



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 10016 of 2018**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE MAULIK J. SHELAT**

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Approved for Reporting	Yes	No
		✓
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MAMNESH MAHENDRABHAI BHAVSAR & ORS.

Versus

STATE OF GUJARAT & ORS.

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Appearance:

DELETED for the Petitioner(s) No. 1

MR ANAND B GOGIA(5849) for the Petitioner(s) No.

10,11,12,13,14,2,3,4,5,6,7,8,9

MR BB GOGIA(5851) for the Petitioner(s) No. 10,11,12,13,14,2,3,4,5,6,7,8,9

MS MUSKAN A GOGIA(6624) for the Petitioner(s) No.

10,11,12,13,14,2,3,4,5,6,7,8,9

MR SIDDHARTH RAMI, ASSISTANT GOVERNMENT PLEADER for the  
Respondent(s) No. 1,2,3

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**CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

**Date : 28/01/2026**

**ORAL JUDGMENT**

1. Heard Ms. Muskan A. Gogia, learned Advocate appearing for  
Mr. Anand B. Gogia, learned Advocate for the petitioners and



Mr. Siddharth Rami, learned Assistant Government Pleader for the respondents. With consent, the matter was taken up for hearing.

2. The present petition is filed under Articles 226 and 227 read with Articles 14, 16, 21, and 23 of the Constitution of India, seeking the following reliefs:

*"A. YOUR LORDSHIPS may be pleased to admit and allow this petition.*

*B. YOUR LORDSHIPS may be please to hold declare and direct by appropriate writ directions and orders that the Petitioner(s) are Civil Servants / Government Servants of Respondent(s) State.*

*C. YOUR LORDSHIPS may be pleased to hold, declare and direct by appropriate writ direction or orders that termination of Service of Petitioner (s) orally from April 29, 2018 (29.04.2018) is illegal, ineffective, null and void and be quashed and be treated as continuing in service with all the consequential benefits including backwages etc.*

*D. YOUR LORDSHIPS may be pleased to hold, declare and direct by the Hon'ble Court that the Petitioner(s) be considered and treated as regular and permanent employees in accordance with the schemes viz. GR dated 17.10.1988 or GR dated 18.01.2017 annexed as Annexure G (Colly) or from the date they have completed 10 years of service with all the consequential benefits.*

*E. YOUR LORDSHIPS may be pleased to hold, declare and direct that the Petitioner(s) are entitled to salary of the regular pay scale of the post of window clerk of Civil Hospital with all other usual allowances*



*from the date of their appointment and be paid accordingly*

*F. Pending admission, hearing and final disposal of Petition, YOUR LORDSHIPS may please be directed to allow the Petitioner to work on their original post of window clerk in Civil Hospital at Ahmedabad and pay them on the minimum pay scale of the such post with usual allowances.*

*G. To pass any other Order or Order(s) which may be deemed to fit for the interest of the injustice.*

*H. Cost of this petition be awarded to the Petitioner."*

### **3. THE SHORT FACTS OF THE CASE:**

**3.1.** The petitioners, 14 in number, are working on different case papers windows/counters in different departments in the Civil Hospital at Ahmedabad. All the petitioners are physically challenged working on the case papers windows of the Civil Hospital, Ahmedabad, and since 2003, they are operating the computerized system to issue/maintain case papers. None of the petitioners are being paid any fixed wages by the respondent as otherwise payable to daily wagers or part-timers or persons engaged on fixed wages, as the case may be.

**3.2.** It appears that as per the Government Resolution dated 8th August, 2001 of the Health Department of the State of Gujarat, whereby, permission was granted to the Civil



Hospital, Ahmedabad, to print the case paper booklet by outside agency. The charges of such case papers are fixed as per the Government Resolution dated 2nd March, 2002.

**3.3.** Apropos to the above, the Blind People's Association (India) (Blind Men's Association), Ahmedabad, vide its letter dated 5th July, 2003, approached to the respondent No. 3-Medical Superintendent, Civil Hospital, Ahmedabad, whereby, it requested to allow the Association to depute handicapped trained staff for doing the job of issuing case papers to the patients at the Civil Hospital, Ahmedabad. It was also stated that the printing of case papers/books would also be done by the handicapped persons at the printing press of the said Association. The commission of Rs.1/- was agreed by the Association to be paid to such handicapped staff for the preparation of case papers for outdoor and indoor patients, if depute at the case papers widows of the Civil Hospital, Ahmedabad, though total charges for the same were requested for Rs.5/- and Rs.10/-, respectively.

**3.4.** The respondent, after considering the said proposal of the Blind People's Association, Ahmedabad, vide resolution dated 2nd February, 2003 of the Health Department of the State of



Gujarat, agreed to assign the said job to the said Blind People's Association, who undertook the responsibility to manage the affairs of issuance of case papers through handicapped persons.

**3.5.** Accordingly, in view of said agreement, the appointment of the petitioners at said place was made directly by the said Blind People's Association for the issuance/maintenance of case papers at the Civil Hospital, Ahmedabad. It is not even case of the petitioners that at no point of time, the respondent has directly appointed the petitioner.

**3.6.** As per the terms of remuneration, as per said agreement, they would receive the commission of Rs.1/- per case papers. It is not the case of the petitioners that they are being paid fixed monthly wages by the respondent, rather, in paragraph No.6(v) of the affidavit-in-rejoinder filed by the petitioners in this matter, it is admitted that they were paid commission for the aforesaid work.

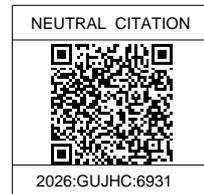
**3.7.** Thus, it cannot be disputed by the petitioners that their appointment at the windows of the Civil Hospital, Ahmedabad, for the issuance of case papers was as per the said agreement between the respondent and the said Blind People's



Association, whereby, the petitioners would receive commission as agreed between the said Blind People's Association and the petitioners, i.e., Rs.1/- per case papers.

**3.8.** It further appears that the petitioners made representations to the Chief Minister of the State of Gujarat in the year 2017 to absorb them as permanent employees of the State as since 2003, they are working and getting meagre amount, i.e., commission. Likewise, the Blind People's Association, vide its letter dated 24th January, 2014, also expressed the hardship caused to the petitioners as they are getting only Rs.3,000/- to Rs.3,500/- per month for doing the said work and shared the feelings of the petitioners who are searching for other good service avenues.

**3.9.** In the year 2018, the State appears to have decided to get the said work done through outsourced agencies. As per the email communication between the said Blind People's Association with the respondent, it would indicate that almost all petitioners, except few, are ready to work through such agencies. Accordingly, they have been redirected to do the said job by the outsourced agency and will be paid their commission through that agency.



- 3.10.** As the principal request of the petitioners to get permanent benefits, regular pay scale, and status as civil servants etc., was not replied positively by the State, they have approached this Court by way of this petition.
- 3.11.** The respondent has submitted its detailed reply opposing the prayers made in this petition and contended, *inter alia*, that none of the petitioners are appointed by the respondent, thereby, the petitioners cannot allow to claim the permanency benefits, regular pay scale and status as civil servants, etc. It is submitted that there is no master-servant relationship between the petitioners and the respondent. The petitioners are being paid only commission as per their said work, i.e., issuance/maintenance of case papers and not paid any monthly fixed wages.
- 3.12.** The petitioners have filed their rejoinder, but nothing contrary is brought on record than what is observed hereinabove.

#### **SUBMISSIONS OF THE PETITIONERS:**

- 4.** Ms. Gogia, learned Advocate for the petitioners, has strenuously espoused the cause of the petitioners by making the following submissions:



- 4.1. All petitioners are handicapped persons and exploited by the respondent by paying them meager amount of Rs.3,000/- to Rs.3,500/- per month for doing the job as otherwise was discharged by regular employees of the respondent.
- 4.2. The petitioners are vulnerable class, unable to raise any voice against such exploitation, but are entitled to the protection of their fundamental rights guaranteed under Articles 14 and 16 read with Article 21 of the Constitution of India.
- 4.3. The respondent-State cannot be allowed to exploit the petitioners by paying them only pittance under the guise of commission when they are discharging the duties of regular employees, who could have been engaged by the respondent-State to carry out such duty. As such, the arrangement between the respondent and the Blind People's Association, would only be beneficial and profit making to them at the cost of the petitioners.
- 4.4. The petitioners are having legitimate expectation to become permanent employees of the respondent as, since 2003, they are honestly discharging their duties.
- 4.5. The petitioners are in the direct control of administration of



respondent No.3-the Civil Hospital, Ahmedabad and have to act as per instructions. So also, it would be the bound duty of respondent-State to regularize of the petitioners.

4.6. As per the settled position of law, the petitioners are required to be regularized in their services and all consequential benefits as prayed in this petition may be granted by directing the respondents.

4.7. To buttress her arguments, Ms. Gogia, learned Advocate for the petitioners, would rely upon the following decisions:

- (i). *State of Assam V/s. Kanak Chandra Dutta, reported in 1967 AIR (SC) 884;*
- (ii). *Chennai Port Trust V/s. Chennai Port Trust Industrial Employees Canteen Workers Welfare Association and Ors., reported in (2018) 6 SCC 202;*
- (iii). *Dharam Singh & Ors. V/s. State of U.P. & Anr., reported in 2025 AIR(SC) 3897.*

4.8. Making the above submissions, Ms. Gogia, learned Advocate for the petitioner, would request this Court to allow the present writ petition.

#### **SUBMISSIONS OF THE RESPONDENTS:**

5. *Per contra*, Mr. Rami, learned AGP, has vehemently opposed



this petition as follows:

- 5.1. There is no master-servant relationship between the petitioners and the respondent. In the absence of such relationship, no relief as prayed in this petition can be granted by this Court.
- 5.2. The engagement of the petitioners at the windows of the Civil Hospital, Ahmedabad, by way of the proposal of the Blind People's Association, Ahmedabad, accepted by the respondent. It was expected, on the basis of such contract, the petitioners have been deputed by the said Association to do the job of issuance/maintenance of case papers at the Civil Hospital, Ahmedabad.
- 5.3. As per the terms of the agreement, the petitioners would get Rs.1/- as commission per case paper and the rest of the amount would be received by the said Association towards printing costs, etc. The status of the petitioners would be only 'commission worker' that too of the said Association.
- 5.4. When the petitioners are not getting any fixed wages from the respondent and their engagement to do the same job is not as daily wagers, fixed-term, or part-time employees, etc., it will not lie in the mouths of the petitioners to enlarge the scope and



ambit of the contract entered into between the parties.

- 5.5.** The selection of the petitioners was also not done by the respondent, as can be seen from the proposal letter dated 5th July, 2003 of the Blind People's Association addressed to respondent No. 3. Further, it was the Association who undertook to look after the work of the petitioners.
- 5.6.** The petitioners are not correct in their submissions that, as they have to follow the instructions of the Medical Superintendent, Civil Hospital, Ahmedabad, thereby, they are under the direct control of the respondent-State. The Civil Hospital, Ahmedabad, is one of the biggest public hospitals in the country, which is treating large number of patients every day, thus, it is also the duty of the administrator of the Civil Hospital to see that patients who are coming to the hospital may not face any difficulty in getting the case papers, etc.
- 5.7.** Since the petitioners are neither daily wagers nor full/part-time employees of the State, reliance placed upon the cited decisions by Ms. Gogia, learned Advocate for the petitioner, would not be applicable and its ratio may not be applied in the present set of facts.



5.8. Further, the selection of the petitioners and their appointments were not directly undertaken by the respondents for the said work, the petitioners cannot be allowed to maintain the claim of regularization by way of this petition.

5.9. To buttress his arguments, Mr. Rami, learned AGP, would rely upon the following decisions:

(i) *Chief Executive Officer, Zila Parishad, Thane and others V/s. Santosh Tukaram Tiwari and other reported in (2023) 1 SCC 456;*

(ii) *Union of India & Ors. V/s. Ilmo Devi & Ors., reported in (2021) 20 SCC 290.*

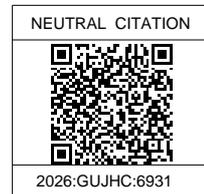
5.10. Making the above submissions, Mr. Rami, learned AGP for the respondents, would request this Court to dismiss the present writ petition.

6. No other and further submissions are being made.

#### **ANALYSIS AND OBSERVATIONS:**

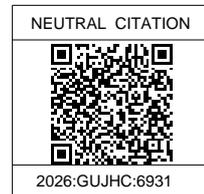
7. Having heard the learned Advocates appearing for the respective parties and upon perusal of their respective pleadings and documents, the following would emerge:

7.1. The petitioners are neither engaged as daily wagers nor as



full/part-timers by the respondents. Their initial appointment at the windows of the Civil Hospital, Ahmedabad, was pursuant to the agreement entered between the respondent and the Blind People's Association, Ahmedabad. As per the agreement, the said Association deputed the petitioners at the windows of the Civil Hospital, Ahmedabad for doing the job of issuance/maintenance of case papers. As per the agreement, only commission of Rs.1/- would be payable to the petitioners per case paper. Undisputedly, none of the petitioners are receiving any fixed wages by the respondent. Before entering into such agreement, vide letter dated 5th July, 2003, the said Blind People's Association agreed to do the work of printing of case paper books and further agreed that the appointment of employees will be done by the Association and their work will be supervised by their Association as well. The price of commission agreed between the parties and accordingly, the petitioners are getting their regular commission, per case paper. That being the position, no master-servant relationship has been created between the petitioners and the respondent.

**7.2.** True, the petitioners are engaged in the service of issuance/maintenance of case papers at the Civil Hospital,



Ahmedabad. To earn reasonable amount, they have to engage themselves for the entire day as they would receive the money as commission of Rs.1/- per case paper. Yet, this would not mean that they are discharging the work like regular employees of the Civil Hospital, Ahmedabad, as the case may be. It is claimed that work which is discharged by the petitioners was otherwise ought to have been discharged by regular employee who were shifted to some other place. This itself means that those employees can be assigned any duty by the respondent unlike the petitioners being handicap and also engaged for specific work on commission basis.

- 7.3. There is nothing on record to show and substantiate the case of the petitioners that they are within the direct control of the Civil Hospital, Ahmedabad, except they have to follow the instructions of the Medical Superintendent, Civil Hospital, Ahmedabad. Such instructions are required to be followed and obeyed by the petitioners, inasmuch as, the Civil Hospital, Ahmedabad, is undisputedly one of the biggest hospitals in India providing various medical facilities to a large number of patients every day; then, considering the nature of the work of the petitioners, i.e., issuance/maintenance of case papers for



outdoor and indoor patients, they cannot be allowed to act in their own way, including the opening and closing of windows at the Civil Hospital, Ahmedabad.

- 7.4. Since there is no master-servant relationship between the petitioners and the respondent, the prayers made in this petition in regard to seeking declaration that the petitioners may be declared as Civil Servants/Government Servants cannot be granted. Likewise, the benefit of Government Resolutions dated 17th October, 1988 and 18th January, 2017, respectively, thereby, claiming benefits as regular and permanent employees of the State, can also not be granted.
- 7.5. So far as, the prayers as regards the minimum of the regular pay scale and other allowances are concerned, it would be beyond the terms of the contract, whereby, the petitioners have been deputed to discharge the said work at the windows of the Civil Hospital, Ahmedabad.
8. The decisions which are pressed into service by Ms. Gogia, learned Advocate for the petitioner, are as such not applicable to the facts of the present case, inasmuch as neither the petitioners are directly engaged by the respondent as daily



wagers/part-time employees/contractual employees, nor the respondent has any direct control over their posting at the windows of the Civil Hospital, Ahmedabad, as aforesaid. Yet, this Court, in brief, would like to observe as to how those judgments are not applicable by making the following observations:

- 8.1. In the case of ***Kanak Chandra Dutta*** (supra), the appointment of the original petitioner was as Mauzadar-Revenue Contractor. The appointment of the Revenue Contractor was as per the Baden-Powell's Land System of British India, which appears to have been continued post-independence, as can be seen from the Assam Land Revenue Manual. The method of selection, appointment and dismissal of a Mauzadar, including the duties and emoluments of the office, etc., was as per the said manual. He may be appointed and dismissed by the Deputy Commissioner subject to the Commissioner's approval and treated as a public servant whose preliminary duty is to collect the land revenue and other government dues. The Mauzadar appears to have been invested with the power of attachment and sale of movables under Section-69 of the Assam Land and Revenue Regulation, 1886 and appointed as



Revenue Officer under Section-124 of the Regulation. Even, it has been observed by the Apex Court in the said decision that such Mauzadar-Revenue Contractor, was normally appointed from the family concern, if minor, their Sarbarahkars have been appointed ex-officio Assistant Settlement Officers and invested with the powers to effect registration under Section-53(A) in uncontested cases, etc. None of such can be observed in the case on hand, inasmuch as the petitioners though they received commission for doing their work at the windows of the Civil Hospital, Ahmedabad, but have no other authority, whereby one can remotely assume that they can be treated as public servants.

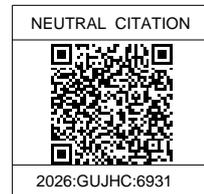
- 8.2.** In the case of *Chennai Port Trust* (supra), the workers who are working with the Chennai Port Trust ran the cooperative society and as per the constitution of the society, only those who are workers of the Port can become its member and no others. As per the facts of the case, the society which was running the canteen its rule shall be subject to the approval of the Chairman of the Trust, whereby, it was held that the ultimate control of the administration of the canteen is with the Port Trust. Moreover, only a nominee of the Port Trust can act



as the Chairman of the society and its accounts can be audited by the Trust administration. Not to burden further, I can only say that the facts of the said decision are not identical to the case on hand, as there is nothing on record to show that any administrative control or power of imposing any penalty as per disciplinary rules is available with the respondent in a case of any misconduct by the petitioners.

**8.3.** In the case of *Dharam Singh* (supra), again the original petitioners were engaged as Class IV and III employees as daily wagers by the State, whose legitimate claims to be made permanent in their respective posts were denied by the State. In the facts of that case, the Hon'ble Apex Court has allowed their request by directing the State to regularize the services of such daily wagers and to pay them not less than the minimum of the regular pay scale. The petitioners herein are undoubtedly cannot be treated as daily wagers as they are neither receiving daily wages/fixed wages nor directly engaged by the respondent.

**9.** Thus, the upshot of the aforesaid observations and discussions, none of the cited decisions would help the case of the petitioners any further and as such, I do not find any substance



in the arguments of Ms. Gogia, learned Advocate for the petitioners.

10. Whereas, as per the decisions cited by Mr. Rami, learned AGP, are concerned, what can be deduced therefrom is that the High Court under Article 226 of the Constitution of India, has no power to issue directions of regularization. Even, the contractual employees whose selections are made without any due process, cannot be allowed to claim regularization. At this stage, it would be apposite to refer the following passage from the decision of the Hon'ble Apex Court in the case of *Ilmo Devi* (supra), wherein, held thus:

*“15. In Daya Lal [State of Rajasthan v. Daya Lal, (2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340] in para 12, it is observed and held as under : (SCC pp. 435-36)*

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

**(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 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 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.*

*[See State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , M. Raja v. CEERI Educational Society Pilani [M. Raja v. CEERI Educational Society Pilani, (2006) 12 SCC 636 : (2007) 2 SCC (L&S) 334] , S.C. Chandra v. State of Jharkhand [S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943] , Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand [Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand, (2007)*



*15 SCC 680 : (2010) 1 SCC (L&S) 742] and Official Liquidator v. Dayanand [Official Liquidator v. Dayanand, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] .]”*

*(emphasis supplied)*

11. Since, none of the petitioners were directly appointed by the respondent through due process, i.e., as per recruitment rules and are receiving their remuneration in the form of commission, their status remains that of ‘commission agents’ rather than employees in any form. Yet, if the petitioners are feeling exploited by the Blind People's Association or outsourced agency, as the case may be, through whom they have been deputed at the windows of the Civil Hospital, Ahmedabad, it is open for them to take appropriate action against such Association if so advised, albeit in accordance with law. Neither the Blind People's Association, Ahmedabad, nor that outsourced agency are joined as the party in this writ petition, thus, I would not like to make any further observations in this regard.

**CONCLUSION:**

12. In view of the foregoing observations, discussions and reasons, I am of the view that there is no merit in the petition and as



such, no reliefs as prayed by the petitioners in this petition can be granted. Since the petition is sans merit, it requires to be dismissed. Accordingly, it is hereby dismissed. Rule is discharged, albeit no order as to costs.

NILESH

**(MAULIK J. SHELAT,J)**