
(2013) 08 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1924 of 2013

Ram Rattan and Another

APPELLANT

Vs

Municipal Corporation and Others

RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:

Citation : (2013) 3 ShimLC 1716

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : Bhuvnesh Sharma, for the Appellant; Haminder Chandel, Advocate for the Respondent No. 1 and Mr. R.P. Singh, Assistant Advocate General for the Respondents No. 2 and 3, for the Respondent

Judgement

Dev Darshan Sood, J.—This is the fourth round of litigation for the petitioners in this Court. The first started with CWP (T) No. 3907 of 2008, which was filed by the first petitioner and CWP (T) No. 4990 of 2008 was filed by the second petitioner before the State Administrative Tribunal in the year 1996 which cases were transferred to this Court after the abolition of the Tribunal. Those writ petitions were disposed of by this Court on 24.11.2010. The Court notes that two prayers had been made by the petitioners herein. The first was for payment of salary as a regular Supervisor from the date of the institution of the petition and arrears from January, 1986 in accordance with the Notification issued by the State Government. This, monetary benefit was claimed with interest at the rate of 18% per annum. The second direction sought was with respect to regularization of the services of the petitioners as Supervisors from the date from which they started discharging duties as such, which was supported by experience certificates issued by the first respondent. This Court took note of the pleadings in reply filed by the respondent Municipal Corporation which in brief were that the petitioner had been engaged as Beldar in the year 1986 and did not discharge the duties of Supervisor. Nonetheless, there were certain certificates on record contrary to what stand was taken for which purpose the Corporation had initiated steps for issuing notices to the officers to show as to on

what basis these certificates had been issued. The other submission made was that the petitioner Ram Rattan was working as Beldar/Mate on Muster Roll basis and therefore, the question of granting him pay as Supervisor did not arise at all. This Court then directed that in view of the reply, if there is any surviving grievance, it would be open to the petitioner to file a representation alongwith additional documents and a copy of the judgment before the respondents for consideration in accordance with law. Representation was to be filed within a month and the Corporation was thereafter directed to look into the case and take appropriate action in accordance with law by affording the petitioner an opportunity of being heard and the representation to be decided within three months. A positive direction was issued that the respondent would look into the fact situation and then a considered decision taken as to whether in the case of one Shri Ramesh Thakur (respondent No. 4 herein), who was also similarly situated with the petitioner, (fact situation being common) and who was junior to the petitioner, has since been regularized as Supervisor, as was apparent from the note/report submitted by the Assistant Commissioner, Municipal Corporation, Shimla, which has been brought on record along with affidavit of the Commissioner, Municipal Corporation, Shimla, filed in terms of order dated 22.4.2010 passed by this Court in connected petition CWP (T) No. 4990 of 2008 (OA No. 501 of 1998) and also taking into consideration the certificate Annexure A-2 to the effect that the petitioner has in fact worked as daily paid Supervisor since 1986. Consequential benefit, if any, shall follow the decision on the representation.

2. In the companion petition Ramji Dass v. Municipal Corporation (petitioner No. 2 in this case) CWP (T) No. 4990 of 2008, similar directions were passed by this Court on the same date. Subsequently, a detailed representation was submitted by each of the petitioners herein enclosing the order passed by this Court. The representation can be paraphrased, thus:- the petitioner had passed matriculation examination in the year 1985, joined the Corporation in January, 1986 and worked as Supervisor. He submitted the entire record with the representation stating that the work of Supervisor had been assigned and performed by him but he was paid the salary of a mazdoor. He then stated that according to the Notification of the State, applicable in the Department of Public Works (which applied to the Municipal Corporation), if after two years of service an incumbent has also passed matriculation, he is eligible to be promoted as Supervisor. The record was with the Corporation substantiating the case of the petitioner. A Resolution was passed by the Municipal Corporation whereby sanction was accorded for six posts of Supervisor. He then states that initially he had filed writ petition in the High Court being CWP No. 1537 of 1995 which was disposed of on 29.10.1996, holding that it was service matter and, therefore, this Court did not have jurisdiction to try the case. Consequently, OA No. 1846 of 1986 was filed by him in the Tribunal. The petitioner pointed out that in case there were no posts of Supervisor available then the stand of the Corporation in the case of Shri Ramesh Thakur (Respondent No. 4 herein), who was also

engaged as daily wager and thereafter was regularized as a Supervisor, is not correct. This Ramesh Thakur was junior to him and in this eventuality there was a clear breach of Article 14 of the Constitution. The petitioner had requested to call for the muster rolls to ascertain these facts. He also stated that a few mazdoors have been promoted as clerks and specifically named them. Shri Ramesh Thakur, according to him, was a regular beldar and was junior to him. Though the posts were available but he (petitioner) had not been regularized. To similar effect is the representation filed by the second petitioner.

3. On 21.3.2011, order was passed by the Assistant Commissioner approving the case of Ram Rattan petitioner for consideration and appointment as Supervisor with the Municipal Corporation, Shimla from the date of issuance of the orders of appointment subject to the condition that the post of Supervisor be first created by the Government either on permanent basis or a personal post to the petitioner.

4. CMP No. 179 of 2011 in CWP (T) No. 4990 of 2008, titled: Ram Ji Das v. Municipal Corporation, Shimla, was filed by the respondents stating therein that the order passed by the Commissioner stating:--

Keeping in view the facts and circumstances as explained above, the case of the applicant Shri Ram Ji Dass is considered and approved for appointment as Supervisor in the Municipal Corporation Shimla from the date of issuance appointment orders as Supervisor subject to the condition that the post of Supervisor in MC Shimla be first created from the Govt. either on permanent basis or a personal post to him which will cease to exist on the retirement or quit of service by him.

could not have been passed and the order in compliance to the Court judgment (extracted above) be allowed to be recalled. This prayer was granted by this Court by its order dated 29th June, 2011, both in the case of Shri Ram Ji Dass as also in the case of the first petitioner with a direction to the first respondent herein to pass fresh orders in order to comply with the judgment of this Court dated 24.11.2010 in CWP(T) No. 4990 of 2008. This Court directed:--

...Consequently, the applicant/respondent is permitted to withdraw the aforesaid order dated 21.3.2011 and pass fresh orders as may be deemed fit in order to comply the aforesaid judgment dated 24.11.2010 passed by this Court in CWP (T) No. 4990 of 2008, Ram Ji Dass v. M.C. Shimla through its Commissioner. Needless to say that necessary permission/approval from the State Government shall also be liable to be obtained and matter finally disposed of within the extended time of six months, i.e. upto 31.12.2011.

5. On 29.11.2011, another order (Annexure P-16) was passed by the Corporation which states that the matter regarding creation of the post of Supervisor on permanent or as a personal post was taken up with the Government, but the Principal Secretary(UD) to the Government of Himachal Pradesh by its letter dated 14.10.2011 intimated that the matter was taken up with the Finance Department to the Government of Himachal Pradesh, which expressed its

inability to concur with the proposal of the Administrative Department. Similar order was passed in case of the second petitioner.

6. Again CWP No. 1680 of 2012, titled: Ram Rattan and another v. Municipal Corporation and others, was filed by the petitioners herein challenging the non-acceptance of the proposal of the Commissioner. The Court holds that no reasons have been assigned as to why the proposal made out by the Administrative Department was rejected. The Court took note of the facts that for similarly situated other employees the proposal has been made for creation of posts, but the Court then directs that in case the proposal was to be rejected, it should have been decided by passing a reasoned and speaking order. The action of the respondents was, therefore, quashed. The Court directed:--

2. In view of above discussion and analysis, the writ petition is allowed and Annexure R-1/2, dated 14.10.2011 is quashed and set aside. Respondent No. 2 is directed to pass a fresh order taking into consideration the grounds taken in the writ petition including letter dated 27.6.2011 and Annexure P-16, dated 20.1.2003, within a period of six weeks from today. He shall also take into consideration the earlier cases decided on similar facts while creating the posts. Pending application(s), if any, also stands disposed of. No costs.

7. Again on 11.2.2013, the case of the petitioner was taken up by Additional Chief Secretary (UD) to the Government of Himachal Pradesh. The order notes that:--

3. So far as the grounds taken in the writ petition that one Sh. Ramesh Thakur, Junior to the petitioner in service was initially appointed on daily waged basis as Mazdoor, was regularized as Supervisor, the case file reveals that Sh. Ramesh Thakur was appointed on daily wage on 21.06.1986 and worked as such till 15.2.1989. Sh. Ramesh Thakur did not work w.e.f. 16.2.1989 to April 1993 but in compliance to the orders of the Hon'ble High Court, he was reinstated as daily paid Mazdoor in May, 1993. Lateron, vide office order dated 15.9.1998 of MC Shimla, Sh. Ramesh Thakur was issued muster roll as Supervisor and worked as such.

8. The order notes that Shri Ramesh Thakur, who was junior to the petitioner and did not work w.e.f. 16.2.1989 to April, 1993, was allotted work in compliance to the orders of this Court. He was reinstated as daily paid mazdoor in May, 1993 and then on 15.9.1998 by the orders of the Municipal Corporation, Shimla, he was issued muster roll as Supervisor and he started working as such. He then records that according to the Policy of the Government for regularization circulated by letter No. PER(AP)-C-B(2)-1/2006-Vol. II, dated 9.6.2006, there is a requirement of 240 days per calendar year for 8 years for consideration for regularization. He extracts a part of the clause and reproduces it in the impugned order:--

...in case of a daily wage worker, who has worked for less than 8 years on a higher post, he will be considered for regularization by combining the service

both in the lower post and higher post but he shall be regularized on a lower post.

9. Keeping in view the provisions of the Regularization Policy, Sh. Ramesh Thakur, was offered appointment on regular basis on the lower post of mazdoor, but he declined to accept it and requested for regularization on the higher post. He had completed 8 years of daily paid service on the post of Supervisor in the year 2008, but his services were regularized w.e.f. 1.4.2010 as Supervisor.

10. Turning to the case of the petitioners, I note that they were appointed as daily wagers in June, 1986 and their services were regularized as Mates in the year 1998. The order (Annexure P-19) then continues:--

5. Shri Ram Rattan and Sh. Ramji Dass were appointed on daily paid in June, 1986 and their services were regularized on the post of Mate in the year 1998 on completion of the above said requirements of regularization policy. In their case, it needs to be remembered that they had never been issued muster roll of Supervisor and had also never worked in that capacity. Therefore, they are not entitled to regularization as Supervisor. Further proposal for creation of posts of Supervisor was indeed moved. When the case was referred to the Finance Department, they did not agree to the proposal. But proposal for creation of posts does not entitle anyone for promotion.

and then ends with the rejection of the case of the petitioners.

11. It would be worthwhile to consider the judgment of this Court in CWP (T) No. 8810 of 2008, titled: Ramesh Chander Thakur v. Municipal Corporation and others, decided on 9th August, 2011, which judgment was not set aside and had attained finality. The facts in that case were that the petitioner therein had been working as Supervisor in the Municipal Corporation and had preferred an application in the Administrative Tribunal in the year 2002. His case was that he had been engaged as mazdoor in the year 1986, but work of Supervisor was taken from him. In February, 1989, he was retrenched, which order was challenged by him under the provisions of Industrial Disputes Act, wherein an award was made by the Tribunal in his favour. This award was challenged in this Court by the respondents-Municipal Corporation. Relevant portion of the judgment of this Court is quoted as follows:--

Learned Counsel for the petitioner stated that pursuance to an interim order passed by this Court, the petitioner has been re-employed and is working. The petitioner according to the learned Counsel, is fully satisfied with his re-employment and does not wish to seek any further relief from this Court. Since this re-employment was directed only because of the statement of the respondent No. 3 contained in the impugned award, this Court would hope that the re-employment settles the matter for ever. In this view of the matter, nothing remains to be decided in this Writ Petition, which stands disposed of accordingly.

12. The Court then holds that the petitioner was re-employed on and w.e.f. 1993 and therefore, his claim for continuity in service from 1986 cannot be accepted.

The other submission made was that he should be considered as Supervisor from the date of his re-employment i.e. 16.4.1993 and on completion of requisite number of years, his services as Supervisor should be regularized.

13. The Municipal Corporation resisted this stating that initially in the year 1986 the petitioner was engaged as mazdoor and his re-employment in the year 1993 was also as mazdoor, but he, in connivance with some officers/employees of the Municipal Corporation, procured bogus documents, stating that he had been discharging the duties as a Supervisor and on the strength of those bogus documents, he could not press any such claim. His services as mazdoor had been regularized and now his services as Supervisor have also been regularized, since 2010. The Court took into consideration order dated 15.9.1998 which was filed with that writ petition as annexure A-12 which stated that pursuant to an order dated 10.9.1998 of the Commissioner, the petitioner (Ramesh Thakur) had been working as Supervisor and was appointed as such on the condition that he would not be entitled for back wages. This order was passed on a note prepared by the Office Superintendent and submitted to the Commissioner. Taking this order into consideration, this Court holds that in conjunction with the note Annexure A-16, it does not lie in the mouth of the respondents to deny the benefit to Shri Ramesh Thakur.

14. This writ petition is resisted on the ground that the petitioner was not engaged as Supervisor but it was reiterated that he was working as a Mate. Though a number of admissions have been made with respect to the regularization of other employees whose example the petitioners want to urge in support of their case. Learned Counsel for respondent No. 1 also refers to Annexure R-1/A, which is a communication dated 4.2.2002 stating that the posts of Supervisors cannot be created in the Municipal Corporation. Subsequently, also on 27.11.2006, proposal regarding creation of posts has been rejected by the Finance Department. I find this rejection as routine without application of mind. On 14.10.2011, a communication was addressed from the Principal Secretary (UD) to the Government of Himachal Pradesh to the Commissioner, Municipal Corporation, Shimla, stating that the matter for creation of two personal posts of Supervisors in the Municipal Corporation, Shimla, was taken up with the Financial Department, which observed:--

Examined. Finance Department regrets its inability to concur in the A.D.'s proposal.

15. Annexure R-1/B is a communication which is addressed by the Secretary(UD) to the Director(UD) stating that the Government had approved for upgradation of post of Chief Accountant to the post of Assistant Accounts Officer in the office of Commissioner, Municipal Corporation, Shimla which was personal to the incumbent Shri Roop Ram Verma, Chief Accountant and after his retirement the post will be reverted as Chief Accountant in the Municipal Corporation. The expenditure incurred on this post will be borne by the Municipal Corporation, Shimla from its own funds.

16. Reply of the State is sought to be supported by Annexure R-2/1, which is a communication dated 14.10.2011 which is same which relied upon by the Corporation and Annexure R-2/2 is also same as filed by the Corporation.

17. A detailed rejoinder was filed by the petitioners" reiterating that Annexures P-1 and P-2 filed with this writ petition have been issued by the Competent Officers on verification certifying that the first petitioner and the second petitioner have been working as Supervisors in the Municipal Corporation w.e.f. January 1986 till date. It is also reiterated that the records available with the respondent- Corporation also acknowledged this fact. The petitioners had applied under the Right to information Act and were supplied information vide Annexure PR-2 and PR-3. In the first document it is stated that Shri Ramesh Thakur was working as a mazdoor since 1993 to October, 1998. The second document is Office Order of appointment of Shri Ramesh Thakur as a Supervisor on the condition that no back wages will be paid to him. Annexure PR-4 is an attested copy of a muster roll showing that the fourth respondent Shri Ramesh Thakur, who was working as a daily waged mazdoor, was working under the supervision of the petitioners.

18. I have considered the detailed submissions made on behalf of learned Counsel appearing for the parties. At the outset, I note that it is unfortunate that the petitioners are being tossed between the respondents and this Court time and again by routine rejection of their representations. This is the fourth round of litigation. The petitioners first approached this Court in 1995 and were sent to the Tribunal which petition was disposed of by this Court with a direction for consideration of their cases. Their representations were rejected. They approached this Court again, when a direction for consideration was issued as it was found that the order did not meet the Constitutional requirement of Article 14 and again the cases of the petitioners were rejected and now finally the present writ petition. It is indeed unfortunate that every time direction is issued, it was complied more in breach than in compliance by a ritual rejection. I may only advert to the last petition being CWP No. 1680 of 2012, titled: Ram Rattan and Ramji Dass v. Municipal Corporation, Shimla, which was preferred in this Court and was disposed of with a positive direction for consideration as the previous orders were only a pretense to show compliance. This Court again found the order challenged therein (Annexure R-1/2, dated 14.10.2011) as unconstitutional with a positive direction that the case be considered within six weeks in accordance with law. Annexure P-19 in the present writ petition is nothing but a facsimile of the previous order of rejection showing non-application of mind for the reasons that it ignores the material on the record available with the respondents.

19. Annexure P-19, order dated 11.2.2013 does not disclose any reason supporting its conclusion. It also records that there is no record available to substantiate the plea of the petitioners that they infact are performing the duties of Supervisors. This is prima facie against the record of the Municipal

Corporation. Annexures P-1 and P-2, which have been issued in the year 1991; they certify and acknowledge that the petitioners are working as Supervisor since the year 1986 and vide Annexure PR-4 Shri Ramesh Thakur, who was junior to the petitioners and had been terminated for some period and then reinstated by the order of the learned Labour Court, was reinstated as Supervisor had actually performed duties under the supervision of both these petitioners. There cannot be clearer evidence on the point. The records are available with the respondent-Corporation. Vide Annexure P-20, which is the record of the meeting of the Corporation held on 28.12.2002, against Item No. 11 it is recorded that the Commissioner had asked for posts of Supervisor by upgrading posts of Mates as there were no Supervisor to look after Mates. The proposal is:--

...if, these posts be up-graded as Supervisor there is no financial liabilities as most of the mates have already cross the scale of Supervisor.

20. In these circumstances, there was no difficulty for the Finance Department to have not granted approval, more especially when there is no financial liability involved. These posts after upgradation could have been made personal to those of the incumbents who were working as Supervisors.

21. Adverting to the order challenged in this petition, what I notice is that it is a non-speaking and non-reasoned order which discloses a mechanical approach ignoring all facts and a pretense to compliance of the judgment passed by this Court. It cannot stand the test of scrutiny under Article 14 of the Constitution of India. This order only recites the directions, more-especially the order of Hon'ble Rajiv Sharma, J. in CWP No. 1680 of 2012 supra, quashing the order dated 14.10.2011 challenged in that petition, which was third round of litigation between the parties. The impugned order (Annexure P-19 in this petition) then proceeds to consider the case of Shri Ramesh Thakur and then states that the policy of the State Government vide letter No. PER(AP)-C-B(2)-1/2006-Vo. II, dated 9.6.2006, requires 240 days per calendar year for 8 years for regularization, which provides that, "in case of a daily wage worker, who has worked for less than 8 years on a higher post, he will be considered for regularization by combining the service both in the lower post & higher post but he shall be regularized on a lower post". Since Shri Ramesh Thakur was offered appointment on regular basis on a lower post of mazdoor, but he declined to accept the offer and requested for regularization on the higher post. He had completed 8 years of daily paid service on the post of Supervisor in 2008 itself, but his services were regularized w.e.f. 1.4.2010 after availability of the post of Supervisor on creation of new post vide letter dated 22.3.2010. He became Supervisor in 1998, but he was regularized in 2010. The second respondent seems to miss the point urged in the writ petition that this Ramesh Thakur was junior to both the petitioners having worked under them. The order then states that both petitioners were never issued muster roll as Supervisors and were never asked to work in that capacity and therefore can not be regularized as Supervisors. When the proposal for creation of posts was moved to the Finance

Department, the same was not accepted. It then continues:--

5. Sh. Ram Rattan and Sh. Ramp Dass were appointed on daily paid in June, 1986 and their services were regularized on the post of Mate in the year 1998 on completion of the above said requirements of regularization policy. In their case, it needs to be remembered that they had never been issued muster roll of Supervisor and had also never worked in that capacity. Therefore, they are not entitled to regularization as Supervisor. Further proposal for creation of posts of Supervisor was indeed moved. When the case was referred to the Finance Department, they did not agree to the proposal. But proposal for creation of posts does not entitle anyone for promotion.

6. The above does reveal a failing of administrative departments in the Secretariat; whenever any proposal/demand is received for creation of posts, etc. the administrative departments take the easy way out and refer it to the Finance Department even if not fully justified. In this manner, the burden of rejection falls on the Finance Department and the administrative department escapes the wrath of the employees. Thus, reference to the Finance Department and their agreeing or not being agreeing is not the main point. The main point is that the representations, already regular employees, will get promoted only if higher posts are available.

This is the crux and core of the reasons furnished. Why the Finance Department rejected it is not clear. I have already considered that the order is a non-speaking and non-reasoned and does not even reflect that the record filed with the writ petition and representations is also available with the respondents, which has not been noticed at all.

22. The decision making process requires a reasoned order not quantitative but qualitative in nature which addresses the points raised intelligibly after assessment of facts. I find that the pattern in this case is well set. The petitioners have been running from pillar to post since 1996. At the first time when the case was decided by this Court in 2008, a direction was issued to the respondents to consider the case of the petitioners for regularization on the pleadings which inter alia included the material on record on the submissions of the petitioners that they were working as Supervisor for which they placed on record adequate material. An order was passed by the Municipal Corporation on 21.3.2011 (Annexure P-14) recommending the case of the petitioners for regularization against the post of Supervisor inter alia noting:--

...taking into consideration the fact that a similarly situate person namely Mr. Ramesh Thakur, who was junior to the petitioner has since been regularized as supervisor, as is apparent from the note/report submitted by the Assistant Commissioner, Municipal Corporation, Shimla, which has been brought on record alongwith affidavit of the Commissioner, Municipal Corporation, Shimla, filed in terms of order dated 22.4.2010 and also taking into consideration the certificate Annexure A-1 and A-2 to the effect that the petitioner has in fact worked as daily

paid Supervisor.

This was subsequently withdrawn vide CMP No. 179 of 2011, vide orders passed on 29.6.2011. But then again the Court directs:--

...Consequently, the applicant/respondent is permitted to withdraw the aforesaid order dated 21.3.2011 and pass fresh orders as may be deemed fit in order to comply the aforesaid judgment dated 24.11.2010 passed by this Court in CWP(T) No. 4990 of 2008, Ram Ji Dass v. M.C. Shimla through its Commissioner. Needless to say that necessary permission/approval from the State Government shall also be liable to be obtained and matter finally disposed of within the extended time of six months, i.e. upto 31.12.2011.

The order though withdrawn, but specifically acknowledges the fact that Shri Ramesh Thakur was junior to the petitioners and had been appointed as Supervisor.

23. I also note from the writ petition that there is material evidencing that the petitioners had worked as Supervisor, Annexure P-1 certifying that the first petitioner worked as such since 1986 and the second petitioner has been working as Supervisor since 1987 on muster roll basis. Annexure P-4 shows the first petitioner to be working as a Regular Supervisor:--

Certified that Sh. Ram Rattan Thakur working as Regular Supervisor in Municipal Corporation Shimla is deputed for Emergency duty on dated 9.6.2007.

Sd/- Executive Engineer, Roads & Building Deptt. M.C., Shimla.

then again vide Annexure P-6 asking the HRTC to issue traveling pass to the petitioner who is certified as working as Supervisor in R/B (Road and Building) Department, deputed on emergency basis, Annexure A-6 in OA No. 1846/1996 (CWP(T) No. 3907 of 2008) showing the petitioner to be supervising Shri Ramesh Thakur, amongst other documents have been completely ignored by the second respondent.

24. Adverting to the question of recording reasons, in Chairman, Disciplinary Authority, Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others, the Supreme Court held that an order of affirmation need not contain as elaborate reasons as an order of reversal but that does not mean that the order of affirmation need not contain any reasons at all. Whether there was application of mind or not, can only be disclosed by reasons, at least in brief, mentioned in the order of the appellate authority. The Court holds:--

8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in S.N. Mukherjee Vs. Union of India, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement

of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

25. I advert to the law on the point of decision making process by an Administrative Authority. In *East Coast Railway and Another Vs. Mahadev Appa Rao and Others*, the Court holds:--

8. There is no quarrel with the well-settled proposition of law that an order passed by a public authority exercising administrative/executive or statutory powers must be judged by the reasons stated in the order or any record or file contemporaneously maintained. It follows that the infirmity arising out of the absence of reasons cannot be cured by the authority passing the order stating such reasons in an affidavit filed before the Court where the validity of any such order is under challenge. The legal position in this regard is settled by the decisions of this Court in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*,

26. In *Mrs. Asha Sharma Vs. Chandigarh Administration and Others*, , clarifying the principles enshrined in Article 14 of the Constitution of India. The Court holds:--

12. Arbitrariness in State action can be demonstrated by existence of different circumstances. Whenever both the decision making process and the decision taken are based on irrelevant facts, while ignoring relevant considerations, such an action can normally be termed as "arbitrary". Where the process of decision making is followed but proper reasoning is not recorded for arriving at a conclusion, the action may still fall in the category of arbitrariness. Of course, sufficiency or otherwise of the reasoning may not be a valid ground for consideration within the scope of judicial review. Rationality, reasonableness, objectivity and application of mind are some of the pre-requisites of proper decision making. The concept of transparency in the decision making process of the State has also become an essential part of our Administrative law.

27. In *Noida Entrepreneurs Association Vs. NOIDA and Others*, the Court reaffirms the principles thus:--

39. State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution, Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a "democratic form of Government demands equality and absence of arbitrariness and discrimination". The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

40. The Public Trust Doctrine is a part of the law of the land. The doctrine has

grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only be a case of colourable exercise of power. The Rule of Law is the foundation of a democratic society. (Vide: Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation, Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, ; and M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others,

28. Lastly, without multiplying precedent further, in Delhi Airtech Services Pvt. Ltd. and Another Vs. State of U.P. and Another, the Court holds:--

218. Principles of public accountability are applicable to such officers/officials with all their rigour. Greater the power to decide, higher is the responsibility to be just and fair. The dimensions of administrative law permit judicial intervention in decisions, though of administrative nature, which are ex facie discriminatory. The adverse impact of lack of probity in discharge of public duties can result in varied defects, not only in the decision making process but in the final decision as well. Every officer in the hierarchy of the State, by virtue of his being "public officer" or "public servant", is accountable for his decisions to the public as well as to the State. This concept of dual responsibility should be applied with its rigours in the larger public interest and for proper governance.

29. It is a combined reading of all the facts supra namely that the documents on record filed with writ petition which also inter alia form a part of the representation by both the petitioners submitted to the second respondent were replete in detail showing how the petitioners were performing duties of Supervisors. There is no indication that they have been considered. The case of the petitioners was recommended by the Assistant Commissioner as noted supra which orders were later withdrawn yet acknowledges their status as Supervisors. Not only that, but the Municipal Corporation had itself recommended for creation of the posts vide Annexure P-20 stating that the posts of Supervisors be created as it would involve no financial liability since Mates were already drawing salary more than that of Supervisors. The fact that Shri Ramesh Thakur was junior to the petitioners, had worked under their supervision and had been regularized earlier was ignored. On the question of financial burden it stands answered by the Resolution of the Municipal Corporation vide Annexure P-20.

30. In these circumstances, it would be fruitless to send the case of the petitioners again for reconsideration as the respondents having rejected it repeatedly, the Finance Department not considering as to whether any financial burden was involved though the second respondent recommended that the petitioners had already worked as Supervisors. It would only be a formality if the case is sent again merely for ritualistic rejection by a stereo type order as have been passed i.e. Annexure R-2/1 in CWP No. 1680 of 2012 and Annexure P-19 with the present petition. The second respondent has bypassed the judgment placed on the record of this case (in the case of Ramesh Thakur Annexure P-21)

without any discernable reason.

31. It is in the context of this that the legality of the impugned order Annexure P-19 is to be judged. I do not find that it complies the requirement of law as noticed by me above, most of all the policy for regularization of employees vide letter No. PER(AP)-C-B(2)-2/97, dated 11.12.1997, which provides the norms of regularization of daily waged/contingent paid workers provided that 10 years service is required for regularization, has been totally ignored.

32. No relief is sought against Respondent No. 4, as such, reply from this respondent is not considered necessary in the present petition. In the facts and circumstances, this writ petition is allowed with the direction that the petitioners be regularized as Supervisors, in terms of the policy (of 1997) of regularization of daily waged workers in the Departments, from the date when Shri Ramesh Thakur, respondent No. 4, who is junior to them, has been regularized. They will be granted seniority with step-up in pay and increments as also pensionary benefits, but actual financial benefits will be restricted to three years prior to issuance of this writ. A" direction is issued to the third respondent to create two posts of Supervisors which would mean nothing but up-gradation of the posts against which the petitioners were working with these posts being personal to them. Writ petition disposed of. Judgment be complied with forthwith.

All interim orders are vacated. All miscellaneous applications are disposed of.