

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/LETTERS PATENT APPEAL NO. 222 of 2024****In R/SPECIAL CIVIL APPLICATION NO. 11268 of 2023****With****CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2024****In R/LETTERS PATENT APPEAL NO. 222 of 2024**

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SENIOR MANAGER (P AND A), GUJARAT WATER SUPPLY AND
SEWERAGE BOARD & ORS.

Versus

DAHIALAL KANTILAL TRIVEDI THROUGH LHS & ORS.

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Appearance:

MR HS MUNSHAW(495) for the Appellant(s) No. 1,2,3

for the Respondent(s) No. 1,1.1,1.2,1.3

MR. SANJAY UDHWANI, AGP for the Respondent(s) No. 2

MR. MUKESH T MISHRA(5900) for the Respondent(s) No. 1.1,1.2,1.3

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CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 19/03/2024

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)

ORDER IN LETTERS PATENT APPEAL

1. Heard Mr. H.S.Munshaw, learned Counsel for the appellants and Mr. T.R.Mishra, learned Counsel for the respondents.

2. In this appeal, the question deserves consideration is whether the scheme for granting lump sum compensation in lieu of

compassionate appointment would apply to the beneficiaries of the employees who died in harness and got the benefit of regularization by Resolution dated 17.10.1988 of the Government of Gujarat.

3. Mr. Munshaw, learned Counsel for the appellants would submit that the issue is at large before the Supreme Court in Special Leave Petition (Civil) Diary No.3576 of 2024 wherein, the Supreme Court while issuing the notice in the application seeking condonation of delay has stayed the order in the meantime.

4. Mr. Mishra, learned Counsel for the respondents would vehemently oppose the entertaining of the appeal and invite the attention of this Court in para 1 of the petition and submit that since the father of the petitioner who had been already regularized, the issue that arises in the batch of appeals before the Supreme Court would not be relevant. He would also rely upon the order of the Division Bench dated 17.10.2022 wherein, while admitting the appeal, the Court directed the appellant-Gujarat Water Supply and Sewerage Board to deposit the amount of compensation before this Court. He would therefore, submit that at least pending hearing of

the appeal, the amount be directed to be deposited. He would also rely upon the observations of the Hon'ble Supreme Court in case of **State of Assam Vs. Barak Upatyaka D.U.Karmachari Sanstha** reported in **(2009) 5 SCC 694** wherein, it is held that :-1

“21. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing.

22. The observations and directions in Kapil Hingorani (I) and (II) being interim directions based on tentative reasons, restricted to the peculiar facts of that case involving an extraordinary situation of human rights violation resulting in starvation deaths and suicides by reason of non- payment of salaries to the employees of a large number of public sector undertakings for several years, have no value as precedents. The interim directions were also clearly in exercise of extra-ordinary power under [Article 142](#) of the Constitution. It is not possible to read such tentative reasons, as final conclusions, as contended by the respondent. If those observations are taken to be a final decision, it may lead to every disadvantaged group or every citizen or every unemployed person, facing extreme hardship, approaching this Court or the High Court alleging human right violations and seeking a mandamus requiring the state, to provide him or them an allowance for meeting food, shelter, clothing, salary, medical treatment, and education, if not more. Surely that was not the intention of Kapila Hingorani (I) and (II).”

5. Considering the submissions made by the learned Counsels appearing for the respective parties and also considering the fact that essentially that the issue involved in this appeal is pending before

the Hon'ble Supreme Court and Hon'ble Supreme Court in the order of 9th February, 2024 has stayed the impugned order passed by this Court, request of learned Counsel for the respondents to pass order in line with the order passed by the Division Bench dated 17.10.2022 cannot be accepted.

6. Even perusal of the order of learned Single Judge would indicate that though the reliance was placed on S.L.P. order passed on 1.9.2022, the subsequent order dated 9.2.2024 would be relevant and therefore, we think it proper to admit this appeal

Admit.

Mr. Sanjay Udhwani, learned AGP waives service of notice of admission for and on behalf of the respondent No. 2.

Mr. T.R.Mishra, learned advocate waives service of notice of admission for and on behalf of the respondent Nos. 1.1,1.2,1.3

ORDER IN CIVIL APPLICATION

In light of the reasoning stated in the appeal, there shall be stay of the order of learned Single Judge till final disposal of the Letters Patent Appeal with liberty to move the Bench after hearing of

pending proceeding before the Supreme Court.

Civil Application stands disposed of.

(BIREN VAISHNAV, J)

BEENA SHAH

(PRANAV TRIVEDI,J)