

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 8876 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DEVAN M. DESAI

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Approved for Reporting	Yes	No
	✓	
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CHIEF OFFICER, JAIMINKUMAR KANUBHAI CHAUDHARI & ANR.
 Versus
 PRESIDENT, NEW GUJARAT MAJUR SEVA SANGH & ANR.

Appearance:
 MR VIJAY H NANGESH(3981) for the Petitioner(s) No. 1,2

CORAM: HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 06/08/2026
JUDGMENT

1. The present petition is filed under Articles 226 and 227 of the Constitution of India, 1950 by the petitioners seeking following prayers.

“(A) Your Lordships may be pleased to admit and allow this petition;

(B) Your Lordships may be pleased to issue appropriate writ, order or direction quashing and setting aside the impugned award passed by the learned Presiding Officer, Industrial Tribunal Ahmedabad in Reference (I.T.) No.242 of 2016 dated 28.11.2025 (Annexure-A) in the interest of justice;

(C) Pending admission and till final disposal of this petition, your Lordships may be pleased to stay the implementation, execution and further proceeding of the impugned award passed by the learned Presiding Officer, Industrial Tribunal Ahmedabad in Reference (I.T.) No.242 of 2016 dated 28.11.2025 (Annexure-A) in the interest of justice;

(D) Any such other and/or further orders that may be thought just and proper, in the facts and circumstances of the present case.”

2. Rule returnable forthwith. Heard learned advocate Mr. Vijay H. Nangesh for the petitioners.

3. The brief facts of the case are as under:-

3.1. Respondent No.1-Union has raised a demand for regularization of 34 workers. The Learned Secretary, Labour and Employment Department, Gandhinagar, referred the charter of demands before learned Industrial Tribunal, Ahmedabad. Learned Industrial Tribunal in reference (I.T.) No.242 of 2016, partly allowed reference of 27 workers and directed present petitioners to appoint workmen as permanent Safai Workmen from the date of their appointment and further ordered that workmen shall not be entitled for arrears for the period from the date of their appointment till the award is passed i.e. on 28.11.2025. The said period be considered as notional period. Petitioners were also directed to consider workmen for retirement benefits like pension, gratuity etc.

3.2. Being aggrieved and dissatisfied with the impugned judgment and award, petitioners are before this Court.

4. Learned advocate for the petitioners, at the outset, contended that the original reference was filed for 34 workmen, out of which, the reference was pursued for 27 workmen and remaining workmen were deleted from the reference. It is further contended that 27 workmen were daily wagers and they have not been able to establish completion of 240 days of their service preceding 12 calendar months. It is further contended that the appointment of 27 employees was not made in accordance with the regular procedure. There were 98 approved posts and remaining 58 were filled after obtaining approval from the Director of Municipalities, based on the seniority of daily wagers and Safai Kamdars / Drainage workers on 01.09.2012. As per the resolution, the establishment expenditure may not exceed 45% and minimum wages and EPF were paid to daily wagers /workmen. It is further submitted that workmen were not

appointed as per Gujarat Municipality Act. Considering economic condition of petitioner, workmen cannot be considered for regularization as it would add additional financial liability on Municipality. Thus, learned Tribunal has committed an error by granting the reference mainly on the ground that the workers are working since long and there are vacant posts. Except above, no other submissions are canvassed by learned advocate for the petitioners.

5. I have considered the submissions made by learned advocate for the petitioners and perused the paper-book placed on record. There is no dispute on the factual aspect that out 27 workmen, many workmen have worked continuously since 2004, 2007 and 2008 as Safai Kamdars. The pay slips which are placed on record at page Nos.7 to 35 of the paper-book also denote that respective employees have worked for almost entire month in the year 2018. Therefore, it is an undisputed fact surfaces on record that workmen have worked continuously

without any break since the date of their respective appointments and have been paid wages for their work. The challenge against regularization is two fold, firstly, workmen were not appointed after following recruitment rules and secondly, weak financial condition of petitioner. So far as first limb of challenge is concerned, admittedly workmen may not have been appointed as per recruitment rules but fact remains that workmen were engaged by petitioner and learned Tribunal has recorded that workmen have continuously worked for 14 to 26 years as daily wager Safai Kamdar. Learned advocate for petitioner could not contradict aforesaid factual position. Irregular appointment of workman / workmen is different from illegal appointment. Illegal appointment is which violates core constitutional schemes or statutory recruitment rules. Irregular appointment cannot be equated with illegal appointment. Illegal appointment of workmen cannot be regularized. But cases where appointment skipped procedural rules such as failing to notify an employment exchange or lack of open competitive

selection, long standing services can be regularized. It is not the case in the present petition that appointment of workmen was against the sanctioned and valid posts and workmen lack needed qualifications. Therefore, irregular appointments can be made regular when petitioner has taken work from workmen for a long period of time. The second contention regarding lack of financial stability is merely an eyewash and such ground cannot disentitle workmen from being regularized. There is no material placed on record with regard to financial crunch sustained by petitioner. To get the benefit of financial constraint, petitioners must establish and prove their weak financial condition. Therefore, both the limbs of submission are rejected.

6. Moreover, it would be relevant to dissect the oral evidence of witness of petitioners. The said witness has admitted in cross-examination that minimum wages for the Municipality was fixed on 13.07.2010 and there were 49 posts granted for Safai Kamdar. The said witness has further admitted that 27 workmen were working before fixing of minimum wages in the year 2010.

As per evidence, there were 13 to 14 posts of Safai Kamdar vacant in the year 2025. Petitioners have not produced the statement showing vacancy of posts. The evidence of the said witness further indicates that there was no separate wage structure for daily wagers. On 01.09.2012, petitioners have appointed other Safai Kamdars in the Establishment of the petitioners. Thus, learned Tribunal assessed the said evidence of the witness of the petitioners and thereafter the fact titled in favour of the concerned workmen and petitioners were found involved in unfair labour practice. Depriving of the workmen who were already in continuous service of petitioners and appointing other daily wagers in the year 2012, is also a fact which has weighed the learned Tribunal in granting benefits of regularization. It is also not in dispute that the petitioners have been taking work from the concerned 27 workmen as daily wagers from their respective dates of appointment. In light of long and uninterrupted duration of service for more than 10 years, is a valid and legal reason / ground for accepting the

claim of workmen for regularization. Learned advocate for the petitioners could not point out any infirmity or illegality from the impugned judgment and award. As I do not find any perversity or illegality being committed by learned Tribunal, present petition lacks merits and the same stands dismissed. Rule stands discharged. Petitioners shall comply with the judgment and award dated 28.11.2025 passed by learned Presiding Officer, Industrial Tribunal Ahmedabad in Reference (I.T.) No.242 of 2016 within 6 weeks.

RINKU MALI

(D. M. DESAI,J)