from daily wagers, Government has taken a decision to grant higher grade vide G.R. dated 01.06.1993 and the authority have already send darkhast to the Government for conversion of work charged employees into temporary establishment as back as on 23.07.2008.

[10.4] It is further submitted by Shri Mishra, learned Advocate that even otherwise in the above LPA, the juniors to the original petitioners were converted from work charged establishment to temporary establishment in the year 1999 itself. It is submitted that the juniors to

the original petitioners have also been granted higher pay scale on completion of 9 years of service. It is submitted that thus juniors to the original petitioners have been granted the benefit of conversion of work charged establishment to temporary establishment and further granted higher grade on completion of 9 years of service. It is submitted that however in the entire group of petitions to which he is representing, most of the original petitioners have not been granted the benefit of conversion from work charged establishment to temporary establishment. It is submitted that in few cases conversion from work charge to temporary establishment has been granted but after 10 to 15 years of service, instead of 5 years of service. It is submitted that in few cases even higher grade on completion of 9 years of service as temporary employees have been granted, but in most of the cases higher grade is not granted. It is submitted that in majority of the cases conversion from work charged to temporary establishment have not been granted.

It is submitted that in the year 1993, the Government issued G.Rs. to grant benefit of conversion to temporary establishment from work charged establishment also but subsequently the same came to be withdrawn.

[10.5] Now, so far as the submission on behalf of the State with regard to delay in filing the petition is concerned, it is submitted by Shri Mishra, learned Advocate appearing on behalf of the respondents in LPA No.429/2017 that as such the question with respect to the delay in filing the petition will not arise as the matter was already pending with the Government for grant of conversion from work charged to temporary establishment. It is submitted that apart from this the benefit has been granted practically to some and many of them are left out from the grant of such benefit of conversion. It is submitted that even the issue with regard to delay in filing the petition has never been raised before the

learned Single Judge and therefore, the same cannot be permitted to be raised at this stage.

[10.6] It is further submitted that even otherwise the Government has withdrawn the G.R. of 1973 granting the benefit of conversion of work charged establishment to temporary establishment, only in the year 2014 vide G.R. of 2014 and therefore, till the G.R. of 2014, whatever the benefit was flowing from the G.R. of 1993, the concerned work charged employees are entitled to the benefit of the G.R. of the year 1973 more particularly when the G.R. of 2014 cannot be applicable retrospectively.

Making above submissions and relying upon the decision of the Hon'ble Supreme Court in the case of **Prem Ram vs. Managing Director, Uttarakhand Pey Jal and Nirman Nigam, Dehradun and Ors.** reported in **(2015) 11 SCC 255** and other decisions of this Court more particularly the decision of the learned Single Judge in the case of Rashmikaben Trikamlal & Ors. (Supra), confirmed by the Division Bench vide order in LPA No.1360/2011 and the order passed by the Division Bench in LPA No.633/2016 and LPA No.126/2016, it is requested to dismiss the present appeal.

[11.0] Shri Mukesh Rathod, learned Advocate appearing on behalf of the respondents herein in LPA Nos.1441/2016 to 1455/2016 arising out of Special Civil Application Nos.1897/2016 to 2114/2016 has vehemently submitted that all the original petitioners were working as Rojamdar since many years, however they were granted the benefit of G.R. dated 17.10.1988 only, however were not granted the benefit of conversion of work charged establishment. It is submitted that order passed by the learned Single Judge in aforesaid Special Civil Applications dated 09.03.2016 has been implemented and the original petitioners are already granted now the benefit of work charged

establishment pursuant to the impugned judgment and order passed by the learned Single Judge.

[12.0] Shri N.K. Majmudar, learned Advocate has appeared on behalf of the original petitioners – respondents in LPA No.934/2016 arising out of Special Civil Application No.17826/2011 and has submitted that original petitioners Nos.1 to 36 were appointed as Junior Scientific Assistant and the original petitioner Nos.37 to 52 were appointed as Senior Scientific Assistant under the Gujarat Engineering Research Institute, which is established, financed, administered, managed and controlled by Narmada Water Resources, Water Supply and Kalpsar Department, State of Gujarat. It is submitted that all of them were appointed on the basis of their names came to be sent / sponsored through employment exchange and after following regular recruitment procedure. It is submitted that all of them were having the requisite eligibility qualifications. It is submitted that however they came to be appointed in the work charged establishment as sanctioned posts were not in existence. It is submitted that though the work was very much there, the establishment was not having enough sanctioned post and therefore, all of them came to be appointed for discharging duties of permanent nature.

[12.1] It is submitted by Shri Majmudar, learned Advocate that by passing the impugned judgment and order and issuing the directions the learned Single Judge has heavily relied upon and considered the G.R. dated 16.08.1973 which has been followed and interpreted by the learned Single Judge in the case of Rashmikaben Trikamlal & Ors. (Supra). It is submitted that the decision of the learned Single Judge granting the benefit of higher grade scale to the work charged employees on granting them the benefit of temporary establishment /

temporary employees on completion of 9 years as temporary employee has been confirmed by the Division Bench in LPA No.1360/2011 and the SLP against the same has been dismissed. It is submitted that therefore the learned Single Judge has rightly issued the impugned directions.

[12.2] It is further submitted by Shri Majmudar, learned Advocate that in the present case the original petitioners were conferred the status of temporary employee only in the year 2007 vide order dated 09.10.2007. It is submitted that in the present case the original petitioners are granted the status of temporary employee with effect from 01.10.2007. Therefore, the services rendered by them from 01.10.2007 only would be counted for higher pay scales and entire earlier services rendered by them prior to 2007 will be wiped out.

Relying upon the decision of the Hon'ble Supreme Court in the case of Upendra Narayan Singh and others (Supra); **Food Corporation of India vs. Parashotam Das Bansal** reported in **(2008) 5 SCC 100**, it is requested to dismiss the present appeals.

[12.3] It is further submitted by Shri Majmudar, learned Advocate that non-granting the temporary status on completion of 5 years' services in work charged establishment would deprive the original petitioners from having advancement opportunities. It is submitted that therefore the impugned directions issued by the learned Single Judge while allowing the petition and directing the appellants – original respondents – authorities to grant the higher pay scales which have become due and payable to the petitioners on 9, 18 and 27 years of service as per the G.R. of 1994 and/or on completion of 12 or 24 years of service as per the G.R. dated 02.07.2007 on completion of 12 years of service as a temporary (after granting the temporary status on completion of 5 years of service as work charged) is absolutely just and proper and the same is

not required to be interfered by this Court.

Making above submissions it is requested to dismiss the LPA No.934/2016.

[13.0] Shri Gunvant Thakkar, learned Advocate appearing on behalf of the respondents in LPA No.281/2016, 291/2016 and 292/2016 arising out of the impugned common judgment and order dated 18.09.2015 passed by the learned Single Judge in Special Civil Application Nos.1246/2007 to 1249/2007 while opposing the present appeals has requested to consider the following points.

"(1)	21.06.1982	Rukunudding Hisamuddin Kazi, respondent herein was appointed as daily wage driver and completed five years as daily wage driver on 21.06.1982. he had retired on 30.06.2008 as a daily wage driver.
(2)	1984	Natubhai Bhanubhai Gajjar, respondent herein was appointed as daily wage driver in the year 1984 and completed five years as daily wage driver in the year 1989. He had retired on 31.05.2012 as a daily wage driver. He expired on 24.11.2016.
(3)	1983	Pyarelal Ramsureman Yadav, respondent herein was appointed as daily wage driver in the year 1988. He retired in 2016 as daily wage driver.
(4)	30.04.1999	All above mentioned original petitioners had been granted benefit of work charged driver w.e.f. completion of five years service as a daily wage driver vide order dated 30.04.1999 issued by the Superintending Engineer, Ahmedabad City (R & B) Circle, Ahmedabad issued by the State Govt. and communications dated 17.02.1999 and 31.03.1999 issued by the State Govt.
(5)	25.01.2006	Superintending Engineer, Ahmedabad City (R & B) Circle, Ahmedabad had issued order against the present respondents and some other employees who were working under his control and withdrawn the benefit of work charged driver granted to them vide order dated 30.04.1999. This benefit is withdrawn after more than 6 years of service as

work charged driver.

(6) 30.01.2006 Executive Engineer, Ahmedabad Store (R&B) Division, Ahmedabad had issued order giving effect to the order dated 25.01.2006.

(7) 21.09.2006 Concerned authority issued order of recovery in favour of Ruknudding Hissamuddin Kazi-petitioner in SCA No.1246/2007 to the tune of Rs.82,507/- and learned Single Judge had granted stay against the recovery vide oral order dated 05.12.2008. Vide order dated 27.04.2007 concerned authority had issued order of recovery against Natubhai Bhanubhai Gajjar – petitioner in SCA No.1248/2007 to the tune of Rs.9,720/- from January, 2006 to March, 2007 and to deduct Rs.1,500/- per month from the salary of the petitioner. The said order of recovery was stayed by the learned Single Judge vide oral order dated 10.05.2007. Concerned authority has already recovered the amount of Rs.52,855/- from the retiral benefits of Pyarelal Ramsureman Yadav – respondent No.1 in LPA No.392/2016 at the time of retirement i.e. in the year 2016.

(8) 29.11.2006 State Govt. has rejected the prayers of the original petitioners and reverted them from the post of work charged driver to the daily wage driver.

(9) 05.01.1990 G.R. issued by the the Roads and Buildings Department by which G.R. dated 04.07.1973 is cancelled which was issued by erstwhile Public Works Department. Considering this G.R. the State Govt. has reverted the original petitioners from the post of work charged driver to the post of daily wage driver after more than 6 years as a work charged driver which is not permissible considering the fact that SLP (C) No.39438 & 39439/2013 filed by the State Govt. are dismissed by the Hon'ble Supreme Court of India on 24.02.2014.

(10) 04.07.1973 G.R. issued by Public Works Department and it is held in para-2 of the said G.R. that daily wager who has completed minimum 5 years of service are eligible to be appointed as work charged employees."

[13.1] Shri Thakkar, learned Advocate appearing on behalf of the original petitioners of Special Civil Application Nos.1246/2007 to 1249/2007 has submitted that the issue involved in the present appeals is already decided by the Hon'ble Supreme Court in the order dated 24.02.2014 in SLP(C) Nos.39438/2013 and 39439/2013 filed by the State Government. It is submitted that the learned Single Judge in the said case held that the G.R. dated 05.01.1990 issued by the R & B Department shall not be applicable with retrospective effect and if employees satisfy all the requirements of G.R. of the year 1973, they are entitled for benefit of work charged employees.

Making above submissions and relying upon above it is requested to dismiss the present LPAs.

[14.0] Ms. Krishna Rawal, learned Advocate appearing on behalf of the respondents in LA No.594/2016 has submitted that so far as the original petitioners are concerned, as such they have already been given the temporary status long back; they have also been given the benefit of the G.R. dated 17.10.1988 and have been put in the regular pay scales; they have also been extended the benefit of 4th, 5th, 6th Pay Commission; they have also been granted some of the allowances available to the government employees such as HRA, DA, CLA, medical allowances, GPF etc. but they have not been granted the benefit of higher pay scale, festival advances, food grain advance etc. viz. those benefits which are available to other similarly situated class IV employees and therefore, have preferred the Special Civil Application No.14297/2015. It is submitted that relying upon the decision of the learned Single Judge in the case of Mahendrakumar Bhagwandas (Supra) which has been confirmed by the Hon'ble Supreme Court, the learned Single Judge has rightly allowed the petition and has rightly granted the reliefs in the petition. Therefore, it is requested to dismiss the present LPA

No.594/2016.

[15.0] Shri H.B. Singh, learned Advocate appearing on behalf of some of the original petitioners has also supported the impugned common judgment and order passed by the learned Single Judge and has submitted that on completion of 5 years as work charged, all those work charged employees are required to be absorbed in the temporary status as per the G.R. of 1973. It is submitted that the concerned work charged employees who have completed 5 years of service as work charged shall be entitled to all the benefits which are conferred upon the temporary establishment from the date on which they completed 5 years as work charged. It is submitted that therefore the learned Single Judge has not committed any error in issuing the impugned directions. Therefore, it is requested to dismiss the appeals in which he is appearing.

[16.0] Shri J.A. Adeshra, learned Advocate appearing on behalf of some of the original petitioners – respondents herein in LPA No.424/2017 and other allied LPAs has also made the similar submissions which are made by other learned Advocates, made in support of the impugned common judgment and order passed by the learned Single Judge and therefore, the same are not repeated. Therefore, he has requested to dismiss the appeals preferred by the State and confirm the impugned judgment and order and the directions issued by the learned Single Judge.

[17.0] Shri M.P. Prajapati, learned Advocate has appeared on behalf of the respondents in LPA No.380/2016 and other allied appeals – original petitioners of Special Civil Application No.10829/2003 and other allied Special Civil Applications. At the outset it is required to be

noted that he is representing the employees who are / were serving as daily wagers and seeking absorption as work charged employees in the work charged establishment on completion of 5 years, as per the G.R. dated 04.07.1973. He has submitted that as the junior to petitioners were granted / extended the benefit of work charged and therefore, and even otherwise considering the G.R. dated 04.07.1973, all those daily wagers who have completed 5 years as daily wagers are required to be absorbed as work charged in the work charged establishment and thereafter on completion of 5 years as work charged, they are required to be absorbed in the temporary establishment and are required to be conferred / given the benefits which are available to the employees working in the temporary establishment.

[17.1] Now, so far as those daily wagers who are extended the benefit of work charged are concerned, it is submitted by Shri Prajapati, learned Advocate that firstly they have been extended the benefit belatedly and that they have not been extended the benefit of higher grade pay scale. It is submitted that they ought to have been granted the benefit of G.R. dated 16.08.1973 immediately on completion of 5 years as work charged and all those were entitled to the benefit which is conferred to the employee working in the temporary establishment from the date on which they have completed 5 years as work charged. It is submitted that therefore, they are entitled for the arrears of the benefit. It is submitted that therefore the learned Single Judge has not committed any error in issuing the impugned directions by specifically observing that the G.R. of 2014 shall not be made applicable retrospectively. He has also relied upon the decision of the Hon'ble Supreme Court in the case of **State of Jharkhand and Anr. vs. Harihar Yadav and Ors.** reported in **(2014) 2 SCC 114**; **State of Gujarat and Ors. vs. PWD Employees Union and Ors.** reported in **2013 (2) GLH**

692 and the decision of the Division Bench of this Court in the case of Rashmikaben Trikamlal & Others (Supra) and the decision of the Division Bench of this Court in the case of **Rajkot District Panchayat & Ors. vs. State of Gujarat & Anr.** rendered in **LPA No.429/2010 in Special Civil Application No.7591/2009** and the decision of the Division Bench of this Court in the case of **State of Gujarat & Anr. vs. Revabhai Bhudarbhai Solanki & Ors.** in **LPA No.472/2014 in Special Civil Application No.2743/2002**.

Making above submissions and relying upon the decision of the Division Bench of this Court in the case of **Karamsad Municipality Through Chief Officer vs. Sureshbhai Mohanbhai Harijan & Anr.** in **LPA No.457/2016**, it is requested to dismiss the LPAs in which he is appearing on behalf of the respondents in those LPAs.

[18.0] Heard learned Advocates appearing on behalf of respective parties at length. We have perused and considered in detail the impugned common CAV judgment passed by the learned Single Judge. We have also considered the material on record more particularly the relevant circulars / G.Rs. issued from time to time with respect to the daily wagers, work charged employees.

[18.1] Having heard learned Counsel appearing for respective parties and considering the impugned common CAV judgment and order passed by the learned Single Judge and other decisions impugned, it appears that the cases can be broadly classified in three categories. First category is with respect to those who are working as daily wagers in different departments of the State Government and claiming their absorption in the work charged establishment; the second category is with respect to those who are work charged employees on work charged establishment and they are claiming their absorption on the temporary

establishment on completion of their 5 years service as work charged as per the G.R. dated 16.08.1973 and the third category would be those who are absorbed in the temporary establishment but belatedly i.e. not on completion of 5 years as work charge. Respective petitioners have also prayed for grant of higher grade on completion of 9, 18 and 20 years of service from the date of their completion of 9 years of service on temporary establishment.

[18.2] While considering the case of the aforesaid class of the petitioners viz. daily wagers and the work charged employees working on work charged establishment, the chronology of dates and events and the relevant G.Rs. are required to be referred to and considered which are as under:

RELEVANT GOVERNMENT RESOLUTIONS AND CIRCULARS WITH REFERENCE TO CONVERSION OF **DAILY WAGERS (ROJAMDARS)** INTO **WORK CHARGED EMPLOYEES**

Sr. No.	Date	Particulars
1.	04.07.1973	A Government Resolution came to be issued by the Public Works Department of the State Government with reference to the appointment of **Daily Wagers** working on the nominal Muster Roll in various Departments of the State Government on work charged establishment subject to various circumstances / conditions amongst the following: i) Occurrence of vacancy in the existing post on the work charged establishment because of current post falling vacant on the work charged establishment; or ii) Creation of new posts on the work charged

		establishment; iii) Completion of minimum 5 years of service as Daily Wage worker; iv) Benefit of such an appointment to the post of work charged establishment shall not be available in case of Telephone Operator, Clerk and/or any other post for which SSC has been fixed as the educational qualification.
2.	16.11.1978	A Government Resolution came to be issued by the Public Works Department, *inter alia,* clarifying in the matter of 5 years of service as Daily Wager by providing that in a current year, the Daily Wager to remain in the employment at least for one year, out of which, he should have attended duty at least for 180 days and that for counting 5 years as Daily Wager, there should be average 240 days of presence in the said period of 5 years.
3.	03.02.1987	A circular came to be issued by the Roads & Buildings Department, declaring a prohibition on the new recruitment, *inter-alia,* on work charged establishment from Daily Wager.
4.	24.03.1988	A Government Resolution came to be issued, constituting a Committee under the Chairmanship of Shri Dolatbhai Parmar to examine and consider the long pending demand of Daily Wagers working in different departments of the State Government.
5.	11.07.1988	A Government Resolution came to be issued by the Roads & Buildings Department, categorically declaring that no Daily Wager should be recruited on work

		charged establishment in view of the constitution of the aforesaid Committee for considering various service related issues of Daily Wagers.
6.	17.10.1988	Three Government Resolutions, all of the same date came to be issued by the Roads & Buildings Department of the State Government, granting substantial benefits to the Daily Wagers of 3 different categories, viz. unskilled; semi-skilled and skilled.
7.	31.03.1989	In view of the issuance of Government Resolutions dated 17.10.1988, referred to above, the State Government issued a Circular / instruction, *inter-alia* declaring that in the absence of there being any provision of appointing Daily Wager on work charged establishment in the said Government Resolutions dated 17.10.1988, appointment of Daily Wagers as work charged employees should be totally banned.
8.	30.05.1989	A circular came to be issued by the Roads & Buildings Department, *inter-alia,* clarifying more particularly with reference to Daily Wage workers in whose benefit the above referred 3 Government Resolutions dated 17.10.1988 were issued.
9.	05.06.1989	A Government Resolution in the Roads & Buildings Department came to be issued, once again reiterating about the ban on the conversion of Daily Wagers to work charged employees, wherein by way of Note-I to Clause (6), it was clarified that in view of the benefits having been granted under the Government Resolution dated 17.10.1988 with reference to Daily Wagers, there is no question of converting Daily Wagers into work charged employees and, therefore,

		Daily Wagers are not to be taken on work charged establishment.
10.	05.01.1990	A Government Resolution in the Roads & Buildings Department came to be issued, *inter-alia,* substituting the earlier Resolutions dated 04.05.1973, 16.11.1973 and the instructions for converting Daily Wagers on the work charged establishment in the wake of the policy and the Rules announced by the aforesaid 3 Government Resolution dated 17.10.1988, in case of Daily Wagers.
11.	16.08.1994	A Government Resolution came to be issued by the Roads & Buildings Department, declaring the grant of benefit of higher pay-scale in lieu of promotion on completion of 9-18-27 years with a clarification that work charged employees are not eligible to get the benefit of higher pay scale in lieu of promotion (Rule 3(31)).
12.	02.07.2007	A Government Resolution came to be issued substituting earlier policy for grant of benefit of higher pay-scale in lieu of the promotion on completion of 9-18-27 years by a new policy for grant of said benefit on completion of 12-24 years, wherein clause 1(4) clearly provides that said policy will not be applicable to work charged establishment employees.

RELEVANT GOVERNMENT RESOLUTIONS WITH REFERENCE TO CONVERSION OF **WORK CHARGED EMPLOYEES** INTO THE EMPLOYEES WORKING ON **TEMPORARY ESTABLISHMENT**

Sr. No.	Date	Particulars
1.	16.08.1973	A Government Resolution came to be issued for

		converting work-charged employees working only in maintenance, repairs and irrigation management of any works, into temporary establishment, subject to certain conditions, including the rendition of service of minimum period of 5 years.
2.	03.02.1987	A Circular came to be issued, declaring prohibition on the new recruitment on work-charged establishment as well as on daily wage basis.
3.	20.08.2014	A Government Resolution came to be issued for cancelling/revoking the aforesaid Government Resolution dated 16.08.1973 from the date of the issuance thereof.

[18.3] Now, so far as those who are working as daily wagers and claiming absorption in the work charged establishment is concerned, considering the aforesaid G.Rs. with reference to the conversion of the daily wagers / rojamdars to work charged employees, it appears that earlier they were governed by G.R. dated 04.07.1973. G.R. dated 04.07.1973 came to be issued by the Public Works Department of the State Government with reference to the appointment of daily wagers working on the nominal Muster Roll in various Departments of the State Government on work charged establishment, however subject to various circumstances / conditions viz. (i) occurrence of vacancy in the existing post on the work charged establishment because of current post falling vacant on the work charged establishment; (ii) Creation of new posts on the work charged establishment; (iii) completion of minimum 5 years of service as Daily Wage worker; and (iv) benefit of such an appointment to the post of work charged establishment shall not be available in case of Telephone Operator, Clerk and/or any other post for which SSC has been fixed as the educational qualification. The aforesaid G.R. dated

04.07.1973 was further clarified vide G.R. dated 16.11.1978 clarifying that while calculating 5 years of service as Daily Wager, the Daily Wager has to remain in the employment at least for one year, out of which, he should have attended duty at least for 180 days and that for counting 5 years as Daily Wager, there should be average 240 days of presence in the said period of 5 years. From the aforesaid chronology of dates and events, it appears that thereafter there was a complete prohibition. It appears that the Government came out with a new policy decision in form of G.R. dated 17.10.1988 issued by the Roads & Building Department of the State Government, granting substantial benefits to the daily wagers of three different categories viz. unskilled; semi-skilled and skilled. On considering the G.R. dated 17.10.1988, it appears that the State Government accepted the recommendations made by the experts / committee and it has been resolved to extend certain benefits to the daily wager employees.

[18.4] G.R. dated 17.10.1988 is a resolution of the Government under which it has been resolved to extend certain benefits to the daily wage employees. Clause (2) of the said resolution provides that as per the provisions of Section 25(B) of the ID Act, daily wage labourers who have put in more than five but less than ten years of service on 01.10.1988, shall be paid monthly wage arrived at by taking into consideration the fixed monthly pay payable as per the prevailing pay-scale in the concerned cadre and the dearness allowance admissible there on as per the prevailing rates, for the number of days present. Besides, 14 casual leaves including two for restricted holidays, leave of Sundays and leave on the days of National Festivals shall be admissible in a year with pay and the benefits of Medical facilities and deduction for General Provident Fund shall also be admissible as per the rules. Clause (3) provides that the skilled daily wage labourers who have put

in more than ten years of service on 01.10.1988 shall be considered permanent and such permanent labourers shall be placed in the running scale of the prevailing pay-scale of the concerned cadre and accordingly, pay, dearness allowances, house rent allowance, local compensatory allowances shall be paid to him. It is further decided to give such persons the benefits of superannuation, pension, gratuity, General Provident Fund etc. as per the prevailing rules. Further, 14 Casual leaves including two for restricted holidays, 30 earned leaves, 20 half pay leaves shall be admissible to them over and above the weekly leave of Sundays and the leave on the days of National Festivals. The age-limit for superannuation of the permanent labourers shall be 60 years. The period of permanent service shall be treated as qualifying service. It has further been decided that as per the provision of Section 25(B) of the ID Act, the skilled labourers who have completed 15 years of service on 01.10.1988, shall be given one increment and who have completed 20 and more than 25 years of service likewise shall be given two and three increments in the prevailing pay-scale of the concerned cadre respectively and their pay shall be accordingly fixed on 01.10.1988.

Thus, on interpretation of the new policy contained in G.R. dated 17.10.1988, all the daily wagers working in different departments of the State Government shall be entitled to the benefit flowing from the G.R. dated 17.10.1988 only. At this stage it is required to be noted that vide Circular dated 31.03.1989, it was clarified that the appointment of daily wagers as work charged employee is banned in view of the G.Rs. Dated 17.10.1988 and has no provision for appointment of daily wagers on work charged establishment having been made vide aforesaid G.R. Therefore, on and after 17.10.1988 the earlier G.R. / policy shall not be applicable at all more particularly the G.R. dated 04.07.1973.

[18.5] Identical question came to be considered by the learned

Single Judge of this Court in the case of **Karshanbhai K. Rabari & Ors. vs. State of Gujarat** rendered in **Special Civil Application No.11071/1993** by which a similar relief was sought by those working as daily wagers and after considering the subsequent policy decision in the form of G.Rs. Dated 17.10.1988 and by observing that the petitioners who are appointed as daily wagers have no right whatsoever, the learned Single Judge dismissed the said petition and observed and held that all those daily wagers shall be governed by the G.R. dated 17.10.1988. The decision of the learned Single Judge in Special Civil Application No.11071/1993 has been affirmed by the Division Bench vide order in Letters Patent Appeal No.1134/1997. In another decision in the case of **Bhimjibhai Bhanjibhai Gohil vs. State of Gujarat** rendered in **Special Civil Application Nos.4726/2004 and 12247/2004**, the learned Single Judge rejected the prayer of those daily wagers who prayed for a direction to the authorities to consider their case for being granted the benefits of work charged employees and regularization. That in the said decision the learned Single Judge considered the subsequent policy decision vide G.R. dated 17.10.1988. In para 3 the learned Single Judge has observed and held as under:

> "3. When the petitioners have been given the benefitsof the circular dated 17-10-1988 and when their case for being treated as work charged employees or for regularization is not backed by any government resolution, their case cannot be accepted merely on the ground that the some other employees have received the said benefits irrespective of want of vacancies and financial constraint of the government. It is true that the petitioners are working since long, however, their case for regularization cannot be considered unless they are selected for regular vacancies in accordance with rules. I am sure if in future occasion arise to grant further benefits of work charge, the cases of the petitioners will be considered by the government in accordance with the rules and their seniority. Subject to above observations, the petitions are rejected."

The said decision of the learned Single Judge has also been

confirmed by the Division Bench vide order in Letters Patent Appeal No.590/2007 in Special Civil Application No.4726/2004. Yet in another decision in the case of **Dashrathbhai Naranbhai Tadvi & Ors. vs. State of Gujarat & Anr.** rendered in **Special Civil Application No.11393/2000**, the learned Single Judge after following the decision of the Hon'ble Supreme Court in the case of Umadevi (3) (Supra) rejected the said petition in which the daily wagers prayed for an appropriate writ, direction and order directing the State to take them on regular establishment on and from their passing the SSC examination with all incidental benefits. Before the learned Single Judge it was the case on behalf of the petitioners that they are daily wagers workmen working under the Department since last more than 15 to 20 years. However, considering the decision of the Hon'ble Supreme Court in the case of Umadevi (3) (Supra) in which it is observed by the Hon'ble Supreme Court that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of adhoc employees who by the very nature of their appointment, do not acquire any right. The decision of the learned Single Judge has been confirmed by the Division Bench vide order in Letters Patent Appeal No.2626/2010.

[18.6] In the case of M.I. Isani, Executive Engineer, Surendranagar District Panchayat (Supra), the Division Bench of this Court has specifically observed after considering the G.R. dated 04.07.1973 that at the most the said confers eligibility for being absorbed when vacancies

arise and if certain conditions are fulfilled. But it does not automatically confers permanency.

[18.7] In the case of **State of Tamil Nadu Through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and Another vs. A. Singamuthu** reported in **(2017) 4 SCC 113**, after considering various earlier decisions of the Hon'ble Supreme Court on the point, in para 8 the Hon'ble Supreme Court has observed and held as under:

> "8. Part-time or casual employment is meant to serve the exigencies of administration. It is a settled principle of law that continuance in service for long period on part-time or temporary basis confers no right to seek regularisation in service. The person who is engaged on temporary or casual basis is well aware of the nature of his employment and he consciously accepted the same at the time of seeking employment. Generally, while directing that temporary or part-time appointments be regularised or made permanent, the courts are swayed by the long period of service rendered by the employees. However, this may not be always a correct approach to adopt especially when the scheme of regularisation is missing from the rule book and regularisation casts huge financial implications on public exchequer."

[18.8] In the case of Umadevi (3) (Supra), in para 48 the Hon'ble Supreme Court has observed and held as under:

> "48. ...There is no fundamental right in those who have been employed on daily-wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules."

[18.9] In the case of **Hari Nandan Prasad vs. Employer I/R. to Management of FCI and Another** reported in **(2014) 7 SCC 190** in para 39 the Hon'ble Supreme Court has observed and held as under:

> "39. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art.14, rather than violating this constitutional provision."

[18.10] In the case of Kartick Chandra Mondal & Anr (Supra), the Hon'ble Supreme Court has observed that merely because some other similarly placed casual workers were regularized, illegality or irregularity in appointments cannot be further perpetuated by regularizing the services of others. Thus, it is held that there cannot be any negative discrimination. In para 25 it is observed and held as under:

> "25. Even assuming that the similarly placed persons were ordered to be absorbed, the same if done erroneously cannot become the foundation for perpetuating further illegality. If an appointment is made illegally or irregularly, the same cannot be the basis of further appointment. An erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare

of the public or a considerable section. This has been the consistent approach of this Court. However, we intend to refer to a latest decision of this Court on this point in the case of State of Bihar v. Upendra Narayan Singh and others [(2009) 5 SCC 65], the relevant portion of which is extracted hereinbelow :"

> "67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong order."

[A reference in this regard may also be made to the earlier decisions of this Court. See also: 1) Faridabad CT Scan Centre v. D.G. Health Services and others [(1997) 7 SCC 752] : (1997 AIR SCW 3716); 2) South Eastern Coalfields Ltd. v. State of M.P. and others [(2003) 8 SCC 648] : (2003 AIR SCW 5258) and 3) Maharaj Krishan Bhatt and another v. State of J. and K. and others [(2008) 9 SCC 24] : (2008 AIR SCW 5421)]."

[18.11] In the case of PWD Employees Union and Others (Supra), the Hon'ble Supreme Court had an occasion to consider the very G.R. dated 17.10.1988. In the said decision it is held that the G.R. dated 17.10.1988 is applicable to all the daily wage workers working in different departments of the State including Forest and Environment Department performing any nature of job. It is held that it is not limited only to the daily wage workers working in building, maintenance and repairing work. While considering the G.R. dated 17.10.1988, the Hon'ble Supreme Court has observed in paragraphs 23, 24, 28 and 29 as under:

> "23. From a bare reading of the Resolution dated 17th October, 1988, the following facts emerge:
>
> (a) Labour and other Unions made representation to the Government making demands and issues relating to daily wage workers of different departments of the Government.
>
> (b) The State Government constituted a committee under the Chairmanship, Minister of Road and Building

Department.

(c) The Committee was constituted for studying

(i) the wages of daily wage workers;and

(ii) work related services and facilities provided to the daily wage workers who are engaged in the building maintenance and repairing work in different departments of the State.

(d) The recommendations of the Committee were accepted and accordingly the State Government resolved to provide the benefits of the scheme contained in the Resolution 17th October, 1988.

24. The daily wage workers who were engaged in building maintenance and repairing work in different departments were already entitled for their work related facilities. Therefore, what we find is that the Committee has not limited the recommendation to the daily wage workers working in building maintenance and repairing work in different departments of the State. The State Government vide its Resolution dated 17th October, 1988 has not limited it to the daily wage workers working in building maintenance and repairing work. What we find is that the Resolution dated 17th October, 1988 is applicable to all the daily wage workers working in different departments of the State including Forest and Environment Department performing any nature of job including the work other than building maintenance and repairing work. The decision of the Full Bench of Gujarat High Court in Gujarat Forest Producers, Gatherers and Forest Workers Union(supra and the subsequent Resolution dated 22nd December, 1999 issued from Forest and Environment Department of the State, in our opinion are not sustainable, as the intent of Resolution dated 17th October, 1988 was not properly explained therein and, therefore, the aforesaid decision of Full Bench and Resolution dated 22nd December, 1999 cannot be made applicable to the daily wage workers of the Forest and Environment Department of the State of Gujarat.

28. Thus, the principal question that falls to be considered in these appeals is whether in the facts and circumstances it will be desirable for the Court to direct the appellants to straightaway regularize the services of all the daily wage workers working for more than five years or the daily wage workers working for more than five years are entitled for some other relief.

29. As per the scheme contained in Resolution dated 17th October, 1988 all the daily wage workers were not entitled for

regularization or permanency in the services. As per the said Resolution the daily wagers are entitled to the following benefits:

> "(i) They are entitled to daily wages as per the prevailing Daily Wages. If there is presence of more than 240 days in first year, daily wagers are eligible for paid Sunday, medical allowance and national festival holidays.
>
> (ii) Daily wagers and semi skilled workers who has service of more than five years and less than 10 years are entitled for fixed monthly salary along with dearness allowance as per prevailing standard, for his working days. Such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. Such daily wagers will also be eligible for getting medical allowance and deduction of provident fund.
>
> (iii) Daily wagers and semi skilled workers who has service of more than ten years but less than 15 years are entitled to get minimum pay scale at par with skilled worker along with dearness allowance as per prevailing standard, for his working days. Moreover, such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. He/she will be eligible for getting medical allowance and deduction of provident fund.
>
> (iv) Daily wagers and semi skilled workers who has service of more than 15 years will be considered as permanent worker and such semi skilled workers will get current pay scale of skilled worker along with dearness allowance, local city allowance and house rent allowance. They will get benefit as per the prevailing rules of gratuity, retired salary, general provident fund. Moreover, they will get two optional leave in addition to 14 misc. leave, 30 days earned leave, 20 days half pay leave, Sunday leave and national festival holidays. The daily wage workers and semi skilled who have completed more than 15 years of their service will get one increment, two increments for 20 years service and three increments for 25 years in the current pay scale of skilled workers and their salary will be fixed accordingly."

Thus, considering the aforesaid decisions of the Hon'ble Supreme Court as well as this Court and in view of the subsequent G.R. dated

17.10.1988 which shall be applicable to all the daily wagers working in different departments of the State, all the daily wagers shall be governed by the G.R. dated 17.10.1988 and any violation and/or resolution/circular prior to 17.10.1988 shall not be applicable including the G.R. dated 04.07.1973.

[18.12] Now, so far as the impugned CAV common judgment passed by the learned Single Judge and the directions issued by the learned Single Judge with respect to the daily wagers more particularly the directions issued in para 148(II) by which the appellants herein – original respondents – State Government is directed to absorb all daily wagers – petitioners on the work charged establishment from the date they were otherwise eligible to be absorbed is concerned, the same cannot be sustained for the reasons stated herein above. At the outset it is required to be noted that as such there is no much discussion by the learned Single Judge so far as the daily wagers are concerned and/or their status of the daily wagers are concerned. There is no discussion at all with respect to the position after the G.R. dated 17.10.1988. The only reason which can be culled out from the impugned judgment and order is that as they are working since many years and in view of the earlier G.R. of 1973, all those daily wagers are required to be absorbed in the work charged establishment. At this stage it is required to be noted that as such the learned Single Judge seems to have considered the G.R. dated 16.08.1973 which has been subsequently revoked in the year 2014 which as such is with respect to the conversion of work charged establishment to temporary establishment and as such the same is not with respect to absorbing the daily wagers to work charged establishment. Even otherwise merely because an employee has worked as a daily wager for 5 years or more, he shall not be automatically entitled to be absorbed in the work charged establishment. The order to

absorb daily wagers to work establishment merely on completion of 5 years automatically shall be contrary to various law laid down by the Hon'ble Supreme Court in catena of decisions referred to hereinabove.

[18.13] Even otherwise it is required to be noted that grant of such direction to absorb all those daily wagers into work charged establishment merely on completion of 5 years as daily wager would have a cascading effect and chain of sequences. After they are absorbed in the work charged establishment they may claim the absorption in the temporary establishment and may claim all other benefits which may be available to the regular permanent employees and they may claim such benefit despite the fact that there are no sanctioned vacant posts. Even otherwise it is required to be noted that even as per the G.R. dated 04.07.1973 (though the same shall not be applicable after the G.R. dated 17.10.1988), absorption of daily wagers to work charged establishment was subject to various circumstances / conditions referred to hereinabove. There was no automatic conversion / absorption of daily wagers to work charged establishment even as per the G.R. dated 04.07.1973 (which shall not be applicable after the G.R. dated 17.10.1988).

[18.14] In view of the above, the impugned common CAV judgment and order passed by the learned Single Judge in terms of para 148(II) by which State Government is directed to absorb the daily wagers on the work charged establishment from the date from which they were otherwise eligible to be absorbed cannot be sustained and the same deserves to be quashed and set aside. Even the example that if the daily wagers would have been absorbed in the year 1995, then the benefits would accrue 9 years thereafter i.e. 2004 is concerned, with greatest respect, it is not possible to cull out which benefits would be available to

such daily wagers who are absorbed on work charged establishment 9 years thereafter. Even as a work charged establishment they shall not be entitled to the higher pay scale / higher grade on completion of 9 years. There is no clarity whatsoever so far as the same is concerned. In any view of the matter the directions contained in para 148(II) referred to hereinabove in case of daily wagers – original petitioners cannot be sustained and the same deserves to be quashed and set aside by further observing that all those daily wagers shall be entitled to the benefits flowing from the G.R. dated 17.10.1988 and any clarificatory circulars only and shall not be entitled to any benefits under any resolution / circular which was in force prior to 17.10.1988. All these appeals are required to be allowed to the aforesaid extent.

[19.0] Now, so far as the impugned common judgment and order passed by the learned Single Judge and the directions issued by the learned Single Judge directing the State Government to absorb all those writ applicants – work charged employees working on work charged establishment in the temporary establishment is concerned, it is required to be noted that as such so far as the work charged employees working on work charged establishment are concerned, the relevant G.R. would be the G.R. dated 16.08.1973, which has been revoked / canceled subsequently vide G.R. dated 20.08.2014. Even the learned Single Judge while passing the impugned judgment and order and issuing the impugned directions has considered the G.R. dated 16.08.1973 only.

[19.1] While considering the impugned common CAV judgment and directions issued with respect to work charged employees and absorbing them into the temporary establishment, what is work charged establishment and temporary establishment is required to be considered. The definition of “work charged establishment” and “temporary

establishment" has been provided under the Gujarat Public Works Department Manual. The definitions of "temporary establishment" and "work charged establishment" are as under:

> "(a) **Temporary Establishment**:
> (i) In order to meet the demand for extra supervision which may arise from time to time as well as to ensure that the Public Works establishments shall be capable of contraction as well as of expansion at the expenditure on works diminishes or increases the permanent establishments may be supplemented by temporary establishments to such extent as may be necessary and varying in strength from time to time according to the nature of the work to be done. Temporary establishment will include all such non-permanent establishment no matter under what titles employed as is entertained for the general purposes of a Division or Subdivision or for the purpose of the general supervision as distinct from the actual execution of a work or works.
>
> (ii) If member of temporary establishment are engaged for a special work, their engagement lasts only for the period during which the work last. All the temporary appointments should always be made "until further order" and the persons so appointed should clearly be given to understand that they are liable to be discharged at any time without any reasons being given. The conditions should be clearly explained to the persons and a written declaration obtained from them that the term have been clearly understood by them.
>
> Note : 1: Pretty establishments and establishments whose pay is charged to works are exempted from submitting temporary service declaration.
>
> Note-2: Junior Engineer, Supervisors and Overseers recruited after the 16th December, 1958 should be required to give an advance notice of minimum 3 notice of their intention to resign the post and Government should, on its part give them similar advance notice of minimum 3 months if their services are to be terminated. The condition regarding giving advance notice of minimum three month, which will be binding on both the sides, should be specified in appointment orders.
>
> (iii) Power of Chief and Superintendent Engineer and the Executive Engineers to sanction temporary establishment are given at Sr. No.2(1) in Appendix XXVII.

(iv) The leave, travelling and other allowances of temporary establishment are regulated by the relevant rules in the Bombay Civil Services Rules. They have ordinarily no claims to pensions.

(v) Superintendent Engineers are authorized to grant conveyance allowance to member of temporary revenue establishment at the rates and on the condition mentioned in the case of the members of the work charged establishment and in subclauses (iv) of clause (c) of Paragraph 92.

(vi) Transfers of temporary person ordered by local officer should be restricted within the divisions as far as possible.

(b) **Work-charged Establishment**:
89. Work-charged posts are just any posts whose pay is directly debited to the work, and work-charged staff are those employed in such posts without having any position in the regular establishment. Works establishment will include such establishment as is employed upon the actual execution, as distinct from the general supervision of a specific work or of sub-works of a specific project or upon the subordinate supervision of a specific work or of sub-works of a specific project, of the departmental labor, stores and machinery in connection with such a work or sub-works. When employees borne on the permanent or temporary establishment are employed on work of this nature their pay, etc. should, for the time being be charged direct to the work; the pay etc, of their substitutes on the regular establishment being charged to the minor head 'Establishment'. At Establishment can be incurred is 2 per cent of Expenditure to be incurred on works.

Note-1: The establishment provided for surveying drawing, tracing etc. in estimates for preparation of projects should be regarded as engaged on the execution of the work and should therefore be treated work-charged.

Note-2: Competent authority may waive the rule, which prescribes that work establishments must be employed upon a specific work, and determine in such cases the proportions in which the cost of such establishment shall be allocated between the works concerned vide serial No.5 in Appendix XXVII.

Exception – In the case of work-charged establishment employed on various maintenance and repairs works and occasionally on original minor works, the names of works on which such establishment is employed need not be specially mentioned while according sanction to such posts, the cost

being allocated by the Executive Engineers between the works concerned in proportion to the time spent on those works.

The Executive Engineers except those of Electrical Divisions should maintain a proper record of the data for distributing the cost of such establishment charged to various works for scrutiny at the time of local audit inspections.

Note-3: The work-charged establishment should be discontinued when works on which they are employed are temporarily stopped or suspended and reemployed as soon as works are resumed.

Note-4: Employees borne on the permanent establishment should be employed on the actual execution of work, only in the case of important major works.

Note-5: Transfers of work-charged persons ordered by local officers should be restricted within the Divisions as far as possible.

Note-6: If employees on permanent and temporary establishment transferred to work-charged establishment are followed the house rent allowance and compensatory local allowance on the condition that they continue drawing pay and allowance as admissible to them while on regular establishment, the substitutes appointed against these posts on regular establishment should not be granted house rent allowance and compensatory local allowance as these persons would have been appointed on the work-charged establishment but for the deputation of the employees on regular establishment to work charged establishment.

90. The cost of works establishment must be shown as a separate subhead of the estimate.

Note-1: In the case of estimates for modernization of road surfaces, the provision for work-charged establishment should be made at 2 per cent of the estimated cost.

Note-2: When provision for works establishment is made in an estimate on a percentage basis it should be invariably be calculated on the estimated cost of work inclusive of contingencies so that the provision may be adequate even when the amount for contingencies has to be utilized.

91. In all cases previous sanction of competent authority to the employment of work-charged establishment is necessary which

> should specify in respect of each appointment (1) the consolidated rate of pay, (2) the period of sanction and (3) the full name (as given in the estimate) of the work and the nature of duties on which the person engaged would be employed, powers of Chief and Superintendent Engineer and Executive Engineer to sanction work-charged establishment are detailed at Senior No.2(2) in Appendix XXVII of P.W.D. Manual Volume II.
>
> 91A. The Superintending Engineers of Circles, the Director of Ports, the Director of Engineering Research Institute, the Electrical Engineer to Government and the Executive Eng inners of Divisions are authorized to employ subordinates (Junior Engineer, Supervisors and Overseers) and Khalasis under them on work-charged establishment where necessary for detailed supervision of works provided their cost is met from the provisions for the work-charged establishment in the estimates of works and subject to the limits laid down at senior No.2 in Appendix XXVII of P.W.D. Manual Volume II."

[19.2] Even the learned Single Judge in para 30 of the impugned common CAV judgment and order has observed as under:

> "30. The setting up and continuation of work charged establishment is dependent upon the Government undertaking, project or a scheme of a work and the availability of the fund for executing it. The employees engaged in the work charged establishment, their nature of work and duties performed by them, their recruitment and condition of services are different than those employed in the regular establishment. The regular establishment and the work charged establishment, both are two separate types of establishment and the employees employed on those establishments, thus form two separate and distinct classes."

[19.3] In the case of Kunji Raman (Supra), the Hon'ble Supreme Court had an occasion to consider the difference between the work charged establishment and the regular establishment. After considering the decision of the Hon'ble Supreme Court in the case of **Jaswant Singh and Others vs. Union of India and Others** reported in **(1979) 4 SCC 440**, in paras 6 and 8, the Hon'ble Supreme Court has observed and held as under:

> "6. A work-charged establishment as pointed out by this

> Court in Jaswant Singh v. Union of India broadly means an establishment of which the expenses, including the wages and allowances of the staff, fare chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the works. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. Thus a work-charged establishment is materially and qualitatively different from a regular establishment.
>
> 8. A work-charged establishment thus differs from a regular establishment which is permanent in nature. Setting up and continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a 'work' and availability of fund for executing it. So far as employees engaged on work-charged establishments are concerned, not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment and a work-charged establishment are two separate types of establishments and the persons employed on those establishments thus form two separate and distinct classes.....”

[19.4] The Division Bench of this Court in the case of K.N. Thanaki and Ors. (Supra) has specifically observed and held that on completion of certain number of years, the work charged employees become eligible for absorption as temporary servants, but that does not mean that they become entitled to be appointed and retained as temporary employees immediately after have become eligible to be absorbed as temporary employees. It is held that their actual absorption has to take place in accordance with their seniority and availability of posts.

In the case before the Division Bench the grievance of the petitioners who were work charged employees was that even though they had completed 5 years of service as work charged employees, they are not treated as temporary government servants and not given all the benefits on that basis.

[19.5] Even considering the G.R. dated 16.08.1973 on which the reliance has been placed by the work charged employees and which has been relied upon and considered by the learned Single Judge while issuing the impugned directions, it appears that the decision was taken by the State Government that various posts of work charged establishment in respect of only maintenance and repairs of any works or irrigation management which are either required permanently or a very long term basis be converted into temporary posts and work charged posts to that extent should be abolished. Assuming that the said resolutions shall be applicable to all the Departments and not in respect of any only maintenance and repairs of any works, in that case also, as observed by the Division Bench of this Court in the case of K.N. Thanaki and Ors. (Supra), there shall not be any automatic absorption of work charged employees into temporary establishment on mere completion of their 5 years of service as work charged. Same shall be subject to availability of posts in the temporary establishment and subject to their seniority etc. As observed by the Division Bench of this Court in the aforesaid decision in the case of K.N. Thanaki and Ors. (Supra), all those work charged employees in the work charged establishment who have worked for more than 5 years shall be eligible to consider their case for absorption into temporary establishment, but there shall not be any automatic absorption in the temporary establishment. Therefore, assuming that the subsequent G.R. of 2014 by which the earlier G.R. dated 16.08.1973 is revoked / cancelled shall not be applicable retrospectively and may be applicable prospectively, in that case also, the direction which could have been issued by the learned Single Judge would have been to direct the State Government to consider the case of all those work charged employees who have worked for more than 5 years on work charged establishment as per the G.R. dated 16.08.1973, which was applicable prior to the G.R. of 2014. Therefore, the impugned

direction of the learned Single Judge so far as the work charged employees are concerned that all the work charged employees who have worked for more than 5 years shall be converted into temporary establishment on completion of their 5 years of service as work charge cannot be sustained and the same deserves to be quashed and set aside.

[19.6] Now, so far as the submission on behalf of the State that in view of the subsequent circular dated 03.02.1987 and in view of the prohibition on the new recruitment on work charged establishment the appointments of work charged employees can be said to be illegal is concerned, at the outset it is required to be noted that merely because all those persons are continued as work charged even after the ban / bar, their appointment cannot be said to be *per se* illegal. It is the State Government who continued them as work charged despite the resolution / circular declaring the prohibition on new recruitment on work charged establishment. The State cannot be permitted to take the benefit of its own wrong. All those seem to have been continued as work charged looking to the need of the work and the requirement. Therefore, the submission on behalf of the State that in view of the circular dated 03.02.1987 declaring the prohibition on new recruitment on work charged establishment, the continuation of the concerned work charged employees is illegal, cannot be accepted.

[19.7] Now, so far as the submission on behalf of the petitioners – work charged employees that in between so many other work charged employees including some of the petitioners are absorbed in the temporary establishment is concerned, it is true that some of the departments have granted the benefit of absorption and the G.R. dated 16.08.1973 and made some of the work charged employees working on work charged establishment into the temporary establishment on

completion of their 5 years' service as work charged. However, as observed by the Hon'ble Supreme Court in the case of Kartick Chandra Mondal (Supra), the guarantee of equality before law enshrined in Article 14 of the Constitution is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. It is further observed and held that even assuming that similarly placed persons were ordered to be absorbed, the same if done erroneously cannot become the foundation for perpetuating further illegality. In the said decision the Hon'ble Supreme Court has taken into consideration the observations made in para 67 of the earlier decision in the case of **State of Bihar v. Upendra Narayan Singh and others** reported in **(2009) 5 SCC 65**. Therefore, merely because earlier some similarly placed persons / work charged employees including some of the petitioners are granted the benefit of absorption in the temporary establishment on completion of 5 years' service as work charged, the petitioners cannot claim the same claiming violation of Article 14 of the Constitution of India. As observed herein above and even as per the decision of the Division Bench of this Court in the case of K.N. Thanaki and Ors. (Supra), there is no automatic absorption in temporary establishment after 5 years of service as work charged. The cases are required to be considered for absorption in a temporary establishment after completion of 5 years as work charged subject to availability of posts in the temporary establishment and as per the seniority etc.

[19.8] From the impugned common judgment and order passed by the learned Single Judge it appears that before the learned Single Judge and even before this Court the learned Counsel appearing on behalf of the original petitioners heavily relied upon the decision of the learned Single Judge of this Court in the case of Rashmikaben Trikamlal and Ors. (Supra) by which the learned Single Judge directed the State to

grant the benefit of higher pay scale under the scheme of 9-18-27 years of service to those employees working on work charged establishment, on the date on which they completed 5 years of service is concerned, at the outset it is required to be noted that in the said decision all those work charged were converted to temporary establishment and the learned Single Judge directed to grant the benefit of higher pay scale. It is true that in the said decision the learned Single Judge observed that on completion of 5 years of service they are deemed to have been converted from work charged establishment to temporary establishment and therefore, they shall be entitled to the benefit of higher pay scale under the scheme of 9-18-27 years on completion of 9 years of service from the date on which they deemed to have been converted from work charged establishment to temporary establishment. However, it is required to be noted that the said decision was challenged before the Division Bench by way of Letters Patent Appeal No.1360/2011 and the Division Bench dismissed the said appeal and confirmed the order passed by the learned Single Judge, however the Division Bench specifically made it clear that order of dismissal of appeal may not be treated as a precedent. Therefore, once the Division Bench specifically observed and made it clear that the dismissal of appeal confirming the order passed by the learned Single Judge in Special Civil Application No.7464/1996 may not be treated as a precedent, normally the same cannot be relied upon as the same is to be treated and/or confined to those petitioners also and the same cannot be treated as a precedent.

While considering the aforesaid decision the learned Single Judge has not at all considered the observations made by the Division Bench in Letters Patent Appeal No.1360/2011 that the said order may not be treated as a precedent. The learned Single Judge seems to have proceeded on the premise that the decision of the learned Single Judge in Special Civil Application No.7464/1996 has been confirmed by the

Division Bench without any further observation (in the present case the observation that the same may not be treated as a precedent).

[19.9] It is true that in many of the cases the concerned petitioners are continued as work charged employees in the work charged establishment since many years and therefore, there shall be a presumption that the nature of work is permanent. However, the same is required to be considered while applying the G.R. dated 16.08.1973 and while considering their cases for absorption in the temporary establishment. From the impugned judgment and order passed by the learned Single Judge, there is no factual data available before the learned Single Judge with respect to the number of persons working in the work charged establishment; on which posts they are working as work charged; in which department they are working; since how many years they are working; how many posts in the temporary establishment were available. The learned Single Judge has passed the impugned judgment and order mainly on the ground that all those petitioners – work charged employees working in the work charged establishment are working since many years and that they shall be entitled to benefit of absorption as per the G.R. of the year 1973 and that subsequent G.R. of 2014 canceling / withdrawing the earlier G.R. of 1973 shall not be made available retrospectively. The learned Single Judge is right in observing that the subsequent G.R. of 2014 withdrawing / revoking the earlier G.R. of 1973 cannot be made applicable retrospectively but at the same time the finding recorded by the learned Single Judge that on completion of 5 years of service as work charged in the work charged establishment automatically they shall be entitled to be absorbed in the temporary establishment cannot be sustained. Number of circumstances/conditions are required to be considered while converting the work charged establishment into the temporary establishment even

as per the G.R. dated 16.08.1973 which was applicable prior to the G.R. of 2014 and therefore, the State Government / concerned Departments of the State Government in which the respective petitioners are serving as work charged employees in the work charged establishment are to be directed to consider the case of all those petitioners – work charged employees who are not absorbed in the temporary establishment to absorb them in the temporary establishment as per the G.R. dated 16.08.1973.

[20.0] Therefore, in light of the above finding and the observations, under normal circumstances, the matters are required to be remanded / sent back to the Government to undertake the exercise viz. when the posts in temporary establishment had fallen vacant; how many posts had fallen vacant; whether there was a requirement and/or work or not? However, considering the fact that in most of the cases the work charged employees have worked for more than three decades, considering the object and purpose of the G.R. dated 16.08.1973 and for the reasons stated hereinbelow, we do not propose to send back the matters to the State Government after number of years.

[20.1] It is required to be noted that the concerned work charged employees have worked and are working since last three decades. Therefore, it can safely be presumed and it cannot be disputed that there was / is work and their services were required and they have continuously worked for approximately three decades. Even as per the G.R. dated 16.08.1973 which shall be applicable pre-G.R. Of 2014, various posts of work charged establishment in respect of maintenance and repairs of any works or irrigation management which are either required permanently or very long term basis be converted to permanent posts and work charge posts to that extent should be abolished. The G.R.

dated 16.08.1973 reads as under:

"Conversion of work-charged posts
Maintenance repairs and
Irrigation management under P.W.D.
into temporary establishment.

Government of Gujarat,
Public Works Department,
Resolution EC-WCE- 1272(2)-G,
Dated the 16th August, 1973.

Read:- Govt. Resolution P.W.D. No.WCE-1270-G-90/(8)/G. dated 29-12-1971.

RESOLUTION:-

Under Govt. Resolution, Public Works Deptt. No.WCE-1270-G-99(8)-G dated 29th December, 1971 referred to above, it was decided that conversion of work charged posts into temporary posts should not be considered in view of the improvement in service conditions of the persons working on work charged establishment. The question of conversion of work charged posts has been re-considered by Govt. After reconsideration Govt. has accepted in principle that the various posts on work charged establishment in either required permanently or a very long term basis be converted into temporary posts and work charged posts to that extent should be abolished.

2. The Heads of department under P.W.D. are therefore requested to please ensure that work charged posts in respect of maintenance and repairs of any works or irrigation management which are proposed for conversion to temporary establishment should have been continuously in existence for a minimum period of five years and are required either permanently or on very long term basis say 10 to 15 years.

3. Separate proposals should be submitted for each division in the enclosed performa giving justification for conversion of each individual post and indicating the existing norms or standard for such posts or the norms which could be fixed. The number of temporary / permanent posts already existing may also be mentioned in the Performa and taken into account while submitting the proposals.

4. All previous proposals pending at govt. level should be treated as disposed off and fresh proposals should be submitted in accordance with the instructions contained in this resolution.

> 5. This issues with the concurrence of Finance Department vide its not, dated 10-7-73 on this Department's file of even number."

[20.2] Therefore, on fair reading of the G.R. dated 16.08.1973 the object and purpose of the G.R. dated 16.08.1973 seems to be to convert various posts of work charged establishment which are either required permanently or very long term basis be converted into temporary posts provided that such work charged posts should have been continuously in existence for a minimum period of 5 years and are required either permanently or on very long term basis say 10 to 15 years. In the present case all the work charged employees have worked for very long term basis i.e. for three decades. Therefore, as such the concerned work charged employees are required to be absorbed in temporary establishment and on conversion and/or absorption into temporary establishment, they shall be entitled to all the benefits which may be available to the employees working in the temporary establishment. At this stage it is required to be noted that as such many departments have already granted such benefits to some of the employees and some work charged employees are converted into temporary establishment as per the G.R. dated 16.08.1973. Therefore, it is held that all those respective petitioners – work charged employees were / are required to be converted to temporary establishment, but as observed herein above, not automatically on completion of their 5 years of service as work charged employees. Consequently, they shall be entitled to all the benefits which may be available to the employees working on temporary establishment.

[20.3] However, next question which is posed for consideration of this Court is from which date such benefit should be granted to the concerned respective petitioners. At this stage it is required to be noted that as such some of the original petitioners – employees are already

granted the benefit of G.R. dated 16.08.1973 before many years and they are converted to temporary establishment long back. However, they are claiming that they ought to have been converted to temporary establishment immediately on completion of 5 years of service as work charged. Some of the work charged employees who are converted to temporary establishment are already granted the benefit flowing from their conversion to temporary establishment. However, according to some of the petitioners they are granted the benefit belatedly and they shall be entitled to the benefits immediately on completion of 5 years of service as work charged as according to them they ought to have been converted to temporary establishment immediately on completion their 5 years of service as work charged. In case of some of the petitioners though they are converted from work charged to temporary establishment, they are not granted the benefit/s on their conversion to temporary establishment more particularly the benefit of higher pay scale on completion of either 9, 18 and 27 years of service on such temporary establishment. It is the case on behalf of the State that as all of them have approached this Court belatedly, on the ground of delay and laches the learned Single Judge ought not to have entertained the petitions. However, the same cannot be accepted. At the most, as observed by the Hon'ble Supreme Court in the case of Shiv Dass (Supra),the reliefs and/or actual monetary benefits can be restricted to three years preceding filing of the petitions. If such a course is adopted, in that case, the concerned petitioners shall get the benefit of the G.R. dated 16.08.1973 and the benefits which may be available to the temporary establishment employees and they are non-suited on the ground of delay and laches and at the same time the State also may not have to bear the heavy financial burden as it is reported that the financial burden upon the State would be approximately Rs.400 Crores to Rs.500 Crores. Therefore, the relief sought is required to be moulded

to strike balance and therefore, we are of the opinion that if the actual monetary benefits are restricted to 3 years preceding the filing of the petition/s, it shall meet the ends of justice.

[21.0] In view of the above and for the reasons stated above, all these Letters Patent Appeals are partly allowed to the extent quashing and setting aside the impugned directions in case of daily wagers and the direction that on completion of their 5 years' service they shall be absorbed in the workcharged establishment and they shall be paid all consequential benefits, is hereby quashed and set aside. However, all those daily wagers shall be entitled to the benefits flowing from the G.R. dated 17.10.1988 and if not paid, they shall be paid such benefits accordingly.

[21.1] So far as the impugned direction/s in respect of workcharged employees namely all those workcharged employees to be absorbed / converted to temporary establishment on their completion of 5 years' service and they shall be paid the consequential benefits accordingly is hereby quashed and set aside and is modified to the extent and it is held that all those petitioners – workcharged employees who have worked for more than 20 years as workcharged employees shall be entitled to conversion to temporary establishment as per the G.R. dated 16.08.1973 from the date on which they complete 20 years of service as workcharged and they shall be entitled to all the benefits which may be available to the employees working in the temporary establishment, including the benefit of higher pay scale / grade if at all the same is being paid to the employees working in the temporary establishment, however they shall be paid the arrears on such conversion to temporary establishment for the period preceding 3 years of filing of the respective petitions. The arrears shall be calculated and paid within a period of 4

months from today, failing which it shall carry interest at the rate of 9% per annum. It is also directed that in case any of the work charged employee has retired, he shall be paid the retirement benefits as if he was converted to temporary establishment provided such employee has worked for not less than 20 years as workcharged employee and retirement benefits be calculated and paid accordingly, however they shall be paid the arrears for 3 years only. Such exercise also shall be completed within period of four months from today. Present appeals are partly allowed to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
(M.R. SHAH, J.)

Sd/-
(B.N. KARIA, J.)

*Ajay**