

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 18834 of 2015**

With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2017
In R/SPECIAL CIVIL APPLICATION NO. 18834 of 2015

FOR APPROVAL AND SIGNATURE:**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

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

SWETABEN WD/O MANOJKUMAR JOSHI**Versus****MODASA MUNICIPALITY & ORS.****Appearance:**

MR JV JAPEE(358) for the Petitioner(s) No. 1

MR JAY TRIVEDI, AGP for the Respondent(s) No. 4

MR MUKESH H RATHOD(2432) for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2,3

**CORAM:HONOURABLE MR. JUSTICE HEMANT M.
PRACHCHHAK**

Date : 26/03/2024

ORAL JUDGMENT

1. The present petition filed by the petitioner challenging

the order dated 07.02.2023 passed by the Commissioner, Municipality Administration whereby, rejected the proposal made by the respondent no.1 - Nagarpalika for the purpose of regularization of services of the petitioner at the vacant post and to pay all consequential benefits as the petitioner was retired from the service.

2. By way of present petition, the petitioner has prayed for the following prayers.

"13(a) be pleased to issue the writ of mandamus or any other appropriate writ, order or direction of this Hon'ble Court and be pleased to direct the respondents to regularize the service of the petitioner as a Clerk since 2001 with all consequential benefits in accordance with the 2(P) settlement arrived at with the petitioner vide case No.IDR 168/1999 before the Conciliation Officer, Himatnagar.

(a)(a) be pleased to issue the writ of mandamus or any other appropriate writ, order or direction of this Hon'ble Court and be pleased to direct the respondents to consider the case of the petitioner for regularization in the post of clerk since 2001 with all consequential benefits in view of the fact that the petitioner has discharged continuous service of 19 years in a sanctioned

vacant post.

(b) be pleased to issue the writ of mandamus or any other appropriate writ, order or direction of this Hon'ble Court and be pleased to direct the respondents to revise the pay scale of the petitioner as per 5th and 6th pay commission and also the dearness allowance admissible to the Petitioner as per the Government Resolutions issued by the State Government from time to time and also be further pleased to direct the respondents to pay all the consequential benefits to the petitioner.

(bb) Your Lordships may issue writ of mandamus or any appropriate writ order or direction and be pleased to quash and set aside the impugned order passed by the Commissioner Municipality Administration, State of Gujarat, dated 07.02.2023 rejecting the proposal for regularization of services of the petitioner.

(bbb) Your Lordships may be pleased to stay the implementation, execution and operation of the impugned order passed by the Commissioner Municipality Administration, Gujarat State, Gandhinagar, dated 07.02.2023, pending admission hearing and final disposal of the petition.

(c) YOUR LORDSHIPS be pleased to direct the respondents to consider the case of the petitioner for regularization as per the 2(P) settlement arrived at with the petitioner vide case No.IDR 168/1999 before the

Conciliation Officer, Himatnagar with all consequential benefits pending admission, hearing and final disposal of this petition.

(d) YOUR LORDSHIPS be pleased to direct the respondents to appropriately revise the pay scale of the petitioner as per the pay revisions granted by the State Government from time to time and be further pleased to direct the respondents to pay all the consequential benefits to the petitioner pending admission, hearing and final disposal of this petition.

(e) YOUR LORDSHIPS be pleased to grant such other and further reliefs as may be deemed fit in the interest of justice."

3. The facts of the present case are as under:-

3.1 That the petitioner was appointed as a Recovery Clerk on 18.10.1996 in the leave vacancy of one Girishkumar Punjalal Shah in the pay scale of Rs.950-1500/- . The services of the petitioner was terminated with effect from 17.03.1997 by order dated 15.03.1997. The petitioner had thereupon raised an Industrial Dispute. During the conciliation proceedings, there was amicable settlement between the petitioner and the Nagarpalika. As per the said settlement, the

petitioner had foregone the arrears of salary. The petitioner was again given adhoc appointment in the leave vacancy of the said Girishkumar Punjalal Shah. It was also agreed that if the post of the said Girishkumar Punjalal Shah falls vacant, the service of the petitioner will be regularized against the said post and the said post shall not be filled up by fresh appointment. The said 2(P) settlement was signed by the President, Modasa Nagarpalika, petitioner and Member of the Nagarpalika. The said settlement was arrived at on 12.11.1999 in case No.IDR 168 of 1999.

3.2 That the said Girishkumar Punjalal Shah in whose leave vacancy the petitioner was appointed as aforesaid had given an application dated 15.01.2001 for voluntary retirement with effect from 31.10.1998. Accordingly, the said Girishkumar Punjalal Shah was ordered to be voluntarily retired from the service. That in view of the retirement of said Girishkumar Punjalal Shah, his post had fallen vacant. The petitioner was appointed against the leave vacancy of the said Girishkumar Punjalal Shah and as per the aforesaid 2 (P) settlement, if the post of the said Girishkumar Punjalal Shah falls vacant, the

service of the petitioner was agreed to be regularized. Since the said Girishkumar Punjalal Shah had retired, his post had fallen vacant and therefore as per the 2(P) settlement, the petitioner was required to be regularized in the said post in which the petitioner was serving on leave vacancy as per the aforesaid settlement. However, the respondent - Nagarpalika has failed to regularize the service of the petitioner. The Modasa Nagarpalika had also adopted the recommendations of 5th and 6th Pay Commissions and the Director of Municipalities had passed the order dated 19.11.1999 granted the benefits of 5th Pay Commission and thereafter by order dated 30.01.2012 granting the benefits of 6th Pay Commission to the employees of Modasa Nagarpalika. The petitioner had made representation dated 04.07.2014 requesting the Nagarpalika to grant the benefits of 5th and 6th Pay commission. That similarly situated employees performing identical nature of duties are getting much higher scale than the petitioner in view of the pay revisions as per the 5th and 6th pay commissions.

3.4 The petitioner has been deprived of the revision of pay

scale from time to time as per the 5th and 6th Pay Commission and also, the revision in the dearness allowance. As a result, the similarly situated employees, who are in regular establishment are getting much higher pay scale and other benefits than the petitioner. The petitioner has been stagnated to the pay scale as per the 4th Pay Commissioner for the last 19 years. Therefore, the petitioner is before this Court by way of present petition.

3.5 Subsequently, the petitioner has moved a draft amendment and the same was allowed by this Court, thereby, adding the prayer being prayers 13(aa), 13(bb) & 13(bbb).

4. Heard learned advocates appearing for the respective parties.

5. Mr. Japee, learned advocate for the petitioner submits that the petitioner was initially appointed as Recovery Clerk on leave vacancy in the year 1996 in place of one Mr. G.B. Shah, who went on leave. Learned advocate further submits that on returning of Mr. G.B. Shah, the services of the

petitioner came to be terminated by the respondent - Nagarpalika. The said action of the respondent was challenged by the petitioner by way of preferring the Industrial Dispute before the competent Conciliation Officer. Learned advocate further submits that by virtue of the settlement arrived at by and between the respondent - Nagarpalika and the petitioner under 2(P) on certain terms and conditions, the petitioner was reinstated in service by the respondent - Nagarpalika. Thereafter, the Nagarpalika has moved a proposal before the competent authority for sanction of the appointment of the petitioner. Learned advocate further submits that the said proposal was rejected by the respondent on 06.02.2015 mainly on the ground that the appointment of the petitioner was a backdoor entry and was not a regular appointment by following the due process of appointment and therefore, they have rejected the proposal of the Nagarpalika, but 1996 till her reinstatement, the petitioner has worked upto 2021 till the date of reaching superannuation and since she has denied to give the benefit of 5th and 6th pay commission and regular salary, and therefore, the petitioner has preferred the present petition for implementation of the

order passed by the conciliation officer and settlement took place by and between the petitioner and respondent - Nagarpalika under 2(P). Learned advocate further submits that by interim order, this Court directed the respondent to reconsider the proposal of the Nagarpalika as the petitioner was working on the vacant sanctioned set-up post. That proposal was decided by the respondent, which is under challenge by the petitioner, which is against the settled principle of law. It is further case of the petitioner that there was a vacant post and the petitioner was having sufficient qualification and working as a clerk since long. In support of her say, the learned advocate referred to and relied upon the decision of this Court in the case of ***Bhaiyalbhai Ranchhodhbhai Prajapati & Others Vs. State of Gujarat & Others*** reported in ***2016 SCC OnLine Guj 6109***, more particularly, paragraph-5, 6, 17 and 18.

5. It is very sad to note that at a point of time, a particular Chief Officer of the Nagarpalika forwarded the proposal to the Director, Municipalities for regularization of the services of the petitioners herein, whereas a successor in office is of the view that the proposal which was forwarded by his predecessor in office was not in

accordance with the rules and regulations. The respondents are unmindful of the fact that here are the petitioners who have worked for 35 years at a stretch with the Nagarpalika. If any information is lacking, then the same could have been called for, but it seems that the proposal has been outright rejected. The Chief Officer of the Umreth Nagarpalika shall prepare a fresh proposal in accordance with the rules and regulations and this time prescribing the qualifications of each of the petitioners in the proposal and then forward the same to the Collector, Anand and the Collector, Anand, in turn, shall forward the same with his recommendations to the Director of Municipalities, State of Gujarat. 6. *I may only say one thing that the petitioners were appointed almost 35 years back on the establishment. The insistence for a particular procedure which ought to have been adopted at the time of their appointment appears to be a little unreasonable. Having regard to the fact that they have put in almost more than three decades of service and are on the verge of retirement, their case deserves to be considered sympathetically.*

17. *There are plethora of judgments of the Supreme Court taking the view that continuance of employment on temporary, casual and adhoc basis is an act of arbitrariness, violative of Articles 14, 16 and 21 of the Constitution of India read in line with the Directive Principles of the State policy enshrined in Articles 39, 41 and 42 of the Constitution of India.*

18. In the result, this writ-application is allowed. The Director of Municipalities, State of Gujarat, and the State Government, shall pass necessary orders regularizing the services of the three petitioners within a period of one month and the consequential benefits be accordingly extended to the petitioners who have retired from service. Direct service is permitted.

6. Learned advocate further relied upon the judgment of the Hon'ble Apex Court in the case of ***Secretary, State of Karnataka vs. Uma Devi*** reported in **(2006) 4 SCC 1**, more particularly, in para-53 reads thus:-

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not

under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

7. Learned advocate for the petitioner also referred to and relied upon judgment of this Court in the case of ***Lalji Shamji Kuhada V. Porbandar Nagarpalika*** reported in Special Civil Application No.8954 of 1992; decided on 19.01.2004, more particularly, head-note (b) held on the ground of alternative remedy that once the petition is admitted by this Court while exercising the jurisdiction under Article 226 and 227 of the Constitution of India, cannot be dismissed on account of alternative remedy. In the instant case, the petition is already admitted since long back. This Court in the case of ***Lalji Shamji Kuhada V. Porbandar Nagarpalika*** held in Paragraph-9, 10 and 11 as under:-

9. Thus, in view of the observations made by the Division Bench of this Court in the matter of Kalol Municipality (supra), the tribunal is not bound by any service rules; on the contrary, the tribunal is having power to change the contract, impose new service conditions and can also vary the conditions of service. In view of that, the contention in that regard raised by the learned advocate Mr. Chauhan is rejected while keeping in view the fact that the award made by the tribunal directing the Nagarpalika to regularize the services of the workmen has been accepted by the Nagarpalika.

10. I have considered these aspects as well as the submissions made by the learned advocates for the parties. I have also perused the award made by the tribunal. According to my opinion, the case of the petitioner is similar to the workmen covered by the said award dated 21st May, 1993 which is relating regularization of the services on the basis of the Government Resolution dated 17.10.1988. It is not the case of the other side that the petitioner is not similarly situated workman. The tribunal has granted the benefit of regularization on the basis of the Government Resolution dated 17.10.1988 in favour of the daily rated employees and, therefore, according to my opinion, the respondent Nagarpalika being the State authority is bound to consider the case of the petitioner for regularization on the basis of the award made by the tribunal without having or raising any technical stand or contention.

11. In view of these facts, as regards the contention of Mr. Chauhan about the availability of an alternative remedy, according to my opinion, no useful purpose would be served by now after a period of about eleven years by asking the petitioner to raise the industrial dispute for redressal of his grievance. I am, therefore, considering that most of the facts are not disputed by the Nagarpalika namely date of joining of the petitioner, the post on which the petitioner was working and the salary received by him from the date of his joining till this date. Therefore, in the peculiar facts and circumstances of the present case, the contention about availability of an alternative remedy now, after a period of eleven years cannot be accepted by this Court. Once, the petition is admitted by the Court, then, ordinarily, the court cannot consider the availability of an alternative remedy and cannot dispose of the petition on such ground. Once when the matter has been admitted, then, question of having alternative remedy is out of question. Whether the petition can be entertained or not if the alternative equally efficacious remedy is available is the discretion of the Court. While exercising the powers under Article 226 and/or 227 of the Constitution of India, High Court can entertain a writ petition even if the alternative remedy is available if the facts and circumstances of the case are so peculiar. Therefore, it is a rule of convenience being followed by this Court so that this court may not be required to exercise extra ordinary jurisdiction under Article 226/227 of the Constitution of India in each and every matter and it is not a rule of compulsion that if the alternative remedy is

available, then, the petition cannot be entertained by this Court. Further, merely because the alternative remedy is available, it cannot be said that it is not maintainable. It is for the court to entertain it or not considering the availability of an alternative remedy in light of the facts of each case. This aspect has, in detail, been considered by the Division Bench of this Court in the matter of KS Joy versus IIM & Ors. reported in 1994 (1) GLR page 57. Therefore, in view of the peculiar facts and circumstances of the present case and also in view of the principles laid down by the Division Bench of this Court in the matter of KS Joy (supra), this contention raised by the learned advocate Mr. Chauhan is rejected.

8. In the case on hand, the petitioner urged before this Court that her case may kindly be considered as she is already retired from the service after putting up her more than 28 years of service as an adhoc employee, working in the respondent - Nagarpalika.

9. As against that, the respondent - Nagarpalika has pointed out that in 2014 itself, they have made a proposal with regard to the appointment of the present petitioner, but the same was rejected. Of course, it is relevant to note herein that the said decision was never challenged by the Nagarpalika

before this Court by way of preferring the petition. But however, considering the fact that the Nagarpalika having sanctioned vacant post, appointed the petitioner and the petitioner was working on the said sanctioned post. The respondent - State of Gujarat has filed its affidavit-in-reply and also referred to and rely upon the unreported decision of this Hon'ble Court in the case of *Amreli Municipality Vs. Gujarat Pradesh Municipal Employees Union* in Special Civil Application No.5746 of 1999; decided on 09.07.2004, wherein, the Hon'ble Larger Bench of this Court held in Paragraphs- 12.1 and 12.2 held as under:-

12.1 After considering the decisions cited before us, the following principles emerge :

(A) No regularisation or permanency can be effected de hors the statutory provisions or the guidelines.

(B) Long service put in by the workmen itself may not be a ground to regularise services of ad hoc/temporary workmen against the sanctioned set-up without following statutory procedure of recruitment. At the most, Labour Court/Industrial Tribunal can issue direction for consideration of absorption subject to availability of posts on the establishment.

(C) To avoid nepotism and corruption, no back-door entry in service;

(D) Financial capacity of the local body to have additional burden is a relevant consideration to be kept in mind while ordering regularisation or absorption.

12.1.2 The Apex Court, in no uncertain terms, ruled that the Labour Court/ Industrial Tribunal can neither regularise services of a workman nor grant permanency when his initial appointment itself is de hors the rules or not on the sanctioned post and has depicrated orders of the High Court/Labour Courts/ Tribunals directing to regularise services of illegally recruited persons and has given guidelines. We are not impressed by the submission advanced on behalf of the workmen that the orders were passed in petitions under Article 226 of the Constitution of India, and therefore, such orders are not applicable in the present case in deciding the controversy. The Labour Courts/ Industrial Tribunals are required to pass orders consistent with the law laid down by the Higher Courts. Needless to say that the exercise of wide powers by Labour Court/ Tribunal is always subject to or governed by the law laid down by the Higher Courts.

10. That in view of the above judgment, it is a backdoor entry and as it is an irregular appointment and therefore, the respondent - Nagarpalika has rejected the proposal of the petitioner. The respondent has also referred to and relied upon the decision of the Hon'ble Apex Court in the case of ***Vibuti Shankar Pandey Vs. State of Madhya Pradesh & Others*** reported in ***2023 (3) SCC 639***, wherein, the Hon'ble Apex Court held in Paragraph-9, 10 and 11 as under:-

9. From the record, this Court finds that while dismissing the claim of the petitioner, the following order has been passed by the respondent:-

"i. That, the case of the petitioner for regularization on the post of Supervisor has been considered in accordance with the circular dated 16.05.2007 and also circular dated 31.12.2010. It has been held that Naramda Valley Development Authority has been established for the development of Narmada River Scheme and the employees appointed under the authority is not governed by any Cadre or Recruitment Rules or any sanctioned and Vacant post and these authorities are parted in different zone and petitioner was not performing the duties against the sanctioned and vacant post therefore he is not coming under the purview of the policy dated 16.05.2007 therefore, his case has not been recommended for regularization.

ii. That as per Clause 4.1 of policy dated 16.05.2007, it is mandatory condition that while considering the case of regularization of the employee their sanctioned and vacant post should be available with the answering respondents as the petitioner was engaged as per availability of work and condition and there was no regular and sanctioned post of supervisor therefore, the case of the petitioner is not found fit to recommend for regularization.

iii. That as per the Clause 4.1 of the circular dated 16.05.2007, the petitioner has been given the benefit

of circular dated 31.12.2010, petitioner has been given benefit of relaxation to pass eligibility examination as provided in the aforesaid circular.

iv. That the answering respondents also by following the Clause 4.1 of the policy dated 16.05.2007, came to the conclusion that the petitioner was not engaged by the competent authority and his appointment is not legal therefore his case is not found fit for recommending the regularization.

v. That the answering respondents have also come to the conclusion that in absence of any recruitment rules or cadre with the Narmada Valley Development Authority, it is not possible to follow the roaster system while regularizing the petitioner in the appropriate post and final the committee has given its conclusion that the case of the petitioner has been considered in accordance with law and according to Clause 1, 2(1), 2(2), 2(4) and 2(5), the petitioner is not entitled to consider for regularization in service of the answering respondents."

10. It is also found that the petitioner has also relied upon the circulars issued by the State Government from time to time and has also filed a circular as Annexure P/9 which clearly provides that the persons who are working as daily wagers be regularized and also that their qualification be relaxed. The said circular, in the opinion of this court, would be applicable in the case of the

petitioner.

11. So far as the regularization of Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour is concerned, the respondent's contention is that they all had the requisite qualification hence their case is distinguishable, however, according to the petitioner, their appointment orders were passed in the year 1990 when the additional qualification of Mathematics was not required whereas the Rules regarding the educational qualification of Time Keeper have come into force in the year 2007. The aforesaid contention has not been denied by the respondent, which leads this Court to conclude that the petitioner has been discriminated inasmuch as when the appointment orders of Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour were passed in the year 1990, there was no mandatory requirement that an incumbent must possess the matriculation with Mathematics as the Rules in this behalf came in the year 2007 only. Thus, it cannot be said that the aforesaid persons were appointed only because they had special qualification of matriculation with Mathematics. In view of the same, as the petitioner has been able to make out a case of parity that his case is at par with the other persons, namely, Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour, whose services have already been regularized, thus, the impugned order dated 18.06.2018 (Annexure P/11) cannot be sustained and is liable to be set aside.

11. In the case of *Secretary, State of Karnataka and Others Vs. Umadevi and others* reported in *2006 (4) SCC 1*, the Hon'ble Apex Court held as under:-

19. In Dharwad case, this Court was actually dealing with the question of 'equal pay for equal work' and had directed the State of Karnataka to frame a scheme in that behalf. In paragraph 17 of the judgment, this Court stated that the precedents obliged the State of Karnataka to regularize the services of the casual or daily/monthly rated employees and to make them the same payment as regular employees were getting. Actually, this Court took note of the argument of counsel for the State that in reality and as a matter of statecraft, implementation of such a direction was an economic impossibility and at best only a scheme could be framed. Thus a scheme for absorption of casual/daily rated employees appointed on or before 1.7.1984 was framed and accepted. The economic consequences of its direction were taken note of by this Court in the following words.

"We are alive to the position that the scheme which we have finalized is not the ideal one but as we have already stated, it is the obligation of the court to individualize justice to suit a given situation in a set of facts that are placed before it. Under the scheme of the Constitution, the purse remains in the hands of the executive. The legislature of the State controls the Consolidated Fund out of which the expenditure to be incurred, in giving effect to the scheme, will have to be met. The flow into the Consolidated Fund depends

upon the policy of taxation depending perhaps on the capacity of the payer. Therefore, unduly burdening the State for implementing the constitutional obligation forthwith would create problems which the State may not be able to stand. We have, therefore, made our directions with judicious restraint with the hope and trust that both parties would appreciate and understand the situation. The instrumentality of the State must realize that it is charged with a big trust. The money that flows into the Consolidated Fund and constitutes the resources of the State comes from the people and the welfare expenditure that is meted out goes from the same Fund back to the people. May be that in every situation the same tax payer is not the beneficiary. That is an incident of taxation and a necessary concomitant of living within a welfare society."

With respect, it appears to us that the question whether the jettisoning of the constitutional scheme of appointment can be approved, was not considered or decided. The distinction emphasized in R.N. NANJUNDAPPA Vs T. THIMMIAH & ANR. (supra), was also not kept in mind. The Court appears to have been dealing with a scheme for 'equal pay for equal work' and in the process, without an actual discussion of the question, had approved a scheme put forward by the State, prepared obviously at the direction of the Court, to order permanent absorption of such daily rated workers. With respect to the learned judges, the decision cannot be said to lay down any law, that all those engaged on daily wages, casually, temporarily, or when no sanctioned post or vacancy existed and without following the rules of selection, should be absorbed or made permanent though not at a stretch, but gradually. If that were the ratio, with respect, we have to disagree with it.

*44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (*supra*), R.N. NANJUNDAPPA (*supra*), and B.N. NAGARAJAN (*supra*), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.*

12. In view of the above judgments, the respondent - state urged before this Court that since the original appointment of the petitioner is dehors the Gujarat Municipalities Act and it is an irregular appointment backdoor entry and therefore, the respondent have rightly rejected the proposal of the Nagarpalika for considering the case of the petitioner, which is in consonance with the settled legal principles. Therefore, the petition is required to be dismissed in light of the submissions and in light of the affidavit-in-reply filed by the respondent State.

13. I have heard the learned advocates appearing for the respective parties.

14. Considering the fact that the petitioner who was appointed originally on the leave vacancy and thereafter, being settlement arrived at by and between the Nagarpalika and petitioner, the petitioner was reinstated in the Municipality on the sanctioned vacant post of a clerk and

since by virtue of the voluntarily retirement from service of the concerned employee, the said post was lying vacant and that vacant post was filled up by the Nagarpalika. Though the proposal made earlier, was rejected, again by virtue of the order passed by this Court, the second proposal was made by the Nagarpalika, which was also rejected. By rejecting the proposal made by the respondent - Municipality without considering the judgments of the Hon'ble Apex Court in the case of ***Uma Devi (supra)*** and this Court, therefore, it is in the fitness of things that the impugned order passed by the respondent - Nagarpalika be quashed and set aside and the petitioner is directed to make a fresh representation by referring and relying upon the decision of the Hon'ble Apex Court and this Court to the respondent and also to the Nagarpalika and on the basis of the representation, the respondent - Municipality also make a fresh proposal to the respondent no.3 for the approval. On receiving the said proposal of the Municipality, let the respondent no.3 be take appropriate decision within two months from the date of receipt of the said proposal.

It is further noted that by virtue of settlement, the petitioner was reinstated and thereafter, the concerned employee viz. Girishkumar Punjalal Shah, who took VRS in the year 2001 and from 2001 to 2021, the petitioner has worked on a vacant sanctioned post and therefore, she has worked on a sanctioned vacant post of clerk almost 21 years and therefore, considering all these facts, appropriate decision shall be taken by the respondent no.3.

15. In the facts and circumstances of the case, the present petition stands allowed. The petitioner shall make representation within two weeks from the date of receipt of the order. On the basis of the said representation made by the petitioner, the respondent no.1 Municipality shall make appropriate proposal to the State Government and in turn, the State Government shall decide the said proposal within two months from the date of the receipt of the said proposal and appropriate decision shall be taken by the respondent no.3 in light of following the decisions of the Hon'ble Apex Court as well as this Court.

Rule is made absolute to the aforesaid extent. Direct service is permitted.

(HEMANT M. PRACHCHHAK,J)

A. B. VAGHELA