

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 2546 of 2017**

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RAJESHKUMAR DALABHAI PARMAR

Versus

STATE OF GUJARAT

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Appearance:

MR SHALIN MEHTA, SENIOR ADVOCATE WITH MS VIDHI J BHATT(6155) for the
PETITIONER(s) No. 1MS MANISHA LAVKUMAR, LEARNED GOVERNMENT PLEADER WITH MR KM
ANTANI, ASST.GOVERNMENT PLEADER for RESPONDENT(s) No. 1

NOTICE SERVED(4) for the RESPONDENT(s) No. 3

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CORAM: **HONOURABLE MR.JUSTICE N.V.ANJARIA****Date : 28/09/2018****ORAL ORDER**

Heard learned Senior Advocate Mr.Shalin Mehta assisted by learned advocate Ms.Vidhi Bhatt for the petitioner and learned Government Pleader and Senior Advocate Ms.Manish Lavkumar with learned Assistant Government Pleader Mr.K.M.Antani.

2. By filing the present petition what the petitioner has prayed is to restrain the respondent authorities and terminating the contractual service of the petitioner till the Scheme known as Mahatma Gandhi Rural Employment Guarantee Scheme (MGNREGA). The petitioner has relied on decision of this Court in **Prajapati Hitesh Mohanlal vs. State of Gujarat**, being **Special Civil Application No.13621 of 2014** and

allied petitions which came to be decided on 01.07.2016 by common judgment, seeking to apply and implement the said decision, more particularly paragraph 52.1 thereof.

3. The relevant facts are that the petitioner came to be appointed under the aforementioned MGNREGA Scheme on the post of Account Assistant on 12.02.2016 on contract basis and on a fixed monthly pay of Rs.10,000/- for 11 months which was renewable. The uncontroverted case of the petitioner was that though the contractual term was due to expire on 28.02.2017, the petitioner was continued in service. It was stated that the petitioner has been in service.

3.1 The MGNREGA Scheme was made operative in accordance with the provisions of the National Rural Employment Guarantee Act, 2005. The MGNREGA scheme ~~inter~~ *alia* contemplates to guarantee minimum employment for 100 days to the rural labourers, for which necessary establishment has been created and sanctioned by the Government of Gujarat through its Panchayat Housing and Rural Department. The scheme is socio-economic measure guaranteeing employment to the rural youth.

3.2 For implementation of the Scheme, resolution dated 12.12.2008 is passed by the Panchayat Department prescribing minimum qualification for different cadres at State, District, Taluka and village level establishments. The petitioners satisfy these requirements. Another resolution dated 23.12.2013 relating to the MGNREGA Scheme provides that the State would continue the work under the said Scheme and for new districts and talukas in the State, additional new posts would also be filled up. The resolution also says that all contractual appointments made on the establishment of the MGNREGA Scheme would be terminated at a particular point of time. It appears that another Government Resolution dated 14.08.2014 was made whereby the recruitment programme for all the post was announced.

3.3 The case of the petitioner is that he has been discharging duties of permanent nature. Though the work orders issued to them are for 11 months on contractual basis, he came to be renewed from time to time.

4. The petitioner relied on the decision of this Court in **Prajapati Hitesh Mohanlal and others vs.**

State of Gujarat and others, being **Special Civil Application No.13621 of 2014** and allied matters, which came to be decided on 01.07.2016. The petitioner relied on decision of this Court in **Prajapati Hitesh Mohanlal (supra)**. It was also undisputedly submitted that the **Prajapati Hitesh Mohanlal (supra)** was relied in other similarly situated cases also and the relief was granted including in **Khatija Atulkumar Kikabhai vs. State of Gujarat**, being **Special Civil Application No.1340 of 2017** decided on 04.07.2018.

4.1 Learned Assistant Government Pleader was *ad idem* with the submission of learned advocate for the petitioner that **Prajapati Hitesh Mohanlal (supra)** as well as **Khatija Atulkumar Kikabhai (supra)** were the cases of similarly situated employees in which identical facts were involved and the prayers were also similarly made. It was undisputedly stated that the decision in **Prajapati Hitesh Mohanlal (supra)** as well as **Khatija Atulkumar Kikabhai (supra)** would apply to squarely govern the relief to be granted in the present case. It is a matter of record that

Prajapati Hitesh Mohanlal (supra) was carried in Letters Patent Appeal No.983 of 2017 which appeal came to be dismissed by Letters Patent Bench by judgment dated 24.04.2018.

5. **Prajapati Hitesh Mohanlal (supra)** was allowed by learned Single Judge by issuing the following directions, which are the operative paragraphs 52 to 52.7 extracted hereunder,

"52. For the foregoing reasons, the present group of petitions are partly allowed.

52.1. The prayer of the petitioners to regularize their contractual services and make them permanent on the establishment is rejected. Limited immunity that is made available to the petitioners is by allowing them to continue on their contractual employment and not to be replaced by other set of contractual employees on ad-hocism. The petitioners shall be continued in the existing cadre as long as the said Scheme continues, but purely on contractual basis and such employment shall be co-terminus with the scheme, subject to evaluation of their performance, service and disciplinary rules as may be made applicable to them. The respondent-State shall insist on periodical upgradation of knowledge, improvisation of technical skill and overall preparedness on the subject, so also on computerization.

52.2. The challenge to the Government Resolutions dated December 23, 2013 and August 28, 2014 and the consequential process of recruitment undertaken in the year 2014 pursuant to the public advertisement dated August 28, 2014, succeeds qua the petitioners only. Those

petitioner who have qualified in the last examination of the year 2014 shall be continued on contractual employment without insistence on their fresh appointment by the respondent-State.

The respondent-authorities shall renew the petitioners' contract of service on the same terms and conditions as continued so far

52.3. Those petitioners who have cleared the examination and not qualified in the process of recruitment of the year 2014, shall not be discontinued, if already on contractual service pursuant to their selection through legally permissible mode in the years 2009 and 2011.

52.4. Those of the petitioners who have approached this Court after their termination on account of non-extension of their contractual employment, but otherwise given appointment after selection under the Rules/ on following public advertisement, shall be restored to continue on their original posts. This shall be considered as their contractual employment without any break.

52.5. It is being clarified that those appointments which have been made freshly pursuant to the aforementioned resolutions and process of selection under challenge in the year 2014, in no manner, shall be affected by this judgment.

52.6. It is being clarified that in absence of any policy of the State to grant permanency in any of the cadres at the District, Taluka or Gram Panchayat levels, the issue of the length of service of the petitioners deserves no adjudication. However, if any such policy in future is made by the State, the petitioners shall be at liberty to raise the contention of continuation and shall be entitled to raise the issue of the length of service from the date of their initial appointment. This Court has not concluded the said issue in the present group of petitions and has left the same for the petitioners to contend at an appropriate time in

the future, if the occasion so arises.

52.7. As a parting note, it is being observed that this Court would fail in its duty if it does not act as a catalyst in the words of the Apex Court and draws the attention of the State Government that it may need to take a policy decision in respect of creating permanent establishment where contractual appointments have continued for more than a decade and its continuation is still felt by gearing up at all levels. Since it entails large financial implication, a marathon exercise is begging the attention of the State."

5.1 In the Letters Patent decision, the Division Bench upheld the aforesaid directions to hold and observe as under,

"7. Since the prayer to regularise the contractual service of the writ petitioners and to make them permanent on the establishment is rejected by learned Single Judge, limited benefit made available to them was also direction to the authority to continue the contractual employment and that they are not to be replaced by other set of contractual employees on ad-hoc basis. Further while passing such order learned Single Judge has taken care of existing educational qualifications and work experience of each of the employees and readiness on their part to undergo any kind of training so as to improvisation of technical skill and overall preparedness on the subject, so also on computerisation.

8. The directions of above in nature issued by learned Single Judge in exercise of powers under Article 226 of the Constitution of India are in consonance with law laid down by the Apex Court, to which, reference is made in the decisions and it is trite that nature of employment namely contractual on which employee is serving is not to be replaced by another set of employees with

same terms and conditions.

9. Considering the object of the Act, 2005 namely to provide employment in rural area by the Central Government and substantial cost to be incurred for and administrative side namely payment of wages and salary is to be borne by the Central Government under Rule 22 and State Government is fastened with the liability with the cost of unemployed allowances payable under the scheme and only 1/4th of the material cost of the scheme including payment of wages to skilled and semi-skilled workers subject to provisions of Schedule II, we find no substance in the challenge to the order impugned passed by learned Single Judge in this appeal filed by the State of Gujarat and in absence of merit it is dismissed."

5.2 In the aforesaid view, the relief in the present petition is required to be granted in the same terms as is granted in **Prajapati Hitesh Mohanlal (supra)**, as approved by the Division Bench.

6. Accordingly, in the present petition, following directions are issued,

(i) The petitioner shall be allowed to continue in his contractual employment and the petitioner shall not be replaced by other set of contractual employee on ad hoc basis.

(ii) The petitioner shall be continued in the existing cadre as long as the aforementioned MGNREGA

Scheme continues. However, his services shall remain purely on contractual basis and such employment shall be co-terminus with the scheme, subject to evaluation of performance, services and disciplinary rules as may be applicable.

(iii) The respondent State shall insist on periodical upgradation of knowledge, improvisation of technical skill and overall preparedness on the subject, so also on computerization.

6.1 The other directions given in paragraphs 52.2 to 52.7 in **Prajapati Hitesh Mohanlal (supra)** would also apply to operate in the case of the present similarly situated petitioner.

7. The petition stands allowed to the aforesaid extent, in the aforesaid terms and stands disposed of accordingly.

(N.V.ANJARIA, J)

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