

(2025) 10 GUJ CK 1514

In the Gujarat High Court

Case No : R/Special Civil Application No. 15902 Of 2010, 7922 Of 2012

Navinbhai Mahyavanshi(Deceased) & Ors

APPELLANT

Vs

Songadh Nagarpalika Through Chief Officer & Ors

RESPONDENT

Date of Decision : 01-10-2025

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226
Gujarat Municipalities Act, 1963 — Section 258, 271

Citation : (2025) 10 GUJ CK 1514

Hon'ble Judges : Sandeep N. Bhatt, J

Bench : Single Bench

Advocate : Pratik Khubchandani, Henil Shah, SP Majmudar, Vedant D Gaikwad

Final Decision : Dismissed

Judgement

Sandeep N. Bhatt, J

1. As the facts and issue involved in both these petitions are similar, they are disposed of by this common oral judgment at the request of learned advocates for the parties.

2. The prayers prayed for in these petitions are as under :

"28(A) The Hon'ble Court may be pleased to issue writ of mandamus and/or any other appropriate writ, direction and order by directing the respondent authorities to absorb/regularize the petitioners in the service setup of the Songadh Nagar Palika;

(B) The Hon'ble Court may be pleased to issue writ of Certiorari and/or any other appropriate writ, direction and order by directing quash and set aside the communication dated 30/7/2009 and 17/4/2007;

(C) Pending hearing and final disposal of this petition, this Hon'ble Court be pleased to direct the respondents not to alter or effect the service and/or service conditions of the petitioner;

(D) xxxx"

3. 1 It is the case of the petitioners that the petitioners have been working with the Songadh Nagar Panchayat since prior to year 1994; that the said Nagar Panchayat which was governed under the provisions of the Gujarat Panchayat Act, 1993, got converted into Songadh Municipal Borough under the notification of State of Gujarat, published in extraordinary Government of Gujarat Gazette on 22.1.2004; that the notification provided for initial strength with respect to each of the Nagarpalika, which would also include the Songadh Nagarpalika; Condition No.7 of the same provided for absorption of the staff working prior to conversion; that a subsequent clarification was issued on 3.10.2006 that Condition No.7 under the circular dated 22.1.2004 would be applicable to the permanent and ad-hoc employees; that on 21.7.2007, the Songadh Nagarpalika had passed Resolution No.98 resolving for the staff continued with the Nagar Panchayat prior to conversion be absorbed in the set up; that the said resolution was challenged before the learned Collector, Tapi, who, under Section 258 of the Gujarat Municipalities Act, placed the said resolution in abeyance and directed to maintain status-quo; that by Resolution No.68 of the respondent Nagar Palika, it had prescribed set up for itself, designating posts which it needed to ensure discharge of functions and the same was forwarded to the Director of Municipalities for approval; the same was approved subject to conditions and item no.8 therein which completely negates condition no.7 of the notification dated 22.1.2004; that the communication was received by the Chief Officer from Deputy Director of Municipalities, directing the respondent to process recruitment only in continuity with the instructions.

3.2 Since the issue of absorption of the petitioners was pending for considerable time, the petitioners made representation to the Chief Officer on 11.10.2010; that on inquiry, it was found that the petitioners have been put to the information on the direction, prohibiting the absorption by the respondent Nagar Palika.

3.3 Hence, these petitions are filed by the petitioners with the prayers noted above, as they have been working since the year 1994.

4. Heard learned advocates for the parties.

5.1 Learned advocate for the petitioners has submitted that inspite of the fact that the petitioners have been working long prior to conversion, they have not been regularized/absorbed within the setup, which is ex-facie arbitrary and discriminatory; that though the respondents Songadh Nagar Panchayat and thereafter Songadh Municipal Borough have availed the services of the petitioners, they are not being absorbed under one pretext or other; that there cannot be any retrospective operation of any Government directive/policy/regulation, and now placed selection criteria cannot relate to appointment of the petitioner; that the petitioners have distinguished experience and the petitioners have acquired legitimate expectation that they would be absorbed in the set up

of the Municipal Borouch/Nagar Palika; that the petitioners have got a legal and enforceable right which would be affected by the impugned orders, which were passed without an opportunity to the petitioners; that if the petitioners may not be entitled to be absorbed in the initial setup, they would certainly be entitled to be absorbed in the extended setup, which is required to be appreciated by the respondent authorities. He submitted that by not doing so, the principles of natural justice are not followed and therefore, these petitions are maintainable.

5.2 In support of his submissions, learned advocate for the petitioners has relied on the following decisions:

(1) Dharam Singh and Others V/s State of U.P. and Another reported in 2025 SCC Online SC 1735.

(2) Trivedi Amthalal Laljibhai V/s The Collector, decided on 18.12.2001 in Special Civil Application No.4985 of 2001.

5.3 He, therefore, submitted that the petitioners are required to be absorbed in the new setup and the prayers prayed for in these petitions are required to be granted.

6.1 Per contra, learned advocate appearing for respondent no.1-Songadh Nagarpalika has referred to the affidavit-in-reply and submitted that the erstwhile Songadh Nagar Panchayat came to be converted into Songadh Municipal Borough by the State Government Notification dated 14.4.1994, the respondent no.1 sought approval from the Director of Municipalities for the existing staff of Nagarpalika on 30.6.1994; the Collector also recommended for such approval to the Director by letter dated 11.9.1995; the Nagarpalika by letter dated 17.1.1995 provided supplementary information to the Director as required; that by Government Resolution dated 22.1.2004, the State Government has decided the staff structure and their norms for all the Nagarpalikas, which came to be amended by another Government Resolutions dated 6.9.2004; the Director has approved the Rules of Recruitment, Promotion and Conditions of Service of the employees of the Songadh Nagarpalika by order dated 22.3.2005; thereafter, the Songadh Nagarpalika passed Resolution No.68/1 in its General Body Meeting dated 21.8.2006 for deciding the staff strength of 60 employees as per the category 'D' as per Government Resolution dated 22.1.2004 and was decided to submit the appropriate proposal and pay scales for necessary sanction and the same was submitted by Nagarpalika to the Collector for his approval with necessary proposal by letter dated 30.10.2006; thereafter, by Resolution dated 30.1.2007, the State Government has decided the norms for strength of sweepers for the Nagarpalikas; that by communication dated 17.4.2007, the Director has granted approval for filling up the vacancies of the minimum sanctioned staff on the conditions stated in the said order; in condition no.8 of the said order, it is stated that the present or past daily wager/temporary employees shall not be directly absorbed in the said minimum sanctioned strength. Thereafter, the Nagarpalika passed Resolution No.98 in its

meeting held on 21.7.2007 for absorption of its existing employees and submitted the said resolution for approval of the Director by letter dated 18.8.2007 and also addressed letter dated 15.7.2009 to the Collector; the Collector has passed order dated 30.7.2009 whereby in exercise of powers under Section 258 of the Gujarat Municipalities Act, has suspended the Resolution No.98 dated 21.7.2007 passed by the Nagarpalika. Thereafter, the Director has instructed the Nagarpalika by letter dated 27.1.2010 that the Nagarpalika is required to undertake the procedure for filling up the minimum staff as per the Government Resolution dated 22.1.2004 in accordance with the order of the Director dated 17.4.2007 by following the prescribed recruitment procedure. He submitted that as the respondent no.1-Nagarpalika is duty bound to obey and to implement the orders passed by the Director of Municipalities and by the Collector, it is unable to absorb/regularize the petitioners in the service setup of the Songadh Nagarpalika as prayed for by them in the present petition, even though it does not have any objection to absorb/regularize the petitioners in the service setup, if so ordered by this Court.

6.2 Learned AGP for respondent nos.2 and 3 has submitted that the petitioners herein were appointed by the said Nagarpalika being respondent no.1 herein vide a resolution passed by the then managing body of the then Nagar Panchayat and as such there was admittedly no sanctioned setup by the said respondent no.1; that the petitioners themselves have stated in the memo of the petition that there was no regular setup which was prescribed by respondent no.1 and therefore it is evident that the said petitioners were working under a non-sanctioned setup; that the respondent no.1-Nagarpalika is converted into Municipal Borough and therefore the provisions of Gujarat Municipalities Act, 1963 would be applicable in governing the recruitment, regularization, conditions of service with respect to its employees as well as employees of the then Nagarpalika; that the respondent no.1 Nagarpalika passed the resolution no.98 dated 21.7.2007 dehors the provisions of law resolving to continue its erstwhile employees including the petitioners who were working in the respondent no.1 Nagarpalika prior to conversion of the same to be absorbed under the new prescribed setup and therefore the same was challenged before the Collector, wherein the Collector, vide its order dated 30.7.2009, had suspended the resolution and granted status quo as regards the absorption/regularization of the said employees, as the absorption directly without sanctioned setup would ultimately lead to back door entry or appointment of employees including the petitioners without going through proper channel/process of appointment and therefore the said resolution was suspended; that the said resolution was kept in abeyance in view of provisions of Section 258 of the Gujarat Municipalities Act, 1963, since the said resolution was passed against the settled position of law and settled service jurisprudence as regards the appointment of Government employees through proper procedure. He submitted that the said order dated 30.7.2009 passed by the Collector was never challenged by the petitioners and therefore the said order has attained finality.

6.3 Learned AGP further submitted that Clause 8 of the resolution dated 17.4.2007 specifically stipulates that the employees who were working with the erstwhile respondent no.1 Nagarpalika would not be absorbed in the new prescribed sanctioned setup and therefore also the petitioners are not liable to be absorbed in absence of any sanctioned post. A representation was made by the petitioners for the purpose of absorption and the said representation came to be rejected vide order dated 3.9.2016, which has not been challenged further by the petitioners and therefore the said order has also attained finality. He submitted that the clause

1 of the resolution dated 17.4.2007 clearly stipulates that the recruitment/appointment of the employees of the respondent would be in consonance with the rules prescribed by the respondent under Section 271 of the Act and therefore it is only through such process that the appointments shall be made. He submitted that the services of the present petitioners were time and again extended by the erstwhile respondent no.1 Nagarpalika and therefore they cannot claim any permanency/continuity of service since they have not been appointed through a regular selection process. He submitted that it is a settled position of law that in absence of sanctioned setup, no employee can claim regularization and cannot claim permanent continuance or continuity of service even if the said employee is working for a long duration of time. He, therefore, submitted that the prayers prayed for cannot be granted.

6.4 In support of his submissions, learned AGP has relied on the following citations:

(1) Upendra Singh V/s State of Bihar reported in 2018(0) AIJEL-SC 61821.

(2) Das Bakuleshkumar Bachubhai V/s Govt of India reported in 2025(0) AIJEL-HC 250310.

7. I have heard learned advocates for the parties and perused the material on record.

7.1 The petitioners were appointed in the year 1994 in Songadh Nagar Panchayat by resolution passed by the then managing body and then the said Songadh Nagar Panchayat got converted into Songadh Municipal Borough. The petitioners themselves have stated that there was no regular setup which was prescribed by respondent no.1 and therefore it is evident that the said petitioners were working under a non-sanctioned setup. As the respondent no.1-Nagarpalika is converted into Municipality, the Gujarat Municipalities Act, 1963 would now be applicable in governing the recruitment, regularization, conditions of service with respect to its employees as well as employees of the then Nagarpalika. When there is no sanctioned set up, which is not disputed by the petitioners themselves, the resolution no.98 passed by the said respondent no.1 Nagarpalika to absorb its erstwhile employees directly without sanctioned setup would ultimately lead to a back door entry or appointment of employees including the petitioners without going through proper channel/process of appointment and therefore, the

Collector, in exercise of powers under Section 258 of the Gujarat Municipalities Act, has suspended the said resolution vide order 30.7.2009. The petitioners could have filed an appeal before the State Government challenging the same if aggrieved by the said order of the Collector, but, instead of doing so, the petitioners have filed these petitions directly.

7.2 Further, during the pendency of these petitions, the representation made by the petitioners was rejected vide order dated 3.9.2016 which is also not challenged by the petitioners and therefore, it has attained finality and they have accepted the same.

7.3 Further, on perusal of the resolution dated 17.4.2007 passed by the respondent no.4-Regional Commissioner of Municipalities, in Clause 1, it is specifically stipulated that the recruitment/appointment of the employees would be in consonance with the Rules prescribed by the respondent no.4 under Section 271 of the Act and as per proper recruitment process as carried out by the respondent and therefore, it is only through such process that the appointment shall be made by the respondent. Clause 8 of the said resolution stipulates that the employees who were working with the erstwhile respondent no.1-Nagarpalika would not be absorbed in the new prescribed sanctioned setup and therefore also the petitioners are not liable to be absorbed in absence of any sanctioned post. The resolutions dated 30.7.2009 and 17.4.2007, which are challenged in these petitions are passed in consonance with the provisions of the Gujarat Municipalities Act which is applicable to the respondent-Municipal Borough and therefore, it cannot be said that the same are illegal or against the provisions of law.

7.4 At this stage, it would be fruitful to refer to the judgment relied on by learned AGP Mr.Shah for the respondents in the case of Das Bakuleshkumar Bachubhai (supra) of this Court, wherein this Court, while dealing with similar issue, has referred to the judgment of the Hon'ble Apex Court in the case of State of Rajasthan & Ors. V/s Daya Lal & Ors., reported in (2011) 2 SCC 429, wherein, the Hon'ble Apex Court has held in paragraph 12 as under:

"12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to

the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

(See : Secretary, State of Karnataka vs. Uma Devi - 2006 (4) SCC 1, M. Raja vs. CEERI Educational Society, Pilani - 2006 (12) SCC 636, S.C. Chandra vs. State of Jharkhand -2007 (8) SCC 279, Kurukshetra Central Co-operative Bank Ltd vs. Mehar Chand - 2007 (15) SCC 680, and Official Liquidator vs. Dayanand - 2008 (10 SCC 1) "

7.5 The facts of the citations relied on by learned advocate are different from the facts of the present case and therefore, they are not helpful to the petitioners.

7.6 In the case on hand, indisputably, there is no sanctioned post. The petitioners claim regularization only on the basis of sympathy as they have been working since so many years. Any order of absorption/regularization of the petitioners, who are not appointed by regular mode, would result in denial of equal opportunity to other eligible candidates. However, in absence of any legal right, in view of the settled position of law, this Court cannot pass any order in favour of the petitioners. Therefore, these petitions fail and are required to be dismissed. Accordingly, dismissed. Rule is discharged.