

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

**R/LETTERS PATENT APPEAL NO. 358 of 2025**  
**In R/SPECIAL CIVIL APPLICATION NO. 16901 of 2022**  
**With**  
**CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2025**  
**In R/LETTERS PATENT APPEAL NO. 358 of 2025**  
**In R/SPECIAL CIVIL APPLICATION NO. 16901 of 2022**  
**With**  
**R/LETTERS PATENT APPEAL NO. 620 of 2025**  
**In R/SPECIAL CIVIL APPLICATION NO. 14661 of 2022**  
**With**  
**CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2025**  
**In R/LETTERS PATENT APPEAL NO. 620 of 2025**  
**In R/SPECIAL CIVIL APPLICATION NO. 14661 of 2022**

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BHAVNAGAR DISTRICT PANCHAYAT & ORS.

Versus

MADHABHAI MANSURBHAI KHIMSURIYA

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Appearance:

MR HS MUNSHAW(495) for the Appellant(s) No. 1,2,3,4

MR HIMANISH J JAPEE(11295) for the Respondent(s) No. 1

MR JV JAPEE(358) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**

and

**HONOURABLE MR. JUSTICE R. T. VACHHANI**

Date : 24/07/2025

**COMMON ORAL ORDER**

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

***Admit.*** Learned advocate Mr. Japee waives service of notice of admission for and on behalf of the respondents.

With consent of the learned advocates appearing for the respective parties, the appeals are taken up for final hearing today.

1. The present appeals are directed against the judgement and order dated 06.12.2024 passed in

the captioned writ petitions challenging the award dated 14.02.2022 passed in Reference (IT) No.71 of 2016, wherein and whereby the Industrial Tribunal, Bhavnagar (for short "the Tribunal") has allowed the reference proceedings in part by directing the appellant-District Panchayat to regularize the services of the respondent-workman from 21.06.1999 and further directed that a period from 21.06.1999 till passing of the award i.e. 14.02.2022 shall be considered as notional and the respondent-workman will not be entitled to the arrears however, such period shall be considered for the purpose of seniority, promotion, retirement benefits, gratuity etc.

2. Being aggrieved, the respondent-workman as well as the appellant-District Panchayat filed the captioned writ petitions. The writ petition being Special Civil Application No.14661 of 2022 was filed by the respondent-workman to the extent of denying him the actual benefits, whereas Special Civil Application No.16901 of 2022 was filed by the Bhavnagar District Panchayat challenging the entire award. Learned Single Judge has partly allowed the writ petition filed by the respondent-workman and has modified the award of the Tribunal to the extent that the respondent-workman will be entitled to the actual monetary benefits from the date of filing of the reference i.e. 19.08.2016, whereas the writ

petition filed by the Bhavnagar District Panchayat (being SCA No.16901 of 2022) was dismissed.

3. Learned advocate Mr.Munshaw appearing for the appellant-Bhavnagar District Panchayat has submitted that the Tribunal fell in error in granting the benefits of regularization to the respondent-workman only on the basis that he has been engaged for long time. It is submitted that the respondent-workman was appointed on the post of Driver as a daily wager, without following the recruitment process and thus, he cannot be ordered to be regularized on the sanctioned post of the Driver, though he may be performing duty of a Driver for three different Primary Health Centers. It is submitted that in case, the judgement of the learned Single Judge confirming the award of the Tribunal is sustained, the same would create class within class and there would be two set of employees working under the District Panchayat.

4. Learned advocate Mr.Munshaw has submitted that a specific contention was also raised before the learned Single Judge that instead of granting the benefits of permanency / regularization, the respondent-workman may be granted the benefits of Government Resolution dated 17.10.1988, which also confers the benefits of a regular pay-scale,

after completion of 5-10-15 years of service by a daily wager. It is submitted that the learned Single Judge, though has recorded such submission, however, the same is not accepted. Thus, it is urged that the judgement and order of the learned Single Judge as well as award of the Tribunal may be quashed.

5. Per contra, learned advocate Mr.Japee, while placing reliance on the judgement of the Apex Court in the case of Jaggo Vs. Union of India and Ors., 2024 INSC 1034 dated 20.12.2024 passed in SLP (C) No.5580 of 2024, has submitted that since the respondent-workman was constantly engaged as a Driver and was doing work of the regular driver for all these years, the benefits of regularization has been precisely ordered by the Tribunal. Thus, it is urged that the judgement and order passed by the learned Single Judge may not be interfered with.

6. We have heard the learned advocates for the respective parties and perused the documents as pointed out by them. We have also perused the evidence discussed by the Tribunal.

7. A Statement of Demand made by the respondent-workman at Exh.10 specifically refers that he has been constantly and regularly working from 21.06.1999 as a Driver. It is also mentioned in

the Statement of Demand that in view of an advertisement pasted on the Notice Board, he filed an application and after holding the interview, he has been selected and appointed as a Driver on daily wage, which was lower than the minimum wages. Thus, he has demanded that since he has been working regularly as a Driver, he may be absorbed as regular driver and paid the regular pay-scale to that of regular driver.

8. Accordingly, the Tribunal discussed the evidence and recorded the finding that the appointment of the respondent-workman cannot be said to be a back-door entry and he has been constantly serving as regular driver from the date of his appointment. It is also recorded that one post of regular driver was also vacant and despite the direction issued by the Tribunal to point out as to why such post has not been filled-in, no response was given by the District Panchayat. Thus, it is categorically held that though one post of a regular driver in a set-up is vacant, the same is not filled-in and the respondent-workman has been engaged as a driver and is being doing the work of regular driver for all these years.

9. Hence, in wake of such evidence, the Tribunal accordingly, after considering the various judgements of the Apex Court, has directed that

the respondent-workman shall be regularized from 21.06.1999 and intervening period from 1999 till passing of the award i.e. on 14.02.2022 shall be treated as notional and he would not be entitled for any arrears and such period though would be considered for the purpose of seniority, promotion, retirement benefits, gratuity etc. Learned Single Judge, after threadbare examination and considering the judgements of the Apex Court, has modified the award to the extent that the respondent-workman would be entitled to the actual arrears from the date of filing of the reference i.e. from 19.08.2016.

10. We may at this stage, refer to the recent decision in the case of *Jaggu (supra)*, after considering the Constitution Bench judgement in the case of Secretary, State of Karnataka vs. Uma Devi, (2006) 4 S.C.C. 1 and arguments of the employer relating to the nature of the appointment of such daily wagers, absence of performance issues, compliance with 'Uma Devi' Guidelines, discrimination in regularization, irrelevance of educational qualifications, equity and fairness, has held thus:

*"20. It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However,*

where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgement of this Court in Vinod Kumar and Ors. Etc. Vs. Union of India & Ors. 5, it was held that held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgement have been reproduced below:

"6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra). 7. The judgement in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case..."

21. The High Court placed undue emphasis on the initial label of the appellants' engagements and the

outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment: continuous, long-term service, indispensable duties, and absence of any mala fide or illegalities in their appointments. In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.

22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration<sup>6</sup> encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.

24. The landmark judgement of the United State in the case of *Vizcaino v. Microsoft Corporation*<sup>7</sup> serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this

*case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment.*

*25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade longterm obligations owed to employees. These practices manifest in several ways:*

- Misuse of "Temporary" Labels: Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*

- Arbitrary Termination: Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*

- Lack of Career Progression: Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental*

*pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*

- Using Outsourcing as a Shield: Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.*

- Denial of Basic Rights and Benefits: Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.*

*26. While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades."*

11. Thus, the Apex Court has held that *Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale.* It is also held that there is latent misuse of "Temporary" labels by engaging an employees for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such mis-classification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.

12. In the present case also, though the respondent-workman has been constantly engaged as a daily wager, the Bhavnagar District Panchayat has been continuously taking work of regular driver from 21.06.1999. Thus, we do not find any infirmity in the order passed by the learned Single Judge in altering the award of the Tribunal and granting the actual benefits to the respondent-workman from the date of reference i.e. 19.08.2016.

13. There is another issue, which has been raised for the first time in the writ petition filed before this Court i.e. grant of the benefits under Government Resolution dated 17.10.1988. No such contention was raised before the Tribunal and the Tribunal had no occasion to deal with such Resolution. Even if it is assumed that the respondent-workman is entitled to the benefits of such Resolution, which has been promulgated to grant the benefits of the regular pay-scale to the daily wager, after completion of 5-10-15 years of service, is applicable to the respondent-workman, however, the same cannot dilute the claim of regularization in wake of the fact that the respondent-workman has been doing work of regular driver and post of regular driver, which is the sanctioned post though is available in the set-up, has not been filled-in by the regular recruitment process. Thus, in fact, the action of the appellant-Bhavnagar District Panchayat can be said to be illegal, arbitrary and the Bhavnagar District Panchayat has adopted an unfair illegal practice by engaging the respondent-workman on daily wage, instead of appointing him on regular basis though the post was available.

14. Hence, the contention with regard to granting the benefits under Government Resolution dated 17.10.1988 is hereby rejected.

15. In light of the foregoing observations, the present appeals fail. The same stand dismissed. We further direct that the directions issued by the learned Single Judge granting the actual benefits from the date of reference being 19.08.2016 and the directions of regularization issued by the Tribunal and confirmed by the learned Single Judge shall be implemented within a period of 03 (three) months, failing which the respondent-workman shall be entitled to interest @ 6% on the arrears.

Registry shall place a copy of this order in the connected matter.

Sd/-  
(A. S. SUPEHIA, J)

Sd/-  
(R. T. VACHHANI, J)

NVMEWADA/53,55

Original copy of this order has been signed by the Hon'ble Judges.  
Digitally signed by: NEHABEN VINODBHAI MEWADA(HC01571), PRIVATE SECRETARY, at High Court of Gujarat on 29/07/2025 10:54:08