



Reserved On : 03/12/2024

Pronounced On : 11/12/2024

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 1530 of 2019

In

R/SPECIAL CIVIL APPLICATION NO. 13843 of 2009

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MS. JUSTICE GITA GOPI

Approved for Reporting	Yes	No
	√	

AHMEDABAD MUNICIPAL CORPORATION & ANR.

Versus

PRAJAPATI ROHIT P & ORS.

Appearance:

MR KAMAL TRIVEDI SENIOR ADVOCATE WITH MR HAMESH C NAIDU

WITH MS ANKEETA RAJPUT for the Appellant(s) No. 1,2

MR YATIN OZA SENIOR ADVOCATE WITH MR. MN MARFATIA(6930) for
the Respondent(s) No. 1CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**

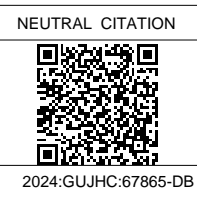
and

HONOURABLE MS. JUSTICE GITA GOPI

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The present Letters Patent Appeal filed under Clause 15 of the Letters Patent is directed against the judgment and order dated 18.09.2018 passed by the learned Single Judge allowing the captioned writ petition filed by the respondents-employees of the appellant-Corporation. The learned Single



Judge has held that the respondents-employees are entitled to be regularized in service from the date on which they completed service of 5 years and 900 days i.e. from 01.11.2005 and not from the date on which the regularization order was passed.

BRIEF FACTS:

2. Initially, in the year 2000, the daily wagers employed by the appellant-Corporation, filed writ petition being Special Civil Application No.5019 of 2001 and allied matters before this Court seeking regularization.

3. During the pendency of the aforesaid petition, the policy decision was taken by the appellant-Corporation by passing a Resolution No.447 of 2004 on 13.08.2004, *inter alia* declaring that the daily-wagers, who have completed 5 years and 900 days in service as on 15.08.2004, will be regularized by creating supernumerary posts. Accordingly, the appellant-Corporation passed an order on 15.08.2004, regularizing 2823 employees, and they were all made permanent with effect from 15.08.2004 and not from the retrospective dates of completion of 5 years and 900 days in their services. Accordingly, by the order dated 03.09.2004, the writ petition being Special Civil Application No.5019 of 2001 along with allied matters were disposed of on the basis of the said Resolution No.447 of 2004 dated 13.08.2004.

4. It appears that thereafter, a dispute arose with regard to the regularization of other employees, which culminated into writ petitions being Special Civil Application Nos.21853 to 21899 of 2006. The learned Single Judge vide order dated



29.10.2007, disposed of the writ petitions by directing the appellant-Corporation to consider their cases for regularization as per the Policy of "5 years/900 days". In the said order dated 29.10.2007, passed by the learned Single Judge, a Speaking to Minutes for necessary correction was filed, whereupon the words "5 years/900 days" came to be corrected as "5 years and 900 days.

5. Pursuant to the aforesaid order dated 29.10.2007 passed by the learned Single Judge in Special Civil Application Nos.21853 to 21899 of 2006, the appellant-Corporation issued a Resolution/Order bearing GDEST No.H/5644 dated 17.03.2008, regularizing the service of 51 daily-wagers including the present 45 respondents-employees with effect from 17.03.2008 by creating supernumerary posts. It appears that thereafter, Misc. Civil Application No.749 of 2009 was filed by the appellant-Corporation in the aforesaid writ petitions seeking review of the order dated 29.10.2007, which was disposed of by the order dated 27.03.2009.

6. After the aforesaid benefit was granted to the present respondents-employees with effect from 17.03.2008, i.e. the date from passing of the resolution/order; after a period of one year and nine months, they filed the captioned writ petition seeking regularization with effect from 01.11.2005 instead of 17.03.2008, being the date on which they have completed five years and 900 days. The learned Single Judge by the impugned judgment and order dated 18.09.2018, has allowed the captioned writ petition. The same has given rise to the present Letters Patent Appeal.



SUBMISSIONS ON BEHALF OF THE APPELLANTS

7. Learned senior advocate Mr. Kamal Trivedi appearing for the appellant-Corporation has submitted that after having accepted the benefit of regularization with effect from 17.03.2008, the respondents-employees after a period of one year and nine months, filed the writ petition claiming regularization from the date of completion of 5 years and 900 days. It is submitted that earlier also, when the policy decision was taken vide Resolution No.447 of 2004, dated 13.08.2004, 2823 employees were made permanent from 15.08.2004, not from completion of the 5 years and 900 days, but from the date of passing the order/resolution. It is submitted that similar approach was adopted in the case of the respondents-employees and they are regularized by creating supernumerary posts and hence, they cannot insist that they should be regularized from 01.11.2005, as directed by the learned Single Judge i.e. after completion of 5 years and 900 days.

8. It is contended by learned senior advocate Mr. Trivedi that the Resolution/Order regularizing the service of the respondents-employees with effect from 17.03.2008 was passed in view of the directions issued by the learned Single Judge in Special Civil Application Nos.21853 to 21899 of 2006, and even the learned Single Judge has appreciated the action of the appellant-Corporation, as recorded in the order dated 27.03.2009 passed in Misc. Civil Application No.749 of 2009 seeking review of the order dated 29.10.2007. It is submitted that the learned Single Judge has exclusively



placed reliance on the judgment of the Supreme Court in the case of Nihal Singh And Ors. Vs. State of Punjab And Ors., (2013) 14 SCC 65, with regard to granting the benefits. It is urged by learned senior advocate Mr. Trivedi that the aforesaid judgment will not in any manner, apply to the facts of the present case since in the present case, the appellant-Corporation has taken a policy decision looking to its financial condition to regularize the respondents-employees with effect from 17.03.2008 by creating supernumerary posts.

9. It is submitted by learned senior advocate Mr. Kamal Trivedi that in fact, the learned Single Judge has not discussed the policy of the Corporation dated 13.08.2004, by which the Resolution No.447 of 2004 was passed by the Standing Committee and also the order dated 15.08.2004, wherein 2823 employees were regularized with effect from 15.08.2004, instead from the date of completion of 5 years and 900 days. It is submitted that similar approach was adopted by the appellant-Corporation in the case of the respondents-employees also, and this vital aspect has been ignored by the learned Single Judge.

10. It is contended that in an identical case of the daily-wagers, who are similarly situated to the respondents-employees, i.e. the pump operators had filed the writ petitions being Special Civil Application No.13974 of 2008 with Special Civil Application No.13973 of 2008, which were rejected by the learned Single Judge vide judgment dated 07.10.2016, and the said decision was confirmed by the Division Bench vide order dated 30.01.2018 passed in Letters Patent Appeal



No.545 of 2017 with Letters Patent Appeal No.546 of 2017.

11. Learned senior advocate Mr. Trivedi has also placed reliance on the judgment of the Supreme Court in the case of Tamil Nadu And Anr. Vs. A. Singamuthus, (2017) 4 SCC 113. It is thus, submitted that the respondents-employees cannot be ordered to be regularized from retrospective effect, as directed by the learned Single Judge. Thus, it is urged that the judgment and order dated 18.09.2018 passed by the learned Single Judge in the captioned writ petition may be quashed and set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS-EMPLOYEES:

12. Vehemently opposing the submissions, learned senior advocate Mr. Yatin Oza appearing for the respondents-employees has urged that the present Letters Patent Appeal may not be entertained and the judgment and order passed by the learned Single Judge is required to be confirmed since, the learned Single Judge, after considering the policy of the appellant-Corporation dated 02.06.1983, has precisely ordered regularization of the respondents-employees from retrospective date instead of 17.03.2008. It is submitted that looking to the perennial nature of the work, a settlement was arrived at between the appellant-Corporation and its employees to the effect that the employees such as, respondents-employees, who had worked for 5 years and 900 days, are to be regularized. It is submitted that it was a settlement under section 2(p) of the Industrial Disputes Act, 1947, which culminated into such benefits and passing of the



Resolution No.447 of 2004 dated 13.08.2004, wherein the appellant-Corporation has specifically declared that the daily-wagers, who have completed 5 years and 900 days of service shall be entitled for their regularization. Learned senior advocate Mr. Oza has specifically referred to the Resolution No.447 of 2004 in this regard.

13. Learned senior advocate Mr. Yatin Oza has also referred to the order dated 29.10.2007, passed by the learned Single Judge in cases of the respondents-employees, who had filed Special Civil Application Nos.21853 to 21899 of 2006, wherein the appellant-Corporation was directed to consider their cases as per the policy. He has also referred to the order dated 27.03.2009 passed in the review application being Misc. Civil Application No.749 of 2009 and submitted that the direction issued by the learned Single Judge in the order dated 29.10.2007 are not altered in any manner and hence, the case of the respondents-employees will be governed by the earlier policy. It is submitted that thus, *lis* was finalized between the parties vide order dated 27.03.2009 passed by the learned Single Judge. It is submitted that the policy introduced by the appellant-Corporation specifically mentions that the employees are to be regularized, after completion of 5 years and 900 days from the first date of next month, which is not considered by any Court. He has also placed reliance on the award dated 30.06.1978 passed in Ref.(IT) No.179 of 1975.

14. While referring to the order passed by the learned Single Judge, which has been referred by the learned senior



advocate Mr. Kamal Trivedi being the judgment dated 07.10.2016 passed in Special Civil Application No.13974 of 2008 with Special Civil Application No.13973 of 2008, he has submitted that the learned Single Judge at the relevant time, has misread the earlier policy and hence, the said judgment though confirmed by the Division Bench, will not apply in the case of the present respondents-employees.

15. Learned senior advocate Mr. Yatin Oza has also referred to the judgment of the Supreme Court in the case of **Nihal Singh (supra)** and has submitted that the learned Single Judge has precisely relied upon the said judgment, which squarely applies in the case of the present respondents-employees. Thus, it is urged that the appellant-Corporation cannot resile away from the initial policy, which was passed on 02.06.1983. It is submitted that by the said decision and invocation of the subsequent Circular dated 24.10.1994, the respondents-employees were regularized after they completed 900 days in 5 years of service. Thus, it is submitted that in fact, the appellant-Corporation cannot apply the subsequent policy decision dated 13.08.2004, in case of the present respondents-employees and they are entitled to be regularized after completion of 900 days and 5 years of service, as per the policy dated 02.06.1983. Thus, it is urged that the present appeal may not be entertained.

ANALYSIS AND CONCLUSION :

16. All the respondents-employees are regularized by the appellant-Corporation by the Resolution/Order dated 17.03.2008 from the date of passing of such orders by



creating supernumerary posts. All the respondents-employees were working as daily-wagers in the appellant-Corporation. Such Resolution / Order dated 17.03.2008 was passed by the appellant-Corporation pursuant to the order dated 29.10.2007 passed by the learned Single Judge in writ petitions being Special Civil Application Nos.21853 to 21899 of 2006, wherein the learned Single Judge had directed the appellant-Corporation to consider the case of their regularization as per the policy.

17. It is pertinent to note that in the said order dated 29.10.2007, the learned Single Judge has recorded as “5 years/900 days”. Thereafter, on filing of note for Speaking to Minutes, the order was corrected and the words “5 years/900 days” were corrected as “5 years and 900 days”.

18. After the appellant-Corporation passed the Resolution/Order dated 17.03.2008, regularizing the services of the respondents-employees with effect from 17.03.2008, it appears that the appellant-Corporation filed a review application being Misc. Civil Application No.749 of 2009 seeking review of the order dated 29.10.2007. The said review application was disposed of by the order dated 27.03.2009, while recording as under:

“6. Thus, order dated 29.10.2007 was corrected and “5 years/900 days” was ordered to be corrected as “5 years and 900 days”. Except that, there was no other change in order of this Court.

7. Averments made in these applications suggest that they have some apprehension that the Corporation will have to confirm or make permanent all concerned petitioners from the date on which they completed 5 years and 900 days.



8. This apprehension is not well founded looking to order of this Court dated 29th October, 2007 and 4th December, 2007. It is good that the Corporation has made permanent all these petitioners by order dated 17th March, 2008 page 14 annexure B. It is also made clear that this Court has not issued any other directions to corporation except direction to consider case of petitioners as per policy.”

19. Thus, when the order dated 27.03.2009 was passed, the learned Single Judge was conscious of the fact that the appellant-Corporation had already made the respondents-employees permanent by the order dated 17.03.2008. Thereafter, the respondents-employees filed the captioned writ petition almost after a period of one year and nine months seeking regularization from retrospective date. In the writ petition, the respondents-employees prayed for directions to the respondent-Corporation to regularize their services with effect from 01.11.2005 instead of 17.03.2008. The prayer clauses reveal that in fact, the respondents-employees have not sought any prayer to the extent of challenging the Resolution/Order dated 17.03.2008 denying them the benefits of regularization from 01.11.2005 i.e. after completion of 5 years and 900 days of service. Be that as it may, the entire controversy revolves around the policy decision of the appellant-Corporation in regularizing the respondents-employees and other daily-wagers by creating supernumerary posts.

20. It is not in dispute that in the earlier writ petition being Special Civil Application No.5019 of 2001, which was filed by the daily-wagers claiming regularization, a compromise was arrived at between the respondent-Corporation and its employees and accordingly, it was recorded in the order dated 03.09.2004 by the learned Single Judge that the appellant-



Corporation has already passed a Resolution No.447 of 2004 in the meeting held on 13.08.2004 to regularize the daily-wagers/Class-4, who have completed 5 years and 900 days of service, as on 15.08.2004. Accordingly, the appellant-Corporation regularized 2823 employees with effect from 15.08.2004 irrespective of their dates of completion of 5 years and 900 days of service. Thus, the appellant-Corporation by creating supernumerary posts, regularized 2823 employees from 15.08.2004 and not from the date on which they have completed 5 years and 900 days of service.

21. The appellant-Corporation has adopted a similar approach in the case of the present respondents-employees also and regularized them from the date of passing of the order i.e. from 17.03.2008 by creating supernumerary posts. Thus, the respondents-employees have been regularized from the date of passing of the order. The same was accepted by them. However, they assailed the same before the learned Single Judge by filing the captioned writ petition and it was claimed by them that instead of 17.03.2008, they should be regularized from 01.11.2005, after completion of 5 years and 900 days of service. The learned Single Judge has allowed the writ petition.

22. We have examined the judgment and order passed by the learned Single Judge, which is impugned in the present appeal. A bare perusal of the judgment would reveal that the learned Single Judge has primarily placed reliance on the judgment of the Supreme Court in the case of **Nihal Singh (supra)** for allowing the writ petition filed by the



respondents-employees. Though, learned senior advocate Mr. Kamal Trivedi for the appellant-Corporation has placed reliance on the judgment passed by the learned Single Judge in Special Civil Application No.13974 of 2008 with Special Civil Application No.13973 of 2008, in the case of Jayesh I.Chauhan And Ors. Vs. A.M.C. Through Municipal Commissioner, which is referred hereinabove and also the judgment of the Division Bench dated 30.01.2018 passed in Letters Patent Appeal No.545 of 2017, the learned Single Judge has not dealt with the same.

23. Since the learned Single Judge has placed reliance on the judgment of the Supreme Court in the case of **Nihal Singh (supra)**, we shall make an endeavor to examine as to whether the ratio of the said judgment will apply in the case of the respondents-employees or not?

24. In the case before the Supreme Court, the issue of regularization of the Special Police Officers, who were appointed by the State of Punjab pursuant to Section-17 of the Police Act, 1861, was examined by the Supreme Court. After examining the facts of the said case, the Supreme Court in light of the provisions of Section-17 of the Act, which pertain to the appointment of the Special Police Officers in order to handle the situation of unlawful assembly or riots or disturbance of peace, appointed such Special Police Officers. The appellants therein were ex-servicemen, who were registered with the Employment Exchange and accordingly, they were recruited as Special Police Officers. When their claim for regularization was rejected, the dispute ultimately,



landed before the Supreme Court. In such context, the Supreme Court has held that the appointments of all the Special Police Officers were made by the Senior Superintendent of Police in exercise of statutory power under section-17 of the Act, and their appointment orders referred that they would be entitled to all privileges under the Act, and as per the provisions of Section-18 of the said Act, the Special Police Officers will have the same power, privileges and protection, as the regular Officers of Police and they were amenable to the disciplinary control of the State, as in the case of any other regular Police Officers. Considering these twin vital factors, ultimately, the Supreme Court directed regularization of such Special Police Officers, who were employed for meeting the exigences contemplated under the provisions of Section-17 of the Act such as, unlawful assembly, riots or disturbance of peace. It is also recorded in the paragraph No.36 of the said judgment that creation of new posts would not create any burden to the State.

25. Thus, the directions issued by the Supreme Court in light of the facts of **Nihal Singh(supra)** will not apply to the facts of the present case. The present respondents-employees are employed as daily wagers, and they are seeking regularization after completion of 5 years and 900 days of service. Even if we accept that the ratio of decision of **Nihal Singh (supra)** is applicable, the appellant-Corporation has already regularized the services of the respondents-employees from 17.03.2008 by creating supernumerary posts. The respondents-employees cannot claim regularization



retrospectively w.e.f 01.11.2005 on completion of 5 years and 900 days of service in wake of the fact that the appellant-Corporation cannot be compelled to create supernumerary posts with effect from retrospective date. If such an approach is adopted, the appellant-Corporation will face a huge financial burden and it will also resurrect the issue of regularization of 2823 employees, who are regularized with effect from 15.08.2004 (i.e. from the date of passing of such order), and not from their respective dates of completion of five 5 years and 900 days of service. The appellant-Corporation in order to see that similar approach is adopted in case of the present respondents-employees, has adopted their earlier decision of regularization, which was formulated vide Resolution No.447 dated 13.08.2004 and consequential order dated 15.08.2004 regularizing 2823 employees. In both the cases, the appellant-Corporation had created supernumerary posts in order to accommodate such employees. In fact, such an approach of the Corporation can be said to be noteworthy and commendable.

26. At this stage, we may refer to the decision of the learned Single Judge dated 07.10.2016 passed in Special Civil Application No.13974 of 2008 with Special Civil Application No.13973 of 2008 on an analogous issue, wherein the daily-wagers, who were serving as Pump-Majur, had filed the writ petition claiming regularization. These daily-wagers/petitioners were regularized in view of the Resolution No.447 dated 13.08.2004 in view of the settlement, as recorded hereinabove. The said petitioners-employees also



placed reliance on the Resolution dated 02.06.1983, on which the present respondents-employees have also placed reliance. The learned Single Judge after considering the policy of the Corporation of 5 years and 900 days of service, ultimately, rejected the writ petitions by observing thus:

“13. Undisputedly, the petitioners, in pursuance to the above resolution, as also in pursuance to the policy framed after High Court’s order accepted the benefits of regularization without any reservation in the year 2004 and therefore now they cannot be heard to argue that the policy afore-stated had excluded them and that therefore they would be entitled to the erstwhile policies for regularization. When thousands of daily wagers-employee of the Corporation were granted benefit in terms of the above policy, there can be no reason for the Corporation to carve out a different class for the petitioners. On the mere ground that in past certain employees were regularized in pursuance to certain policy of the Corporation, no right to regularization accrue to the petitioners as regularization would depend upon various factors provided in the policy; which may not have rendered petitioners eligible for regularization. No grievance was made by the petitioners when the orders dated 12/07/2000 regularizing the services of 29 daily wagers came to be issued until the year 2004 and even thereafter for a period of four years. Thus, having accepted the regularization in pursuance to the impugned order, the petitioners cannot now fall back on the erstwhile policy which in the opinion of this Court would stand obliterated once a new policy concerning the same subject was put in place. In the opinion of this court, the petitioners would be governed by the respective orders of regularizations with consequential benefits flowing therefrom.”

27. The said decision was further assailed before the Division Bench by filing Letters Patent Appeal No.545 of 2017 with Letters Patent Appeal No.546 of 2017, wherein vide order dated 30.01.2018, the Division Bench also rejected the Letters Patent Appeal, by observing thus:

3.02. At the outset, it is required to be noted that the issue involved in the present Appeals is in a very narrow compass. The appellants - original petitioners are claiming regularization on their completing 5 years and 900 days services with the respondent Corporation. It is the case on behalf of the appellants herein - original petitioners that as both of them were working



since 1993 / 1994, as the case may be, their services were required to be regularized as per the policy of the Ahmedabad Municipal Corporation on completion of their completing 5 years and 900 days services as daily-wagers. However, their services are regularized by the respondent - Ahmedabad Municipal Corporation belatedly w.e.f. August, 2004. That after accepting the order of regularization w.e.f. August, 2004 and thereafter approximately four years, the appellants herein - original petitioners approached this Court by way of aforesaid Special Civil Applications and prayed for regularization on their completing 5 years and 900 days service as daily wagers-regular Pump Majur / daily wagers.

3.03. Having considered and noted that the process for regularization of the services of similarly situated thousands of daily wagers was initiated by the Ahmedabad Municipal Corporation pursuant to the settlement entered into between the Union and the Ahmedabad Municipal Corporation recorded in the order dated 3/9/2004 passed in Special Civil Application No. 5019 of 2001 and having observed in the order that for accommodating / regularizing the services of such thousands of Mazdoors / daily wagers even supernumerary posts were created in the year 2004 and thereafter their services were regularized in the year 2004 and considering the fact that when their services were regularized in the year 2004, they did not raise any objection and thereafter after accepting regularization w.e.f. August, 2004 and thereafter after four years they have raised dispute that their services ought to have been regularized with effect from earlier date and on completion of their 5 years and 900 days services as daily wagers, the learned Single Judge has dismissed the aforesaid Special Civil Applications which has given rise to the present Letters Patent Appeals.

4.00. Heard the learned advocates appearing on behalf of the respective parties. At the outset, it is required to be noted that non-regularization of similarly situated Mazdoors / daily wagers on their completing 5 years and 900 days as daily wagers was the subject matter before this Court by way of Special Civil Application No.5019 of 2001 and other Special Civil Applications. The learned Single Judge of this Court disposed of the aforesaid Special Civil Applications vide order dated 3/9/2004 recording amicable settlement between the original petitioners / Union and the Ahmedabad Municipal Corporation by which it was agreed that within four months from 15/8/2004, process and exercise for regularization and to pass orders in that behalf shall be completed. Recording the above, the learned Single Judge disposed of the aforesaid Special Civil Applications. That thereafter as there was no sufficient sanctioned posts and/or vacant posts on which the services of those daily wagers were to be regularized, only with a view to see that the appellants herein - original petitioners and similarly situated daily wagers are accommodated and/or their services are regularized, the Ahmedabad Municipal Corporation



created thousands of supernumerary posts to regularize the services of those daily wagers w.e.f. August, 2004. Considering the fact that prior thereto there was no sufficient vacant posts in the establishment of Ahmedabad Municipal Corporation on which the services of the appellants herein - original petitioners and other thousands of similarly situated daily wagers / Mazdoors could have been regularized, there was no question of regularizing their services merely on completion of 5 years and 900 days. The services of daily wagers even as per the policy of the Ahmedabad Municipal Corporation cannot be regularized solely on completion of 5 years and 900 days services as daily wagers. The services are required to be regularized provided there are sufficient vacant posts. It is required to be noted that in the present case even to accommodate and/or regularize the services of the appellants - original petitioners and other thousands of similarly situated daily wagers and as per the settlement entered into between the parties, recorded in the order dated 3/9/2004 passed in Special Civil Application No. 5019 of 2001 and other allied Special Civil Applications, even Ahmedabad Municipal Corporation created thousands of supernumerary posts in the year 2004 on which services of the daily wagers came to be regularized. Under the circumstances, the appellants herein - original petitioners are not entitled to regularization prior to August, 2004 merely on completion of their 5 years and 900 days services as daily wagers irrespective of the fact whether there was any sanctioned vacant posts or not."

28. Thus, in a similar case to the present respondents-employees, the Division Bench has held that the employees, who are similarly situated to the present respondents are not entitled to be regularized on their completion of 5 years and 900 days of service. It is also held that in view of the new policy, which is adopted by the Corporation, earlier policy would get obliterated and the same cannot be placed reliance by such employees. The Division Bench has categorically held that the services of such employees cannot be regularized merely on completion of 5 years and 900 days of service, and such service can only be regularized provided there are sufficient vacant posts. Thus, the claim of the similarly situated employees to the respondents-employees seeking



regularization on completion 5 years and 900 days of service on the basis of Resolution dated 02.06.1983, is already delved into by the Division Bench and such claim is rejected. It is always within the domain of the appellant-Corporation to regularize its employees looking to their administrative requirement and financial constrain, more particularly, when they have to create supernumerary posts.

29. We are not inclined to differ from the view expressed by the Division Bench in the order dated 30.01.2018 passed in Letters Patent Appeal No.545 of 2017 with Letters Patent Appeal No.546 of 2017. Thus, on an overall appreciation of the facts and the policy of the Corporation in light of the impugned judgment dated 18.09.2018 passed by the learned Single Judge in the captioned petition, we are of the opinion that the learned Single Judge has failed to appreciate the obligation of the appellant-Corporation and also the decision of the Coordinate Bench, and also erred in allowing the writ petition filed by the respondents-employees by placing reliance on the judgment of the Supreme Court in case of **Nihal Singh (supra)**. Thus, we hold the decision of the learned Single Judge in allowing the writ petition filed by the respondents-employees, and further directing the appellant-Corporation to regularize their services with retrospective effect from 01.11.2005, as erroneous. The award dated 30.06.1978 passed in Ref(IT) No.179 of 1975 does not in any manner help the respondents-employees, which relates to demand of workmen working in the Engineering Department of the appellant-Corporation for making them permanent after



completion of 240 days of service, and ultimately, in the award, a formula was formed to grant benefit of such workmen, after completion of 5 years or more as on 31.03.1978.

30. The present Letters Patent Appeal succeeds. The impugned judgment and order passed by the learned Single Judge in Special Civil Application No.13843 of 2009 is hereby quashed and set aside.

(A. S. SUPEHIA, J)

(GITA GOPI, J)

Pankaj / 1