

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

1) **Civil Writ Petition No.5898 of 2004**
Date of decision: November 27, 2015

Satnam Kaur and others

...Petitioners

Versus

State of Punjab and others

...Respondents

2) **Civil Writ Petition No.10681 of 2010**

Chanan Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

3) **Civil Writ Petition No.20242 of 2013**

Hardeep Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. K.L.Arora, Advocate,
for the petitioner(s).

Mr. Amit Singh Sethi, Addl.AG Punjab
for respondents no.1 to 3.

Mr. K.S.Dadwal, Advocate,
for respondent No.4.

Amol Rattan Singh, J.

The petitioners in these 3 cases (45 in number), are former employees of the Notified Area Committee/Nagar Panchayat Bhikhiwind, District Tarn Taran (formerly district Amritsar). After having been relieved

from different posts, on which they were working, consequent upon the initial de-notification of the Notified Area Committee, they originally sought appointment/adjustment in the service of other municipalities in the “region of Amritsar”.

Two petitioners in CWP No.10681 of 2010 had withdrawn their names from the petition, as reflected in the order dated 23.12.2014.

For the sake of convenience, the facts are being taken from CWP No.5898 of 2004 .

3. The eleven petitioners in CWP No.5898 of 2004 were working as Clerks/Octroi Clerks, except petitioner no.1 Satnam Kaur, who was working as a “Typist-Clerk”.

Other than petitioner no.1, all the other petitioners were initially appointed on contract basis in the same capacity in the year 1993, on different dates in September and October, except for petitioner no.7 Anita Rani, who was appointed on contract basis as an Octroi Clerk on 01.08.1994.

Thereafter, all these petitioners were appointed in April and May 1995 on these very posts on daily wage basis and Satnam Kaur joined for the first time itself, on daily wage basis, on 09.01.1995, as a Typist-Clerk.

On 11.06.1999, petitioners no.1 to 5 were given regular appointment in the same capacity on which they were working on daily wage basis and three days later, i.e. on 14.06.1999, petitioners no.8 to 11 were also given similar regular appointment. Such regular appointment was given upon, first, resolution No.16/99 having been passed on 20.04.1999 by the Municipal Committee (Nagar Panchayat), authorizing the President of the Committee to make appointments on the posts of Clerks and Sewadars,

on regular basis. Thereafter, resolution No.26-A/99 is stated to have been passed on 01.06.1999, appointing 49 persons on the posts of Clerks, including the petitioners, and appointing 25 persons on the posts of Sewadars. These appointments are shown by the said resolution (Annexure P-2 with the petition), to have been made pursuant to an advertisement given in the newspapers for filling up these posts and upon preparation of a merit list (as per the merit of each candidate in the interview).

Appointment letters are also stated to have been issued to all the petitioners thereafter, by the President of the Nagar Panchayat, on 11.06.1999 /14.06.1999, as already noticed. Medical fitness and antecedents having been verified, the petitioners are stated to have joined regular service and service books consequently prepared in respect of each employee.

The petitioners of the two other petitions were also appointed either as Safai Sewaks or Clerks/Octroi Clerks or Sewadars, in the same process.

4. It is also stated in the lead petition that the regular appointments of these petitioners would also be covered by the instructions of the Punjab Government, dated 30.08.2000 (Annexure P-7/A) and 08.09.2000 (Annexure P-7/B), directing the Executive Officers of the Nagar Councils/Nagar Panchayats, (though of Ferozepur region as per Annexure P-7/B), that the services of those employees as had completed 240 days of service, be considered for regularisation. This is apart from the fact that, as per the petitioners, they were appointed by due process.

However, vide orders dated 01.07.1999, i.e. one day prior to the de-notification of the Nagar Panchayat, the Regional Deputy Director, Urban Local Bodies, Amritsar, exercising powers under Section 232 of the

Punjab Municipal Act, 1911 (hereinafter referred to as the Act), stayed/suspended the operation of the orders of the President of the Nagar Panchayat, appointing the petitioners and others as regular employees.

5. It is further stated in the petition, that the Punjab Government vide order dated 02.07.1999, de-notified Nagar Panchayat, Bhikhiwind, which was challenged before this Court by way of CWP No.8973 of 1999, which petition was allowed on 13.10.1999, consequent upon which the municipality again started functioning from 30.12.1999 and the petitioners continued to work there after that.

The judgment of this Court in the aforesaid writ petition was challenged by way of SLP No.3670 of 2002, and operation of the judgment was stayed by the Supreme Court, vide its order dated 08.05.2000. As such they worked in the Committee from 30.12.1999 to 08.05.2000.

As per the petitioners, even thereafter, neither were they (formally)relieved from service nor terminated.

6. Thereafter, the petition makes reference to the legal opinion obtained from the Legal Assistant in the office of the Director of Local Government, Punjab, dated 02.08.2001 (Annexure P-11), in which it was opined that the competent authority “may consider the desirability of rescinding or modifying the resolution u/S 235” (of the Act), as regards the appointments that were made in accordance with law, subject to the decision of the Supreme Court, further opining that no such appointment should exceed the sanctioned strength (of the cadre concerned).

Reference has also been made in the petition, citing the legal opinion given by the Legal Assistant, to a Division Bench judgment of this Court in **Surjit Mehta v. State of Haryana** (AIR 1993 P&H 150), holding

therein that the power conferred under Section 246 of the Haryana Municipal Act 1973 (pari materia with Section 232 of the Punjab Act), could not be exercised by the Deputy Commissioner in respect of a resolution relating to making of appointments in the Municipality. Such power, as per the judgment, in relation to the Haryana Act, could only be exercised in respect of resolutions which would be contrary to public interest, or would be likely to cause waste or damage of municipal funds or property, or lead to a breach of peace etc.

7. The writ petition also refers to the instructions of the Government of Punjab, dated 24.04.1986 (Annexure P-11/A), prioritising the categories of persons who would be absorbed in State services in given circumstances.

The first among such categories, as given in the instructions, would be a member of the family of a person killed in terrorist action, or of a family that lost its bread winner in the riots that took place from 31.01.1984 to 07.11.1984.

The second category given in the instructions, is that of employees declared surplus on account of abolition of an organisation. In such a case, i.e. in the category in which the petitioners claim absorption in other municipalities, the instructions further state in clause 2(iii) thereof that relaxation of age would be admissible up to the extent that the employee rendered continuous Government service on regular basis.

Thereafter, on 20.04.1992 another set of instructions (Annexure P-11/B) was issued, reiterating the earlier instructions but pushing the category under which the petitioners' claim, down to the third priority, the second priority going to a member of the family of a deceased Government employee or of a Government employee retired from service on medical

grounds.

8. In the light of the above instructions, the petitioners are stated to have made various representations on 18.09.2002 and 08.05.2003 (copies not attached with the petition), as also 20.06.2001 (Annexure P-9) and in the case of petitioner no.1, another representation dated 25.10.2000 (Annexure P-8).

Their representations having gone unanswered, the petitioners earlier filed CWP No.10147 of 2003 which was disposed of by a Division Bench of this Court on 08.07.2003, directing the respondents to decide the representations and further directing that in case the petitioners were entitled to salary for the period that they claimed, the same would be paid to them within one month of the date of the order.

9. Consequently, a speaking order dated 12.11.2003 (Annexure P-13) was passed by the Deputy Director, Urban Local Bodies, Amritsar (respondent no.2), the quashment of which is sought by the petitioners, the said order having rejected their claim for absorption and regular appointment, or even for grant of salary except for the period that they actually worked on the posts to which they were appointed.

10. A perusal of the said order shows that the reasoning given therein for the rejection of the petitioners' claim is to the effect that, initially, on 10.06.1997, vide resolution No.12/97, the Nagar Panchayat, Bhikhiwind, had sought to regularise the services of employees working on daily wages, which was stayed by the Deputy Director on 23.06.1997, as there was a complete ban on the creation of new posts. It is further stated in the order that other than the above, the judgment of this Court by which services of employees engaged on *ad hoc* basis/for 89 days/on daily wages were

directed to be regularised, was stayed by the Supreme Court with a direction to the State Government to make appointment by regular process by 31.07.1997. (Though neither the judgment of this Court, nor that of the hon'ble Supreme Court, has been described by title in the impugned order, the reference seems to be to this Courts' judgment in Pyara Singh v. State of Haryana 1988 (4) SLR 739 and that of the Supreme Court in State of Haryana v. Pyara Singh(1992) 4 SCC 118.

The impugned order further states that the instructions in this regard were circulated to all Executive Officers of Municipalities, including that of Nagar Panchayat, Bhikhiwind, on 29.06.1998, but ignoring the same, the services of daily wage employees were regularised “with malafide intention and in violation of Government instructions”. Consequently, the resolution by which such appointments were approved, was stayed, as also for the reason that the persons appointed were far beyond the sanctioned budget of the year 1999-2000.

Reference has also been made, earlier in the order, to the fact that 34 posts of Clerks, 12 of Sewadars, one of Sanitary Supervisor, one of a Tractor driver and 27 Safai Sewaks were given budgetary sanction from time to time, from the year 1993-1994 to 1999-2000, by the Deputy Director, Local Government, Amritsar, but on contract basis only. During this period, the posts of Sewadar and Mali-cum-Chowkidar were converted into daily wage posts from contractual posts by the Nagar Panchayat, vide a resolution dated 25.04.1995, which was approved/sanctioned by the Deputy Director on 01.06.1995. However, even for these two categories of Mali-cum-Chowkidar and Safai Sewak, no approval was ever granted for regular appointment to the Nagar Panchayat. Despite that, it is further stated in the

impugned order, that vide resolution dated 01.06.1999, the President of the municipality confirmed regular appointment of 49 Clerks and 26 Sewadars/Peons and issued them appointment letters and that too during the period when there was a complete ban on regular appointment in Municipal Councils, which had been duly conveyed to the Executive Officers on 26.09.1998.

The order further states that these posts were never sanctioned even in the budget for the year 1999-2000 and that the action of the Deputy Director, Urban Local Bodies, Amritsar, dated 01.07.1999, taken in exercise of jurisdiction under Section 232 of the Act, was confirmed by the Government on 23.09.2003, exercising jurisdiction under Section 235 thereof.

Other than that, the order also states that the Nagar Panchayat was on notice of being de-notified due to “mal-functioning in various fields of activity” and that 75 employees (49 Clerks and 26 Sewadars) were appointed “without following any procedure or sanction of the competent authority” at a time when the President was aware that a show cause notice had already been served for such de-notification.

All in all, it is stated that the petitioners have no legal right to be adjusted in other Municipal Councils as they were working on daily wages and cannot be treated to be regular appointees, regular posts never having been duly sanctioned by the Government.

11. In the written statement filed on behalf of the respondent State and the Regional Deputy Director, Urban Local Bodies, Amritsar, by the said Deputy Director, whereas the essential facts have not been denied, with regard to initial appointment of the petitioners and the passing of the

resolution pursuant to which they were given regular appointment by the President of the Municipality, it has been stated that as per Section 39 of the Act, the power to create posts in the Municipal Councils vests with the Government. As such, the Nagar Panchayat was not legally competent to pass the resolution dated 01.06.1999, or even the earlier resolution (dated 25.04.1995 Annexure P-1), by which the employees were taken on daily wages rather than on contract basis. In fact, it has been pointed out that the wordings of the resolutions themselves show that the Municipality was very much aware that no appointments could be made without sanction of Government and as such, it was resolved, in the resolution dated 25.04.1995, that necessary approval may be taken for appointment on daily wage basis, (though the said approval has not been referred to in the subsequent resolutions, as already noticed, the impugned order states that approval was granted on 01.06.1995).

It has further been stated that by the time the instructions dated 30.08.2000 were issued, pertaining to absorption of those employees who had been declared surplus from different organizations, the Nagar Panchayat, Bhikhiwind, had already ceased to exist pursuant to notification of the Government dated 02.07.1999 and thereafter again, when the Supreme Court, on 08.05.2000, stayed the judgment of this Court, by which the said notification had been struck down.

12. It is important to notice that in reply to paragraphs 4 and 5 of the writ petition, it is stated in the reply of the State, that no agenda item pertaining to appointment of Clerks and Peons was placed (listed) in the meeting of the Nagar Panchayat and as such, no deliberation on this issue took place.

In fact, as per the reply, the said agenda item was illegally and unauthorisedly recorded in the meetings book at a later stage, “as the petitioners connived with the President of Nagar Panchayat and malafidely the ante date of 01.06.1999 was affixed”.

It is further stated that in the “forged and fabricated resolution” (Annexure P-2), it was categorically stated that the appointment letters to the newly recruited employees have already been issued. Factually, the appointment letters were issued on 04.06.1999, 11.06.1999 and 14.06.1999, thus showing by the language of the resolution that it was actually passed after the said appointment letters had been issued but was “fraudulently” shown to have been issued on 01.06.1999.

13. Again importantly, it is also reiterated in the reply of the Government that a show cause notice dated 18.05.1999 had already been served on the Nagar Panchayat, proposing to de-notify it. Hence, the appointment of the petitioners and the others, post haste, further in the face of a ban on recruitment, communicated on 29.06.1998, shows the malafide intent of the President of the Nagar Panchayat.

14. As stated in the impugned order (Annexure P-13), it is again stated in the reply that in the absence of any regular posts available or created, the petitioners and others like them, could not have been appointed by the Nagar Panchayat and as such, the instructions dated 30.08.2000, which pertain to appointment/absorption of employees who have been declared surplus etc, would not apply to the case of the petitioners.

The order of the Principal Secretary of the Punjab Government, Department of Local Government, dated 23.09.2003, confirming the order of the Regional Deputy Director, Local Government, Amritsar, dated

01.07.1999, suspending the appointments made by the Nagar Panchayat has also been annexed with the reply, a perusal of which shows that the order was made conditional by the Government, upon the decision of the Supreme Court in the pending SLP. This order also refers to the fact that the municipality had already been put to notice for de-notification.

15. In the replication filed by the petitioners, to the aforesaid written statement filed by the State, emphasis has been mainly laid on the fact that Section 39 of the Act does not confer any power on Government to create posts and as such, a Municipal Committee is not required to obtain any approval before appointing a person on a regular post. The ratio of the judgment of the Division Bench in *Surjit Mehtas' case* (supra) has been reiterated and all allegations of malafides and connivance have, obviously, been denied.

It is also stated that there was no ban on making any appointments or regularising the services of those who had been appointed in a temporary capacity.

The replication also refers to the fact that despite admitting that the petitioners worked for six months with the Committee, salaries have not been paid to them for the said period, in the regular scale.

16. The writ petition (CWP No.5898 of 2004) was ordered to be adjourned *sine die* by a Division Bench, to be listed for hearing after the decision of the Supreme Court in SLP No.3670 of 2000. Thereafter, Civil Miscellaneous Application No.6239 of 2010 was filed by the petitioners, seeking a direction for taking them on duty during the pendency of the writ petition as the Municipality had been re-constituted. Though notice was issued in the said application, it remains pending.

Thereafter, a reply to the main petition was filed by the Executive Officer of the Nagar Panchayat, dated 17.07.2015, on behalf of respondent no.4. The said respondent was added on C.M. no.9033 of 2013 having been filed by the petitioners, under Order 1 Rule 10 CPC, seeking impleadment of the Executive officer, Municipal Committee, Patti, as he had also been given charge as Executive Officer, Nagar Panchayat, Bhikhiwind.

17. In the said reply, the stand of the Government has been virtually reiterated, stating that the regularization of the services of the employees, vide resolution dated 01.06.1999, was patently illegal and that no (agenda) item with regard to appointment of Clerks and Peons “was placed in the meeting of the Nagar Panchayat, Bhikhiwind and no deliberations on this item took place”.

It has been reiterated that the agenda item was unauthorisedly recorded in the minutes book at a later stage, as the petitioners connived with the then President of the Municipality and it was, in fact, ante-dated. The action of the Regional Deputy Director, suspending the appointment of the petitioners vide order dated 01.07.1999, has been justified in the reply of the Municipality, further reiterating that it was confirmed by the Government in exercise of power under Section 235 of the Act. It has been stated in this reply also, that the resolution dated 01.06.1999 had been passed after Government had already served a show cause notice proposing to de-notify the Nagar Panchayat.

18. It is further stated therein that the writ petition deserves dismissal on the ground of non-availability of sanctioned posts on which the petitioners could be adjusted. It is stated that as per the 2015-16 budget of the Nagar Panchayat, the following staff is existent:-

- “i) One Executive Officer (Additional Charge of the Bhikhiwind Nagar Panchayat otherwise posted at M.C Patti).
- ii) One Inspector
- iii) One Sanitary Inspector
- iv) One Accountant (Additional Charge Bhikhiwind Nagar Panchayat otherwise posted at Tarn-Taran)
- v) One Junior Engineer (SOB) (Bhikhiwind Nagar Panchayat otherwise posted at Jandiala)
- vi) Five Clerks against five regular posts
- vii) One Clerk on one daily wages post.”

Thus, of the posts of Clerks, there are stated to be five regular posts and one post on daily wage basis, with no Class-IV employees working as Safai Sewaks.

19. As regards the non-payment of salary in the regular scale, it has been stated that the petitioners re-joined the Municipality upon this Court staying the de-notification of the Municipality but they were appointed on daily wages and were accordingly paid. In other words, the petitioners' claim to regular salary has been denied on the ground that they were never validly appointed as regular employees and consequently, after they rejoined their posts upon the de-notification having been stayed, they were simply posted back to their respective posts, on daily wage basis.

20. As regards the re-constitution of the Nagar Panchayat, it has been denied that the Municipality originally constituted on 11.01.1993, has been restored. It is contended in the reply of the Executive Officer of the Nagar Panchayat, that a new Nagar Panchayat, Bhikhiwind, was decided to be constituted vide notification dated 20.03.2013 (Annexure P-24 filed by the petitioners), under Section 4(1) of the Act, which was done pursuant to the

interim order dated 18.02.2013 (Annexure P-23 with CM no.9020 of 2013 filed by the petitioners), passed by the Supreme Court in SLP No.3670 of 2002.

The process of inviting objections before constitution of the Nagar Panchayat and thereafter constituting it vide notification dated 29.05.2013 (Annexure P-25 with CM no.9020 of 2013), has been stated in the reply, further contending that objections are only invited when a new Municipality has to be constituted and not when a formerly existent Municipality is restored.

On this premise, that, in fact, a new Municipality was constituted, rather than the old one having been restored, it is further stated that the process of fresh appointments to the Municipality has not started and that since Octroi was abolished by the Government in the year 2006, and as such, no posts are required for collection of octroi, the petitioners cannot be re-appointed in any capacity. It has yet further been stated that there is no source of income to the Nagar Panchayat at this stage and even the Executive Officer has been given additional charge, his principal charge being that of Executive Officer, Municipal Council, Patti.

Thus, in a net-shell, the stand on behalf of the Nagar Panchayat is that it being a freshly constituted body, the petitioners have no right of appointment to any post in the said body and that their status, even in the earlier Nagar Panchayat, was only that of daily wagers and not regular employees.

21. In response to the written statement filed on behalf of respondent no.4, petitioner no.2, Swarn Singh, filed an affidavit dated 22.07.2015, stating therein that the reply on behalf of the Nagar Panchayat deserves

rejection on the short ground that the Executive Officer has not been authorised by any resolution of the Municipal Committee, to “defend the writ petition” or to engage a counsel for the purpose.

A reply to the aforesaid affidavit, yet again, has been filed on behalf of the Nagar Panchayat, by the Executive Officer, stating therein that the petitioners filed Civil Miscellaneous Application No.9033 of 2013, under Order 1 Rule 10, read with Section 151 of the CPC, seeking to implead the Municipal Committee/Nagar Panchayat, Bhikhiwind, through the Executive Officer, Municipal Committee, Patti, and the application having been allowed, the said respondent was impleaded as respondent no.4 and consequently, it does not lie in the mouth of the petitioners to state that the Executive Officer of Municipal Committee, Patti, has no authority to file a reply on behalf of the Nagar Panchayat, Bhikhiwind.

It has further been stated that resolution No.46 dated 21.07.2015, was duly passed by the Nagar Panchayat, Bhikhiwind, empowering the Executive Officer, Patti, to defend the case. (A copy of the said resolution has been annexed with the affidavit). It has also been stated that the Nagar Panchayats are now being defended by the counsel appointed by the office of the Director, Local Bodies, Punjab, Chandigarh, from its panel of lawyers and as a result of the same, the counsel who is defending respondent no.4, has appeared in Court on its own behalf.

22. A detailed reference also needs to be made to CM No.9020 of 2013 filed by the petitioners seeking that they be taken on duty in view of the interim order dated 18.02.2013, passed in SLP (Civil) No.3670 of 2002. The said order of the Supreme Court is reproduced hereinunder:-

“ORDER

State of Punjab had created the Nagar Panchayat. Subsequently, it was de-notified in the year 1999. However, while entertaining the writ petitions, the High Court has set aside the order of de-notification and restored the Nagar Panchayats with retrospective effect. This Court had stayed the operation of the said impugned judgment and order of the High Court and that is operating since 8.5.2000, i.e. for the last 13 years.

The matters have been heard earlier and came up for hearing today. We have heard learned counsel for the parties.

Mr. Kuldip Singh, learned counsel appearing for the State of Punjab has suggested that instead of deciding the cases on merit, this Court should give appropriate time to the State Government to come with a notification creating Nagar Panchayats as the State is considering the same and it is not possible for the State to do so because of the interim order passed by this Court.

In view of the above, we modify the interim-order passed by this Court earlier to the extent that it shall be open for the State Government, if it so desires, to come with a notification establishing a Nagar Panchayat. That may be done within a period of three months and produced before this Court.

List the matters after three months.”

23. Thus the earlier interim order dated 08.05.2000, was modified by the Supreme Court thereby granting permission to the State Government to establish a Nagar Panchayat.

After the above order was passed, the notification dated 20.03.2013 (Annexure P-24 with the application) came to be issued, describing therein the earlier Constitution of the Nagar Panchayat, Bhikhiwind and the litigation in this Court and the Supreme Court and thereafter stating in clause 6 thereof as follows:-

“6. Now, therefore, in exercise of the powers conferred under Section 4(1) of the Punjab Municipal Act, 1911 (as amended by

Act No.II 1994) the Governor of Punjab is pleased to declare the local area comprising the village Bhikhiwind in Tarn Taran District, the boundaries of which are fully described in Schedule of boundaries to be a Nagar Panchayat, for the purpose of the said Act, with immediate effect.

SCHEDULE OF BOUNDARY

North: Starting Point 'A' i.e. Khasra No.70/7 towards east along northern side Khasra No.70/7, 6, 69//15, 9, 8, 7, 6, 68/10, 9, 12, 13, 67//14, 7, 5, 50//25, 51//21, 22, 23, 24 upto Point 'B' i.e. west side of Amritsar Bhikhiwind Road then belong west side of Amritsar-Bhikhiwind Road upto North side of drain point 'C' across Amritsar-Bhikhiwind Road along the North side of drain up to the Point 'D' i.e. North west corner of Khasra No.52//31.

East: From Point 'D' to Point 'E' towards south side of Khasra No.52, 8,13,18, across Katcha Rasta 21/5, 66//3, 8 crimination ground 147, 77//2, 9 across Pacca Road to village Balohar Veterinary Hospital 77//22/2.92//2/2. 9/3, 12, 19, 22, 102/211, then along North side of Katcha Rasta upto Point 'F'. Then Khasra No.102//7/2, 14, 17, 24/2 across Harike Road, 17//4, 7, 14, 17, min 18, 23, 126//3, 8, 12, 11, 125//15, 14, 18, 25, 132//2, 1, 11 min. 133//15, 16, 24, up to point "G' i.e. the east-South side of Khasra No.133//24.

South: From Point 'G' to 'H' along South side of Khasra No.133//24, 23, 21, 21, 134//24, 23, 22, 32, 133//25, 24, 23/2 and along eastern side of Khem Karan Road up to Point 'Y' then across Khem Karan Road up to Point 'J' i.e. the Schedule Barhada of Village Marri Sahib and Village Challa, then along Khasra No.137//25, 24,17, 18, min. 13,8,3,136//23 upto Point 'F' i.e. Barhade Pari of village Challa.

West: Towards North side along Western side of Khasra No.130//23, 18, 17, 15, 135//10, 9, 2, 3, 122/23, 18, 13, 8, 4, 21//24, 17, 16, 15, 6, 5, 98//25, 16, 15, 7,4,96//24, 23,17, 14,4, 73//24, 17/3 across Pahunand Road, 14/2, 7,4, 70//25/2, across Khara Road 25/1.16.15/1, 7 upto Point 'A' i.e. the starting point.

If any inhabitant of the area prescribed above has any objection, he may file the same in writing to the Principal Secretary to Government of Punjab, Department of Local Government or Executive Officer, Nagar Panchayat Patti, District Amritsar within a period of 30 days from the date of Publication of this notification.

20-3-2013

Jagpal Singh Sandhu, IAS,
Principal Secretary to Government of Punjab,
Department of Local Government”

Thereafter, in exercise of jurisdiction conferred under Sections 4 and 5 of the Act, the Government issued notification dated 29.05.2013 (Annexure P-25) constituting Nagar Panchayat, Bhikhiwind, in terms of the earlier notification dated 20.03.2013.

Since one of the arguments of learned counsel for the petitioners is that, in fact, the same Municipality was restored, with the same boundaries, as were notified to be a Nagar Panchayat earlier on 11.01.1993, it would be appropriate to reproduce the said notification also, dated 11.01.1993 by which the Nagar Panchayat, Bhikhiwind, was originally constituted. That notification is also, therefore, reproduced herein below:-

“Government of Punjab
Department of Local Government
(Local Government III Branch)

Notification, Dated 10/11.1.93

No.10/5/93-2LGIII/172

Whereas it is expedient to make improved arrangements with respect to some or all the matters upon which a Municipal fund may be expended under Section 52 of the Punjab Municipal Act, 1911 with the area specified below:

And whereas it is not expedient to constitute such areas as a Municipality;

Now, therefore, in exercise of the power conferred by Section 241 of the Punjab Municipal Act 1911, the Government of the Punjab is pleased to declare the local area comprising the village Bhikhiwind in the Amritsar District, the boundaries of which are fully described in the sub-joined Schedule, to be specified area for the purpose of the said Act.

SCHEDULE

North: Starting Point 'A' i.e. Khasra No.70/7 towards east along northern side Khasra No.70/7, 6, 69//15, 9, 8, 7, 6, 68/10, 9, 12, 13, 67//14, 7, 5, 50//25, 51//21, 22, 23, 24 upto Point 'B' i.e. west side of Amritsar Bhikhiwind Road then belong west side of Amritsar-Bhikhiwind Road upto North side of drain point 'C' across Amritsar-Bhikhiwind Road along the North side of drain up to the Point 'D' i.e. North west corner of Khasra No.52//31.

East: From Point 'D' to Point 'E' towards south side of Khasra No.52, 8,13,18, across Katcha Rasta 21/5, 66//3, 8 crimination ground 147, 77//2, 9 across Pacca Road to village Balohar Veterinary Hospital 77//22/2.92//2/2. 9/3, 12, 19, 22, 102/211, then along North side of Katcha Rasta upto Point 'F'. Then Khasra No.102//7/2, 14, 17, 24/2 across Harike Road, 17//4, 7, 14, 17, min 18, 23, 126//3, 8, 12, 11, 125//15, 14, 18, 25, 132//2, 1, 11 min. 133//15, 16, 24, up to point "G' i.e. the east-South side of Khasra No.133//24.

South: From Point 'G' to 'H' along South side of Khasra No.133//24, 23, 21, 21, 134//24, 23, 22, 32, 133//25, 24,

23/2 and along eastern side of Khem Karan Road up to Point 'Y' then across Khem Karan Road up to Point 'J' i.e. the Schedule Barhada of Village Marri Sahib and Village Challa, then along Khasra No.137//25, 24,17, 18, min. 13,8,3,136//23 upto Point 'F' i.e. Barhade Pari of village Challa.

West: Towards North side along Western side of Khasra No.130//23, 18, 17, 15, 135//10, 9, 2, 3, 122/23, 18, 13, 8, 4, 21//24, 17, 16, 15, 6, 5, 98//25, 16, 15, 7,4,96//24, 23,17, 14,4, 73//24, 17/3 across Pahunand Road, 14/2, 7,4, 70//25/2, across Khara Road 25/1.16.15/1, 7 upto Point 'A' i.e. the starting point.

N.K.Arora

Secretary to the Government of Punjab
Department of Local Government.

No.10/5/93-3LHIII/173

Dated, Chandigarh the 10th/11 January, 1993”

Thus, the area that constituted the Nagar Panchayat vide notification dated 10/11.01.1993, is the same as that which is comprised in the Nagar Panchayat vide notification dated 29.05.2013.

24. A representation was made by the petitioners on 21.05.2013 (Annexure P-26), to the Deputy Director, Local Government Department, Amritsar, seeking that they be allowed to join Nagar Panchayat, Bhikhiwind, as Clerks, in view of the fact that the Municipal Council had been constituted.

25. A reply to the aforesaid Civil Miscellaneous Application no.9020 of 2013, was filed by the Deputy Director, Amritsar, again reiterating that the resolution dated 01.06.1999 was actually a fraudulent exercise and legally not sustainable, again thereafter giving the history of the litigation, upto the order of the Supreme Court dated 18.02.2013 and constitution of a

new Nagar Panchayat.

The prayer of the petitioners, for appointment, was opposed in the reply, on the ground that the petitioners were actually daily wage employees, who had no right to be reinstated in the new Nagar Panchayat.

26. In the rejoinder filed by the petitioners to the above reply, the contents of the writ petition had been reiterated in different words, stating that the regular appointment of the petitioners was by proper process, in view of the resolution dated 20.04.1999 and after applications were duly invited by an advertisement given in the newspapers. The judgment of a co-ordinate Bench has also been referred to, in the case of **Sukhminder Singh and others v. State of Punjab and another**(CWP No.13005 of 2001, decided on 26.05.2010), in which it was held that a local body alone shall be competent to establish office and employ persons as may be required and that it would also have control over “affairs of removal, dismissal or otherwise”.

A Division Bench judgment in **Balwinder Singh and others v. State of Punjab and others**(CWP No.9948 of 2005, decided on 31.10.2012) has also been referred to, in which regularization of the services of the petitioner in that writ petition, by the Municipality, was upheld, holding that Government “cannot put spokes in the said decision taken by the Municipal Committee”. Section 39 of the Act, was referred to by the Division Bench to hold as above.

27. Section 18 of the Act has also been referred to in the rejoinder filed by the petitioners, which stipulates that every Municipal Committee shall be a body corporate, having perpetual succession etc. The implication obviously is that a Municipal Committee, being a wholly independent body,

is within its right to make appointments on its own.

It has also been stated that despite the new notification, it was absolutely the same Nagar Panchayat which was reconstituted and as such, the petitioners had a right to re-appointment thereto. The recommendation of the Regional Deputy Director, i.e. the same authority that had stayed operation of the resolution dated 01.06.1999, has been reproduced in the rejoinder. The said recommendation, dated 09.07.2001, is to the following effect:-

“It would be relevant to mention over here that a merit list was prepared at the time of interview regarding regularization of their services but on account of filling up of excess posts, this Office had invoked the provisions of Section 232 of the Punjab Municipal Act, 1911 and orders were accordingly issued. However, these orders have not so far been confirmed by the Government. Whole of this record is already available in your office in the above mentioned file.

Under these circumstances, if the Government desires, then after taking legal opinion in the matter, these employees may be adjusted in the service of other Municipal Committees.”

28. Having considered the arguments addressed and the law cited, obviously the first question that is to be considered is as to whether, in exercise of power of Section 232 of the Act, the Regional Deputy Director, exercising powers of the Deputy Commissioner, can suspend the resolution of the Municipal Committee thereby prohibiting it from taking any action pursuant to such resolution.

A plain reading of Section 232 (reproduced already as part of a judgment of the Supreme Court), would appear to show that the Deputy Commissioner, if he is of the opinion that a resolution, order or act of the Municipal Committee is either in excess of the powers conferred by law or

is contrary to the interests to the public, or is likely to cause waste or damage of municipal funds or property, or its execution is likely to lead to a breach of peace etc., may by an order in writing, suspend the execution of such resolution or order.

As per the respondents, the Nagar Panchayat having made appointments of the petitioners without due sanction of Government and in excess of already sanctioned posts, the Regional Deputy Director (exercising the powers of the Deputy Commissioner) was very much within his jurisdiction, to suspend the operation of resolution 26-A of 1999. Of course, it is also vehemently contended on behalf of the respondents that the resolution itself was actually only a paper transaction, without any agenda for appointment of the petitioners and others, before the Nagar Panchayat and as such, it was a “fraudulent action” and that too, ante-dated after the intention of the Deputy Commissioner/Government had become known, to de-notify the Nagar Panchayat.

29. That issue would be considered later. First, as regards the power of the Deputy Commissioner/Regional Deputy Director, in my opinion, the said authority would be within its jurisdiction, as conferred by Section 232 of the Act, to suspend the resolution of a municipality, on the ground that it was resulting in wasteful expenditure and as such, would constantly also be contrary to public interest. Thus, as per the plain wording of the Act, there would be no bar on the Deputy Commissioner to exercise his power, in writing, as has been done by the order dated 01.07.1999. The reasoning given in the order (Annexure R-2/1 with the reply of the respondents no.1 and 2), is that the municipality had already been issued a show cause notice proposing to convert into a Gram Panchayat under Section 14(1) of the Act

of 1911, and with the matter still under consideration with the Government, the resolution had been passed; and further, that there were only 28 sanctioned posts of Clerks, for which no sanction had been obtained to fill them up, in the budget proposal of the Nagar Panchayat.

Thus, with the Nagar Panchayat already in the process of being de-notified, the exercise of powers under Section 232, suspending a resolution of the municipality, making 75 appointments in such circumstances, would, in the opinion of this Court, be within jurisdiction of the Deputy Commissioner/person exercise such authority, it being the resolution, being against public interest with the municipality under consideration of being de-notified.

30. Mr. Arora, learned counsel for the petitioners, however, relied upon a Division Bench judgment of this Court in *Surjit Mehta and others v. State of Haryana* (AIR 1993 P&H 150), to submit that the power conferred under Section 233 does not extend to suspending the resolution of a municipality, appointing employees on different posts in the municipality.

As already noticed, in that case, Section 246 of the Haryana Municipal Act, 1973, was under consideration of the Division Bench, which is *ad verbatim* the same as Section 232 of the Act.

The Division Bench held as follows:-

“After hearing counsel for the parties, we are of the view that S.246 of the Haryana Municipal Act was not attracted to the case in hand, and the Deputy Commissioner could not suspend the resolution passed by the Municipal Committee.

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A bare reading of the provision aforesaid would show that power

was given to the Deputy Commissioner to suspend resolution or orders passed by the Municipal Committee, if its implementation was going to cause waste or damage of the Municipal funds or property or execution of such a resolution or order was likely to lead to a breach of peace or to encourage lawlessness or to cause injury or annoyance to the public. The nature of the resolution adopted by the Municipal Committee as contained in Annexure P-2 does not indicate that implementation thereof was in any manner likely to cause breach of peace etc. as contemplated under S.246 of the Act. Some of the resolutions related to making appointments on certain posts in the Municipal Committee and some related to payment money to the Government of loan etc. That being the position the order of the Deputy Commissioner purporting to have been passed under S. 246 of the Act cannot be sustained.”

In that case also, it was contended by the Government that no meeting had actually taken place and as such, the Deputy Commissioner was within his right to suspend a resolution specifically passed by the Members. That contention was also repelled by the Division Bench.

31. Similarly, the views expressed in the aforesaid judgments, are contrary to the view expressed by this Court hereinabove, and as such, this Court would otherwise be bound to either refer the matter to a Division Bench or to follow the ratio of the law laid down in the said judgment, and allow the writ petitions, while expressing its own opinion on the same.

32. However, Mr. Dadwal, learned counsel appearing for the respondent municipality has cited a judgment of a five judges Bench of the Supreme Court in **Shri Subhash Chandra and others v. Municipal Corporation of Delhi and another** (AIR 1965 SC 1276) in which the same provision, i.e. Section 232 of the Punjab Municipal Act, 1911, (then applicable to Municipal Committee, Delhi also), was considered by their

Lordships and the power of the Deputy Commissioner (Commissioner in that case) to suspend the execution of a resolution or order of a Committee, or to prohibit the Committee from doing an act which was about to be done, was upheld.

It needs to be noticed that prior to enactment of Punjab Act 34 of 1953, Section 232 read to say that the powers conferred by the said provision were exercisable by the Commissioner or the Deputy Commissioner, as was brought out by their Lordships even in the said judgment.

33. It also needs to be noticed that in *Subhash Chandras' case*, the municipality of Delhi had initially passed a resolution in July 1954 stopping payment of graduate allowance to future recruits but subsequently, vide a resolution passed on November 1, 1957, it was resolved that the payment of personal pay of Rs.20/- per month to all graduates, should be revived.

It was also resolved on November 8, 1957, that the words “necessary sanction of the Chief Commissioner be obtained”, appearing at the end of the resolution dated 01.11.1957, be deleted.

However, the Commissioner of the successor Municipal Corporation of Delhi, admitted the claim for payment of graduate allowance only to those graduate Clerks of the erstwhile Delhi Municipal Committee, who had been granted permission to pursue higher studies before 30.07.1954, denying the claim of the other graduate Clerks. This order of the Commissioner was challenged on grounds of discrimination, as also being beyond the powers conferred upon him by Section 232 of the Act of 1911.

The contention before the Supreme Court in that case and its consideration, were as follows:-

“9. In the first place, according to him, Section 232 of the Act could not be resorted to by the Chief Commissioner but only by the Deputy Commissioner. Before the passing of Punjab Act 34 of 1953 this section read as follows:

“232. The Commissioner or the Deputy Commissioner may by order in writing, suspend the execution of any resolution or order of a committee, or joint committee or prohibit the doing of any act which is about to be done, or is being done in pursuance of or under cover of this Act, or in pursuance of any sanction or permission granted by the committee in the exercise of its powers under the Act, if in his opinion the resolution, or order or act is in excess of the powers conferred by law or contrary to the interests of the public or likely to cause waste or damage of municipal funds or property, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace, to encourage lawlessness or to cause injury or annoyance to the public or to any class or body of persons.”

By the aforesaid Act the words “Commissioner or the” were deleted. It has not been brought to our notice that the Amending Act was applied to the State of Delhi. We must, therefore, proceed on the footing that the word “Commissioner” was still there in Section 232 of the Act as applied to the state of Delhi. By virtue of the provisions of the Delhi Laws Act, 1912 contained in Schedule B as adapted by the Adaptation of Laws Order, 1950 the expression “the Commissioner” used in any enactment applicable to the State of Delhi has to be read as “the State Government of Delhi.” The expression “State Government” as defined in sub-section (60) of Section 3 of the General Clause Act 1897 shall as respects anything done after the commencement of the Constitution and before the commencement of the Constitution (Seventh Amendment) Act, 1956 mean, in a Part C State, the Central Government, “Central Government” is defined in subs. (8) of Section 3 of that Act and meant in relation to a Part C State

like Delhi, the Chief Commissioner thereof. Clearly therefore, the Chief Commissioner could make an order of the kind we have to consider here under Section 232 of the Act.

10. Mr. Mehta, however, contends that what the chief commissioner could do under the section before the Delhi Corporation Act of 1957 came into force was to suspend the execution of a resolution or order of a committee or prohibit the doing of an act which was about to be done and that it did not empower him to prohibit the Municipal committee from passing a resolution. It is true that the section did not enable the Chief Commissioner to prohibit a Committee from passing a particular kind of resolution but it certainly empowered him to prohibit the committee from doing an act which was about to be done. Here, the order of the Chief Commissioner to which we have adverted, in fact prohibited the Committee from, among other things, granting special pay or any other pecuniary advantage to any of its employees. What was thus expressly prohibited was the doing of an act but not passing of a resolution. Even so, we think that when the doing of an act was prohibited the Committee ceased to have any power to do that act and resolution passed by it to the effect that the act be done, can have no legal validity.”

(Emphasis applied)

Further, their Lordships held, after considering the law on the subject, as follows:-

“11. But, Mr. Mehta said, the power of the Chief Commissioner was exercisable only when the Municipal Committee was about to do something and not to prohibit something in the distant future. In this regard he has referred us to the meaning given to the expression “about to” in Stroud's Judicial Dictionary and to an English decision referred to therein. What precise meaning should be given to the expression must naturally depend upon the context in which it is used but it does involve the element of anticipation. To this extent, therefore, Mr. Mehta is right that Section 232 does not authorise the authorities mentioned therein

to make a blanket prohibition as to the doing of an act or a series of acts unless the authority anticipated that such acts would be done. There is, however, no difficulty in the case before us because the order itself mentions that it had been made to appear to the Chief Commissioner that the Municipal Committee of Delhi, amongst other things, was about to revise the existing scales of pay of its employees, creating posts and granting advance increments or special pay or other pecuniary benefits to some of its existing employees. The obvious reason for making this order was that the Municipal Committee was soon to cease to exist and the Corporation of Delhi to take its place. The Chief Commissioner, therefore, did not want the Committee to enter into commitments which would bind its successor. A perusal of the proceedings of the Committee during the relevant period shows that the Committee had before it numerous proposals relating to the emoluments of its employees and the Chief Commissioner must have known about them.

(Emphasis applied)

12. Mr. Mehta then contended that if upon its true construction, Section 232 permitted the Chief Commissioner to suspend the execution of any resolution or order of a Committee but did not prohibit the passing of a resolution the Committee was quite competent to pass the resolutions of November 1 and 8, 1957 and in this connection he referred us to the decisions of the Punjab High Court in **Mistri Mohammad Hussein v. Municipal Committee, Sialkot, AIR 1936 Lahore 689, Lahore Municipality v. Jagan Nath, AIR 1939 Lahore 581 and Mahadeo Prasad v. U.P. Government, AIR 1949 Allahabad 56.** None of these cases helps him but one of them goes against his contention. In the first case the Deputy Commissioner had ordered the suspension of a resolution passed by a Committee sanctioning the construction of a platform after the platform had been constructed. In order to give effect to the order the Committee ordered under Section 172 the demolition of the platform. The High Court held that as the

platform could not be said to have been constructed without sanction its demolition could not be ordered under Section 172. In the second case the High Court, following the above decision, held that under Section 232 the Deputy Commissioner can prohibit the doing of an act or suspend the execution of a resolution before the act was done or the resolution carried out. In the third case the Allahabad High Court had, amongs other provisions, to consider Section 34(1) of the U.P. Municipalities Act, 1916 whereunder the District Magistrate could prohibit the execution or further execution of a resolution passed by a Municipal Committee. The High Court pointed out that this provision did not, as did the corresponding provision in an earlier Act, empower the District Magistrate to make an order in anticipation of an act which was about to be done. This case is thus distinguishable.”

Thus, as is brought out in para 11 of the above judgment, the Chief Commissioner did not agree with the resolution passed by the municipality in view of the fact that the Municipal Committee itself was soon to cease to exist, with a different body (Municipal Corporation) to take its place. A similar situation exists even in the present case, where the Nagar Panchayat was under notice of de-notification, to be replaced by a Gram Panchayat.

34. The issue with regard to exercise of powers by the Commissioner (Chief Commissioner in the case of Delhi), obviously is not relevant to the present case. However, the following paragraph from the judgment may be still referred to, simply to bring out the difference between Sections 232 and 235, the latter of which has also been cited by the State, to submit that the order of the Regional Deputy Director under Section 232, was approved by the Government under Section 235. Thus, it was further held in *Subhash*

Chandras' case, with regard thereto, as follows:-

“13. xxxxx xxxxxx xxxxxx

it has to be borne in mind that an order under Section 232 takes effect immediately and its operation is not made dependent upon the action contemplated under Section 235. Where an order is made thereunder by an authority other than the State Government that authority has to report to the State Government. But, though such authority is bound to make a report its order is not inoperative or inchoate. It has to be given effect to by the Committee. It is true that till the procedure set out in Section 235 is complied with it cannot be regarded as final. But want to finality does not vitiate the order under Section 232. The order is, unless modified or annulled by the State Government, legally effective and binding on the committee. The Committee can, therefore, acquiesce in it and waive the non-compliance by the State Government with the provisions of Section 235. Since Section 235 does not require an opportunity to be given to parties affected by the, order other than the Municipality, the petitioners are not entitled to say that the order is bad.”

35. Hence, the Supreme Court having considered the powers conferred on the Commissioner or the Deputy Commissioner (such power having been conferred, in Punjab, upon the Regional Deputy Director, by a notification of Government dated 30.07.1966-Annexure R-2 with the additional affidavit dated 14.08.2015, filed by the Special Secretary-cum-Director, Local Government, Punjab), the judgments in *Surjit Mehtas' case*, *Sukhwinder Singhs' and Balwinder Singhs' cases (all supra)*, in my opinion, would not hold the field.

Though, of course, in the case before the Supreme Court, the issue was whether or not the Commissioner could suspend a resolution pertaining to pay scales of employees, and in the present case, it is a case of

appointments, the question actually is whether or not the Deputy Commissioner would have the power to suspend such a resolution pertaining to appointments which necessarily imply financial implications, especially in a situation where the municipality was already under notice of de-notification. The Supreme Court effectively held that there was no fetter on the power of the Commissioner/Deputy Commissioner to suspend a resolution having financial implications, especially in such a situation.

However, this Court would still have been bound to refer the matter to a larger Bench, with 3 judgments cited contrary to the view taken herein; however, on the facts of the present case, the same is not necessary, in my opinion, in view of the fact that the situation very clearly and admittedly, was that though the initial resolution No.16/99 was passed by the Nagar Panchayat on 20.04.1999, i.e. before 18.05.1999, authorising the President to make appointments on regular basis, however, about one month thereafter, the municipality was issued a show cause notice as to why it should not be de-notified. Such notice having been issued, it was obviously to ensure that some advantage accrues to its employees (the petitioners and others), that the municipality decided to pass another resolution on 01.06.1999, again authorising the President to make such appointments, without any reference to the Government/the Regional Deputy Director/Deputy Commissioner.

36. The respondents have alleged that the resolution dated 01.06.1999 was actually ante-dated as there was no record showing that such an agenda, for regular appointments of employees, was actually before the Committee on 01.06.1999.

A perusal of the proceedings book submitted to this Court by the

respondents, shows that on 01.06.1999, resolutions no.20, 21, 22 (slightly obliterated), 23, 24 and 25 pertaining to different issues, were debated upon and decided by the Committee. Thereafter, in a different ink, is resolution no.26-A/99 pertaining to making such appointments.

However, it is to be noticed that whereas resolution/agenda item no.26-A of 1999 is shown to have been passed on 01.06.1999, i.e. is shown on the same page as is resolution/agenda item No.25/99, resolution/agenda no.26 of 1999 is shown on the next page under the date of 18.06.1999.

Thus, definitely, it is seen that agenda item no.26-A of 1999 being shown before 26 of 1999 points to it being ante-dated, especially as the entire agenda and resolution item no.26-A/99 is in a different ink than agenda/resolutions no.20 to 25 of 1999, all of which are dated 01.06.1999. Hence, the contention of the respondents in this regard, does not seem to be unfounded.

37. Be that as it may, whether or not this resolution was ante-dated or not, the fact remains, it should not have been so passed, until a final decision was taken by the Government as to whether or not the Nagar Panchayat was to be dissolved/de-notified. That eventuality also happened, on 02.07.1999. The petitioners were thus, given regular appointments, at a time when the Nagar Panchayat itself was proposed to be dissolved and as such, actually, their services may have been no longer needed, at the time when the resolution is shown to have been passed on 01.06.1999; which, of course, was borne out with the de-notification dated 02.07.1999.

Therefore, as regards the contention of Mr. Arora, that it was not within the power of the Regional Deputy Director to suspend the resolution, that contention is rejected.

In such a situation, even if the view of this Court that Section 232 includes the power to suspend a resolution or order of the municipality to stop appointments or to cancel such appointments, is a view which is contrary to a larger Benches' view, in the fact situation, in my opinion, the Deputy Commissioner/Regional Deputy Director exercising jurisdiction under Section 232 and Government exercising jurisdiction under Section 235 would be empowered to stop a municipality under notice of de-notification, from making appointments, when such appointments would actually not be needed at all, upon the municipality being dissolved, as was in the present case.

38. Having held as above, it is now to be seen whether the petitioners have any right to be either adjusted in other municipalities, as prayed for by them in the writ petitions filed, or as is now prayed for, upon the Nagar Panchayat, Bhikhiwind, having been constituted again/restored, to be reinstated in the said municipality itself.

39. As this Court has already held that the regular appointments of the petitioners, made pursuant to resolution dated (or shown to have been dated) 01.06.1999, were not valid appointments, the contention of the respondents that the instructions Annexures P-11/A and P-11/B, would not apply to daily wagers, would also have to be accepted even though the said instructions (dated 24.04.1986 and 20.04.1992) do not specifically state that they are in respect of only regular employees, as regards the clause that pertains to the petitioners. That clause simply directs that employees declared surplus on account of abolition of any posts or organisations, or for any other reasons, would be absorbed in other State services. It is not in dispute that for this purpose, other municipalities are included in the said term. Clause 6(iii) of

the initial instructions dated 24.04.1986 (Annexure P-11/A) states that in the case of such employees, relaxation of age would be admissible upto the extent that the employee has rendered continuous Government service on regular basis.

Thus, the petitioners having held to have not been appointed to regular posts validly, even w.e.f. June 1999, they obviously cannot claim any relaxation of age for appointment to other municipalities.

40. Coming then to whether or not they have any right to appointment in the municipality now constituted vide notification dated 29.05.2013. To determine that, it would first be necessary to consider whether the Nagar Panchayat now constituted is actually the same Nagar Panchayat restored, as was de-notified on 02.07.1999, or whether it is a wholly new Nagar Panchayat. For that, it is necessary to bear in mind that the de-notification itself vide notification of the Government dated 02.07.1999, was challenged before this Court which challenge was sustained but the judgment of this Court was stayed by the Supreme Court on 08.05.2000. A reading of the interim order dated 18.02.2013, passed by the Supreme Court in Civil Appeals No.7975 of 2002 and 7976 of 2002, shows that the order dated 08.05.2000 was modified after 13 years (as even noticed by their Lordships in the interim order itself), stating that “it shall be open for the State Government, if it is so desired, to come with a notification establishing a Nagar Panchayat”.

Thereafter, the said appeals were disposed of on 16.01.2014 with the following order (after giving reference to the earlier order dated 18.02.2013):-

“ At the time of hearing of these appeals today, the learned

counsel appearing for the State has submitted that on 29th May, 2013 necessary Notification, which had been referred to in the earlier order, had been issued whereby Nagar Panchayat, Bhikhiwind, has been notified prospectively.

In view of the aforesaid development in the matter, in our opinion, the appeals have become infructuous. The appeals are disposed of accordingly.

In view of the fact that the appeals have become infructuous, the application for intervention does not survive and stands disposed of accordingly.”

Hence, though at first blush, disposal of the appeals, as having been rendered infructuous, rather than their dismissal, would imply that with the Nagar Panchayat having been again constituted, it would amount to a restoration of the former Nagar Panchayat, yet a careful reading of the order shows that it was specifically noticed that the notification dated 29.05.2013 had been issued prospectively. The implication obviously is that the issue of whether or not the notification dated 02.07.1999 was legally sustainable or not was not gone into, but that notification (of July 1999), was accepted as *fait accompli*, with a new notification dated 29.05.2013 having been issued constituting Nagar Panchayat, Bhikhiwind, prospectively. That being so, obviously, the petitioners cannot claim any right or benefit for the period between 02.07.1999 and 29.05.2000, except the wages that were already paid to them, as daily wage employee, after the notification of 02.07.1999 was stayed by this Court in CWP No.8973 of 1999 till the judgment in that petition was itself stayed by the Supreme Court on 08.05.2000.

41. It requires mention that a perusal of the record produced by the respondents shows that the de-notification of the municipality in July 1999, was pursuant to the notice dated 18.05.1999, in which the reasons for de-

notification/dissolution of the municipality, was on grounds of mis-management on various fronts, including non-recovery of house-tax from certain persons, non-maintenance of sanitation, cleanliness and street-lights, encroachments, wrong appointments etc. (12 charges were made out in the show cause notice issued to the municipality on 18.05.1999).

However, no comment is being made on that aspect, in view of the fact that the matter has already attained finality by disposal of the civil appeals filed against the judgment of this Court by which the de-notification had been quashed. This part has been noticed in this judgment, only for the record.

42. Hence, having concluded that the petitioners were not validly appointed as regular employees pursuant to a resolution (purportedly) issued on 01.06.1999, they at best can now only claim, in equity, appointment on daily wages in the newly constituted Nagar Panchayat, Bhikhiwind, in view of the fact that they had served 5 to 6 years on contractual/ daily wage basis in the municipality, prior to its dissolution/de-notification on 02.07.1999.

43. These writ petitions are, therefore, disposed of, rejecting the prayer of the petitioners for regular pay scales at any point of time and for a right to be absorbed in other municipalities, or even for regular appointment in the now constituted Nagar Panchayat, Bhikhiwind. However, considering the fact that the petitioners in all these petitions worked 5 to 6 years in different capacities in Municipal Council, Bhikhiwind, prior to its de-notification in 1999, and the Nagar Panchayat has now again been constituted, the following direction is given:-

In case temporary/daily wage/contractual/*ad hoc* appointments are to be made to the post/posts on which the petitioners were working as on 30.06.1999, then such appointments be made only from amongst the petitioners, priority being given to that

employee who had put in a longer length of service, whether in contractual or in daily wage capacity.

Such appointments, if made in temporary/ daily wage/ contractual/ *ad hoc* capacity, would continue till such time as regular appointments by due process are made by the municipality, to the posts in question.

No order as to costs.

November 27, 2015

dinesh

(AMOL RATTAN SINGH)
JUDGE