

**(2014) 08 GUJ CK 0040**  
**In the Gujarat High Court**

**Case No :** Letters Patent Appeal No. 1183 of 2013

State of Gujarat

APPELLANT

Vs

Balevia Devjibhai Bhimjibhai Watchman

RESPONDENT

**Date of Decision :** 07-08-2014

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226

**Citation :** (2014) LabIC 4071

**Hon'ble Judges :** V.M. Sahai, J; R.P. Dholaria, J

**Bench :** Division Bench

**Advocate :** Harsheel Shukla, A.G.P, Advocate for the Appellant; Vaibhav A. Vyas, Advocate for the Respondent

## **Judgement**

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R.P. Dholaria, J.—This Letters Patent Appeal has been filed by the appellants-original respondents challenging the judgment and order of the learned single Judge dated 07.04.2010 passed in Special Civil Application No. 2141 of 2000, wherein the writ petition filed by the respondent-original petitioner has been partly allowed for the reasons stated in the judgment and order dated 24.02.2004 passed in Special Civil Application No. 9988 of 1999 with direction to consider the case of the respondent-original petitioner for appointment on permanent post in Class-IV and if the permanent posts are found vacant, he shall be appointed on the same in accordance with his claim in the matter of seniority and concerned Regulations and if otherwise he is not ineligible. The learned single Judge was further pleased to direct that the appointment should not be denied on the ground of overage or on the ground that it may amount to giving a back-door entry. The brief facts of the present case are that the respondent-original petitioner was appointed as Watchman on daily wage basis since 3.6.1996 by the Social Welfare Officer (ST), Gandhinagar and he was working since then and similarly situated such temporary employees were made regular. Therefore, he made a representation for making his services regular but the

concerned department refused to make his services regular. Consequently therefore, he has preferred the aforesaid writ petition before the Court, wherein the aforesaid directions came to be issued by the learned single Judge.

2. We have heard Mr. Harsheel Shukla, learned AGP, appearing for the appellants and Mr. Vaibhav A. Vyas, learned advocate, appearing for the respondent.

3. Mr. Harsheel Shukla, learned AGP for the appellants argued that the respondent-employee was employed on hourly basis and he was working as a part timer and therefore, in view of the decision of the Hon''ble Apex Court, such part time services cannot be regularized. Mr. Harsheel Shukla, learned AGP further pointed out that the respondent in the instant case was not appointed after due selection process, but work was taken by him on the basis of Government Resolutions dated 5.4.1997 and 23.09.1998 as part time employees Class-IV without following any selection process, whereas in Special Civil Application No. 9988 of 1999, relied by the learned single Judge, the petitioners were appointed after selection based on their qualification and eligibility on fixed tenure.

4. Mr. Vaibhav A. Vyas, learned advocate for the respondent has argued that in view of the Resolution issued by the State of Gujarat way back in the year 1980, upon which previously, this Court has put reliance and such similar situated employees were made regular and due to which, the learned single Judge has also relied upon the aforesaid decision and has directed to make services of the petitioner regular and to appoint him on permanent basis, which calls for no interference by this Court and the order passed by the learned single Judge is in accordance with the Government Resolutions and Rules applicable to the facts and circumstances of the case of the respondent.

5. We have thoughtfully considered the rival contentions raised by the learned advocates for the respective parties. We have also considered the material available on record.

6. Precisely on going through the material on the record, it is clearly revealing that the employee was employed in pursuance of the Government Resolution authorizing for engaging Part-time employees in Class-IV on hourly basis, wherein the resolution has provided different monthly consolidated remuneration on hourly basis. The minimum hour is prescribed for one hour and the maximum a person can be appointed for six hours in a day. If a person is employed for one hour, then he will be paid a monthly consolidated remuneration of Rs. 225/- and if he is appointed for six hours, he will be paid monthly consolidated remuneration of Rs. 1350/-. It has come to our notice that vide Government Resolution dated 26.12.1980, it was directed that whenever part time employment has continued for 3 years, the Head of Department should make efforts as per prescribed recruitment rules and procedure for filling in the posts to absorb such incumbents in regular posts that may be available and to replace the incumbent by a fresh part time employee. However, the aforesaid

Government Resolution was kept in abeyance vide Government Resolution dated 21.8.1995 and thereafter vide Government Resolution dated 7.1.2006, the above mentioned Government Resolutions dated 26.12.1980 and 21.8.1995 were withdrawn. Thereafter, vide Government Resolution dated 10.2.2006, financial power vested with the Head of Department to appoint part time employees was withdrawn.

7. In that view of the matter, now in the State of Gujarat, no person can be appointed as a part timer on hourly basis and no such person, even if he has been so appointed, can be continued in view of the revocation of the aforesaid resolutions, which were authorizing for such appointments. Indisputably, the case of the employee itself clearly states that he was appointed as a part timer on hourly basis and he was being paid Rs. 1350/- per month considering his work of six hours per day. Indisputably, while appointing the employee, no regular procedure for appointment was carried out. Indisputably, his service was casual and he was appointed as a part timer.

8. In similar case, the Hon"ble Supreme Court in Secretary to Government, School Education Department, Chennai Vs. Thiru R. Govindaswamy and Others, held as under:

"5. The issue involved here remains restricted as to whether the services of the part-time sweepers could have been directed by the High Court to be regularized. The issue is no more res integra.

6. In Secretary, State of Karnataka and Others Vs. Umadevi and Others, , this Court held as under:

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

7. In Union of India (UOI) and Others Vs. A.S. Pillai and Others, , this Court dealt with the issue of regularisation of part-time employees and the court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

8. This Court in *State of Rajasthan and Others Vs. Daya Lal and Others*, , has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation 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 regularisation of services of an employee which would be violative of the 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 regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a 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 regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing mat 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 regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation 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."

9. As narrated above, the facts emerging out in the present case as well as the

facts which were considered by the Hon"ble Supreme Court in the aforesaid case are similar. In both the cases, the employees were part timers. Aforesaid decision squarely applies to the facts of the instant case, therefore, in view of the aforesaid decision, we find that the learned single Judge could not have issued such direction for consideration of appointment as well as appointing him on permanent post in Class-IV. For the reasons given above, the order of the learned single Judge cannot be maintained.

10. In the result, this Letters Patent Appeal succeeds and is allowed. The order dated 07.04.2010 passed by the learned single Judge is quashed and set aside. The parties to bear their own costs. In view of disposal of the present Letters Patent Appeal, Civil Application No. 10854 of 2013 also stands disposed of.