

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 7958 OF 2005  
WITH  
CIVIL APPLICATION NO. 2093 OF 2010**

Mahapalika Arogya Seva Karmachari  
Sanghatana, Mumbai ...Petitioner  
vs.  
Municipal Corporation of Greater Mumbai ....Respondent

**WITH****WRIT PETITION NO. 8947 OF 2004  
WITH  
CIVIL APPLICATION NO. 874 OF 2007**

Brihanmumbai Mahanagarpalika ...Petitioner  
vs.  
Mahapalika Arogya Seva Karmachari  
Sanghatana, Mumbai ...Respondent

**WITH****WRIT PETITION NO. 1300 OF 2005**

Municipal Corporation of Greater Mumbai & Ors. ....Petitioners  
vs.  
Smt.Deepa Arun Shinde ...Respondent

**WITH****WRIT PETITION NO. 4980 OF 2010**

Smt.Anjali Vishok Jagtap ...Petitioner  
vs.  
Municipal Corporation of Greater Mumbai ...Respondent

**WITH**

**WRIT PETITION NO. 6831 OF 2015**

Municipal Corporation of Greater Mumbai ....Petitioner  
vs.  
Mahapalika Arogya Seva Karmachari  
Sanghatana, Mumbai ...Respondent

**WITH****WRIT PETITION NO. 6944 OF 2016**

Municipal Corporation of Greater Mumbai & Ors. ....Petitioners  
vs.  
Smt.Deepa Arun Shinde ...Respondent

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Mr.S.S. Pakale with Mr.P.M. Palshikar with Mr.Vinod Mahadik for  
Petitioner in WP 8947/2004 and WP 2958/2005 and WP 1300/2005.

Mr.Prakash Devdas for Respondent in WP 8947/2004, WP 2958/2005 and  
WP 1300/2005.

Mr.A.V. Bukhari, Senior Advocate with Mr.B.V. Bukhari and Mr.S.S. Pakhale  
with Mr.P.M. Palshikar, Ms.Fauzia Bukhari and Mr.Vinod Mahadik for  
Respondent in WP 4980/2010 and WP 7958/2005.

Mr.Prakash Devdas for Petitioner in WP 4980/2010 and WP 7958/2005.

Mr.A.V. Bukhari, Senior Advocate with Mr.B.V. Bukhari with Ms.Fauzia  
Bukhari for Petitioner in WP 6831/2015.

Mr.Prakash Devdas for Respondent in WP 6831/2015.

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**CORAM : S.C. GUPTE, J.**

**RESERVED ON : 12 AUGUST 2016**

**PRONOUNCED ON : 4 JANUARY 2017**

**JUDGMENT :**

This group of petitions concerns Voluntary Health Workers appointed by the Municipal Corporation of Greater Mumbai, particularly in relation to their status as workmen of the Corporation and their entitlement to permanency of tenure based on such status.

2. Writ Petition No.7958 of 2005, which is heard as a lead petition, is filed by a registered trade union, who claims to be a recognized union of workmen of the Respondent Corporation, representing the nursing and paramedical staff including Women Community Health Workers employed by the Corporation. The following are the facts of the case stated briefly :

2.1 In the year 1988, the Respondent – Municipal Corporation of Greater Mumbai (“Corporation”) created 176 Health Posts (as Urban Health Centres) with financial assistance from World Bank through the State Government. This project, which was meant to supplement the Health Services and Family Welfare Programme of the Corporation, was known as “India Population Project V” (“project”). Each Health Post was to have a Medical Officer and other full time nursing and paramedical staff. These officers and staff were to be assisted by Women Health Workers working part-time.

2.2 The Corporation appointed about 3400 Volunteer Health Workers as a link between the Health Posts and the community served by the Health Posts on an honorarium of Rs.200/- p.m. (These workers are referred to as 'CHVs' hereafter.) These appointments, according to the Corporation, were temporary and made on a voluntary basis, and do not

come under Corporation employments or rules made for the same. On the other hand, it is the Petitioner's case that the CHVs were duly appointed, though on a temporary basis, in accordance with rules and procedure framed by the Corporation, and are Corporation employees.

2.3           The project period, originally from 1988 to 31 March 1996, was extended by the Corporation with effect from 1 April 1996 *inter alia* by taking over the financial burden. The Health Posts including the engagement of CHVs were continued by the Corporation. The project continues till date with about 3500 CHVs working on it.

2.4           Some time in or about 2000, the Petitioner Union raised an industrial dispute concerning the employment of CHVs. It was their case that the CHVs were appointed as per rules framed by the Corporation as part time temporary employees in permanent posts; that the CHVs have put in over 10 years of continuous service in the Public Health Department of the Corporation on a fixed remuneration of Rs.500/- p.m., increased recently to Rs.750/- p.m.; that the CHVs were working on par with other part time workmen of the Corporation and ought to be treated as part time workmen of the Corporation as defined in the Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 in the absence of any other certified Standing Orders applicable to them; and that the CHVs should be accordingly made permanent based on their continuous service and paid remuneration commensurate with the number of hours put in by them on par with other part-time permanent workmen of the Corporation.

2.5           Upon failure of conciliation, the Commissioner of Labour referred that industrial dispute to the Industrial Tribunal at Mumbai

(“Tribunal”) for adjudication under Section 12(5) of the Industrial Disputes Act, 1947 (“ID Act”). Both parties, i.e. the Petitioner and the Corporation, filed their respective statement of claim and written statement.

2.6 On or about 2 March 2002, the Tribunal, after allowing the parties to lead evidence and hearing them, passed a Part I Award on the preliminary issue of the status of the CHVs, holding them to be workmen within the meaning of Section 2(s) of the ID Act.

2.7 The Corporation challenged the Part I Award before this Court by Writ Petition No.4027 of 2002. That Writ Petition, however, was withdrawn with liberty to challenge the Part I Award after the final award, if adverse to the Corporation.

2.8 The Tribunal, thereafter, proceeded to hear the reference and on 13 January 2004 passed the Part II or final award, by which the Tribunal rejected Demand Nos.1, and 3 to 6 made by the Petitioner, but allowed Demand No.2.

2.9 The Tribunal's rejection of Demand Nos.1, and 3 to 6 is challenged by the Petitioner union in Writ Petition No.7958 of 2005, whereas the companion petition of the Corporation, namely, Writ Petition No.8947 of 2004, challenges the Part I award, based on which the final award allowing Demand No.2 made by the Union is passed.

3 Other companion petitions arise in the circumstances set out below.

**Writ Petition No.1300 of 2005 :**

A CHV working with the Corporation, Deepa Arun Shinde, was removed from service and her honorarium was discontinued. Being aggrieved, she moved a complaint under Section 33A of the ID Act, being Complaint No.9 of 2002, in the Union's reference, claiming her removal pending the reference which *inter alia* dealt with her status as a permanent part-time workman of the corporation without complying with the provisions of Section 33 of the ID Act to be illegal, null and void. The Industrial Court by its order dated 27 May 2004 allowed the complaint and ordered her re-instatement. That order is challenged in this petition by the Corporation.

**Writ Petition No.6944 of 2016 :**

By its complaint, being Complaint (ULP) no. 699 of 2004, the Union sought implementation of the order dated 27 May 2004 passed in respect of the abovenamed CHV Deepa Arun Shinde . By its order passed on 26 April 2005, in Writ Petition No.1300 of 2005, this court granted interim stay of the award passed by the Industrial Court on 27 May 2004 in the complaint of the abovenamed CHV. The interim stay was on a condition that as and when there was a vacancy of CHV, unless the claim of the particular CHV, Deepa Arun Shinde, was considered, no one should be engaged. On 7 August 2013, the Union filed an application that there being vacancy of CHV and the Corporation not having considered the claim of Deepa Arun Shinde, the conditional stay granted in Writ Petition No.1300 of 2004 stood vacated and that the order of the Industrial Court dated 27 May 2004 in her case be implemented. The Industrial Court proceeded to

hear Complaint (ULP) No.699 of 2004. By its order dated 27 April 2016, the Court allowed the complaint and directed reinstatement of the CHV with effect from 15 May 2004 with full back wages. Being aggrieved, the Corporation has presented this petition challenging that order.

**Writ Petition No. 4980 of 2010 :**

Another CHV working with the Corporation, one Anjali Vishok Jagtap, was removed from service after the date of the final award on the Union's reference. She raised a demand for reinstatement with full back wages and continuity of service, upon rejection of which the matter was carried before the Labour Court in an industrial dispute. The Labour Court by its award rejected the reference. The award is challenged by her in this petition.

**Writ Petition Nos. 6831 of 2015 :**

The Union raised a further industrial dispute making eleven further demands for absorption of CHVs into vacant posts and grant of various allowances to them. By its award dated 25 September 2014, the Industrial Tribunal granted two demands of the Union, namely, 8 days' leave and Conveyance allowance of Rs.600/- per month to the CHVs. The award has been challenged by the Corporation in Writ Petition No.6831 of 2015.

4           The Central issue in these petitions concerns the status of individual CHVs *vis-a-vis* the Corporation. Are the CHVs workmen of the corporation? If they are, what category do they belong to? Which rules of service govern them? These are matters which formed part of arguments

advanced at the Bar by the parties. The arguments were advanced generally for the entire class of CHVs and not from the standpoint of individual cases of particular CHVs, which, as I have noted above, form the subject matter of petitions individually filed by or against them. The arguments, in other words, dealt with the Part I and Part II awards passed by the court on the reference of the Union, namely, Reference (IT) No.39 of 2000.

5           The contention of the Corporation is that though Part I award holds the CHVs to be workmen within the meaning of Section 2(s) of the ID Act, Part II award, with which the former award has merged, makes it clear that the CHVs merely function as volunteer members of the community and not as corporation servants; that they act rather as an interface between the community and the health posts established by the Corporation for serving the community, as social workers; and that they are not governed by the service rules of the Corporation. It is submitted that the Industrial Tribunal has, in terms, held that the “CHVs therefore cannot be considered as part time or full time employees of the first party Corporation.” Mr.Pakale for the Corporation relies on the case of **Md.Arif vs. State of Bihar**<sup>1</sup> and submits that unless the appointment of CHVs was in terms of the relevant rules governing appointments under the Corporation, the status of regular Corporation employees could not be conferred on the CHVs. He also relies on the judgments of the Supreme Court in the cases of **State of Karnataka vs. Umadevi**<sup>2</sup> and **Rajkumar s/o Rohitlal Mishra vs. Jalagaon Municipal Corporation**<sup>3</sup>, as also a judgment of our court in **Sandip Baliram Sandbhor vs. Pimpri Chinchwad Municipal Corporation**<sup>4</sup>, in support of his contentions. Mr.Bukhari for the Corporation submits that all CHVs were

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1   2010 II CLR 485

2   2006 LawSuit(SC) 296

3   2013 LawSuit (SC) 98

4   Writ Petition No.262/2015 decided on 3-12-2015

appointed as voluntary workers and not as employees of the Corporation. He relies on the affidavits submitted by the CHVs at the time of their appointments agreeing to their status as such voluntary workers who could not claim to be Corporation employees. He relies on the cases of **State of Karnataka vs. Ameerbi**<sup>5</sup>, **State of Uttar Pradesh vs. Audh Narain Singh**<sup>6</sup>, **Management of Ambala Cantonment Electric Supply Corporation Ltd. vs. Workmen**<sup>7</sup>, **Sunaina Singh vs. District Magistrate, Mau**<sup>8</sup>, **Union of India vs. Bishamber Dutt**<sup>9</sup>, **H.R. Adyanthaya vs. Sandoz (India) Ltd.**<sup>10</sup> and **Vandana Joshi vs. Standard Chartered Bank Ltd.**<sup>11</sup>, in support of his submissions. Mr.Palshikar for the Corporation supports Mr.Pakale and Mr.Bukhari. He relies on the decisions of a learned Single Judge and Division Bench of our court in **Mahapalika Arogya Seva Karmachari Sanghatana vs. Commissioner, Brihanmumbai Mahanagar Palika**<sup>12</sup>, in support. On the other hand, it is submitted by Mr.Devdas for the Union that the final award really amounts to a contradiction in terms in that the question of the CHVs' status as workmen of the Corporation having been finally decided by the Tribunal in its Part I award, the Tribunal could not have denied such status to them in the final award by revisiting the issue. Learned Counsel relies on the cases of **Cox & Kings (Agents) Ltd. vs. Their Workmen**<sup>13</sup>, **Dr.Beck and Company vs. Sushil Kumar Madhav Bhide**<sup>14</sup> and **Superintending Engineer vs. Sukhadeo Ramchandra Dhakite**<sup>15</sup> on the meaning of an 'award' and the question of agitating the same issue

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5 (2007)11 SCC 681

6 AIR 1965 SC 360

7 1971 LAB.I.C. 854 (V 4 C 207)

8 2003 III CLR 760

9 (1997) I.L.L.J. Supreme Court of India 187

10 1994 II CLR 552

11 2010 III CLR 901

12 Appeal No.250/2007 in Writ Petition No.323/2004 decided on 1-3-2011.

13 AIR 1977 SC 1666

14 MANU/MH/1153/2011

15 MANU/MH/0796/2011

earlier decided in such 'award'. He also relies on the case of **Prahlad Singh vs. Col.Sukhdev Singh**<sup>16</sup> in support of his contention that the decision given earlier in a proceeding was binding even at a later stage of the same proceeding. He also relies on the cases of **State of Uttar Pradesh vs. Audh Narain Singh**<sup>17</sup>, **Shree Mahila Griha Udyog (Lijjat Papad Kendra), Amravati vs. Ratnamala D. Koken**<sup>18</sup> and **Silver Jubilee Tailoring House vs. Chief Inspector of Shops & Establishments**<sup>19</sup> on the relationship of employer-employee. It is submitted by Mr.Devdas that the CHVs being held as workmen of the Corporation, considering the fact that their engagement was on a part -time basis for remuneration, they ought to be treated as part-time employees of the corporation and as such part-time employees employed on permanent posts, ought to be made permanent on the basis of their continuous service. Learned Counsel relies on several judgments in support of his claim of permanency and other benefits on the ground of continuous service.

6           As may be noted from the foregoing gist of rival submissions, the very first controversy between the parties concerns the seeming conflict between Part I and Part II awards. Various submissions are advanced on the part of the Corporation in this behalf. These are to the effect that Part I award is no award or that there is no adjudication at that stage. On the other hand, the Union relies on Part I award as a final determination of one of the issues arising in the reference, namely, the master-servant relationship between the parties, and submits that this final determination cannot be revisited at a later stage in the same reference. I do not, however, propose to go into this controversy, since, as I have explained below, I do

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<sup>16</sup> MANU/SC/0797/1987

<sup>17</sup> AIR 1965 SC 360

<sup>18</sup> MANU/MH/0081/1955

<sup>19</sup> AIR 1974 SC 37

not find any conflict between Part I and final awards. Both are, in my view, consistent and can very well stand together. Part I award deals with the preliminary issue as to whether there exists a relationship of employer-workman between the parties, whereas the final award considers whether the existence of such relationship implies the availability of the reliefs claimed in the reference. Whereas the former award holds in favour of such relationship, the latter does not consider such relationship as entailing the final reliefs claimed in the reference. As a matter of law, both may be right. What really needs to be considered is, what is the nature of this relationship and what are its incidents, which is what I propose to do in the order below. It is not necessary, in the premises, to consider **Cox & Kings (Agents) Ltd.** (supra) and other judgments cited by Mr.Devdas on the meaning of an 'award' as also the judgment of **Prahlad Singh** (supra) on the binding nature of a decision later in the same proceedings.

7           The definition of 'workman' in Section 2(s) of the ID Act involves four aspects, namely (i) the type of engagement, i.e. the requirement of having to be "employed", (ii) the place of engagement, i.e. the requirement of having to be employed in an "industry", (iii) nature of work, i.e. (a) manual work; (b) unskilled work; (c) skilled work; (e) technical work; (e) operational work; (f) clerical work; and (g) supervisory work, either of which qualifies the person engaged to be a workman, and (iv) the hire or reward, for which he is so engaged. The word "employed" may ordinarily have different connotations. It may simply mean 'being occupied or engaged in some form of activity' or it may mean 'engaged for rendering service on payment of wages'. Insofar as the definition of 'workman' in Section 2(s) of the ID Act is concerned, the word "employed" connotes that "*there is a relationship brought about by express or implied*

*contract of service. The employee renders services for which he is engaged by the employer and the employer pays the employee in cash or kind as agreed between them or statutorily prescribed*". (See **Workmen of Food Corporation of India vs. Food Corporation of India**<sup>20</sup>). "Industry" is defined in Section 2(j) of the ID Act to mean any business, trade, undertaking, manufacture or calling of employers. It includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The person must be employed in an industry to carry out any of the types of work referred to in items (a) to (g) above. One has to take into account the principal duties and functions of the person employed to ascertain whether or not he carries out any of the above types of work. Lastly, the work must be for wages or remuneration. The words 'hire or reward' convey a broad spectrum of remuneration and may take any form, such as obligatory periodical payment for work rendered, time-rate or piece-rate payment or even payment on commission basis. (See the judgment of **Shree Mahila Griha Udyog** (supra).

8            In the present case, there is no dispute between the parties that the CHVs are engaged in an industry and that they render the type of work which is subsumed in the seven types referred to in the definition. The dispute concerns (a) the nature of their engagement – whether they are "employed" by the Corporation and (b) whether they are engaged for hire or reward. It is the corporation's case that the CHVs have offered their service on a 'voluntary basis' as social workers and what is paid to them is simply an honorarium. They merely act as an interface between the Health posts created by the Corporation and the community. It is submitted that the CHVs are not governed by any service rules of the Corporation such as

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20 1985 AIR 670

leave, notice pay, disciplinary action, etc. It is submitted that their attendance is marked on the muster-roll only to ensure punctuality and sincerity in attendance. Whenever any additional work is assigned to them, they are reasonably compensated by additional incentives. On the other hand, it is claimed by the Union that under the provisions of Section 61 of the Mumbai Municipal Corporation Act, 1888, the Corporation is under an obligation to carry out duties like public vaccination and preventing and checking spread of diseases; that it has for the purpose opened a Public Health Department; that from 1988, it has undertaken a project known "India Population Project-V", initially financed by the World Bank and later through its own resources; that for this project, it has established 176 Health Posts and 56 Family Welfare Centres in the city of Mumbai, each staffed by full time medical, and regular and auxiliary nursing staff, and full-time as well as part-time health workers; and that to see that the community at large takes the benefits of those services, it has engaged CHVs to act as liaison between the community and the Health Posts staff.

9           The nature of relationship of master and servant and the various indicia of such relationship are laid down by the Supreme Court in the case of **Audh Narain Singh** (supra) in the following words:-

"8.           Whether in a given case the relationship of master and servant exists is a question of fact, which must be determined on a consideration of all material and relevant circumstances having a bearing on that question. In general selection by the employer, coupled with payment by him of remuneration or wages, the right to contract the method of work, and a power to suspend or remove from employment are indicative of the relation of master and servant. But co-existence of all these indicia is not predicated in every case to make the relation one of master and servant. In special classes of employment, a contract of service may exist even in the absence of one or more of these indicia. But ordinarily the right of an employer to control the method of

doing the work, and the power of superintendence and control may be treated as strongly indicative of the relation of master and servant, for that relation imports the power not only to direct the doing of some work, but also the power to direct the manner in which the work is to be done. If the employer has the power, prima facie, the relation is that of master and servant.”

10           Whenever there is a clear case of engagement for a remuneration, the question that usually arises is whether the contract is of service or for service. The traditionally formulated test is the control test. 'Control' implies the power to direct how the person engaged should do his work. If there is such control of the employer, the contract is traditionally considered to be a contract of service and the relationship between the parties is that of master and servant. If, on the other hand, there is no control or supervision and the person engaged is free to decide the manner of his work, the contract may well be a contract for service. This traditional view has since been watered down. The control test is no more treated as an exclusive test now. In fact, there is no single test now considered as decisive of the nature of the relationship. As explained by the Supreme Court later in the case of **Silver Jubilee Tailoring House** (supra) there is no formula in the nature of a single test to tell a contract of service from a contract for service. What the court has to do is to simply “*perform a balancing operation weighing up the factors in one direction and balancing them against those pointing in the opposite direction.*”

11           The Tribunal, after assessing and weighing the documentary and oral testimony on the touchstone of the law laid down by the Supreme Court and after considering the essential ingredients of Section 2(s) of the I.D. Act, which are noted above, came to a conclusion that the CHVs have been employed by the Corporation to discharge duties, which are essential

and perennial in nature; that the CHVs have discharged duties assigned to them in a manner and fashion as directed by the Corporation; that the duties were to be discharged under the control and supervision of full-time medical officers and other staff working at the health posts; that they have been paid remuneration at the rate of Rs.750/- per month; that for any lapse or misbehaviour on their part, the CHVs were liable to face disciplinary action, including termination of services; that their daily presence was marked in the muster register maintained at the concerned health posts; that the CHVs have been deprived of the remuneration in the event of their absence and that their working hours have been prescribed by the Corporation. On these considerations, the Tribunal held that the CHVs were squarely covered under the definition of “workman” under Section 7(s) of the I.D. Act. The Tribunal in particular rejected the submission of the Corporation that the services of CHVs were merely voluntary. The Tribunal considered the expression “voluntary” in the present case as a misnomer. The Tribunal in particular found that the CHVs did not offer themselves to do work for the Corporation free of charge. It also held that the honorarium paid to them was not a mere nominal payment.

12           The appreciation of facts and application of law to the facts found by the Tribunal cannot, in any way, be faulted. As held by the Supreme Court in **Audh Narain Singh** and **Silver Jubilee Tailoring House** cases (supra), the existence of relationship of master and servant is a question of fact, which must be determined on a consideration of all relevant facts and circumstances having a bearing of that events and by doing a balancing operation. The various indicia discussed by the Supreme Court in **Audh Narain Singh**'s case are clearly present in the facts of the present case. The Tribunal has duly performed the balancing operation as

discussed in **Silver Jubilee Tailoring House** and come to a finding of master servant relationship between the parties.

13           As for the payment made by the Corporation to the CHVs, it is clearly in the nature of hire or reward, though described as 'honorarium'. The honorarium, which was originally in the sum of Rs.200/- per month was raised to Rs.500/- per month and was pegged at Rs.750/- per month as at the date of the Part-I Award. The Tribunal directed the honorarium to be raised to Rs.900/- per month with effect from the date of the final award, i.e. from 13 January 2004. (As of today, the Corporation is paying honorarium of Rs.5,000/- per month to the CHVs.) As I have noted above, the words “hire” or “reward” in the definition of “workman” convey a broad spectrum of remuneration and may take any form. In the present case, the remuneration, though called 'honorarium', is paid as an obligatory periodical payment for the work rendered by the CHVs. In the event a CHV is marked absent on any particular day, suitable adjustment is made in the remuneration paid to her. By no means these payments can be termed as nominal payments for services rendered without charge.

14           It is contended on behalf of the Corporation that the employment of CHVs is not governed by service regulations of the Corporation. Being covered or not by general service regulations of the employer is not decisive of the nature of engagement for the purposes of the definition of “workman” under Section 2(s) of the I.D. Act. The Corporation has framed a policy for CHVs, which is placed on file before the Tribunal. The CHVs have been appointed by displaying notices and inviting applications from eligible candidates. After scrutiny of the applications, candidates have been interviewed by a panel of municipal

staffers. There is a duty list prescribed for the CHVs. In other words, appointments of CHVs are made and their duties are governed by terms and conditions prescribed by the Corporation. The fact that these appointments and duties of CHVs are not governed by general Service rules applicable to other full-time or part-time employees of the Corporation does not detract from the engagement of CHVs as “employed” by the Corporation, though it may have consequences as far as the Union's demand for service benefits for the CHVs comparable to regular part-time employees of the Corporation is concerned.

15           The Tribunal has taken into account all material facts and circumstances and has not disregarded any important fact or circumstance for arriving at its conclusion. The conclusion arrived at by the Tribunal is supported by evidence. By all accounts, the conclusion that the CHVs are employed by the Corporation within the meaning of the expression “employed” in the definition of “workmen” under Section 2(s) of the I.D. Act, is clearly a reasonable conclusion and in my considered view, no interference is called for with the same within the parameters of permissible judicial review under Articles 226 and 227 of the Constitution of India. The Part-I award is, thus, required to be sustained.

16           Coming now to the benefits claimed by the Union for the CHVs by way of the various demands forming part of the reference, which is the subject matter of the final award, the thrust of the Union's submissions is that the CHVs being held to be “employed” by the Corporation as its “workmen”, and such 'employment' being on a part-time basis, they should be treated as permanent part-time employees of the Corporation. The argument is that though their appointments are temporary, the posts which

they hold being perennial in nature, depending on continuous service rendered by them, they should be made permanent and accorded all service benefits available to other permanent part-time employees of the Corporation. In the first place, there is no reason to put all employees in straight-jacket compartments or stereotypes, such as full-time or part-time, depending on their duty hours, particularly so in the case of a municipal corporation forming part of a welfare state. Workmen may be “employed” by a welfare state on the basis of various exigencies. The state may engage workmen as part of its regular workforce or as part of its various special projects, which, though perennial in nature, do not come under regular corporation work. It may, for example, appoint marshals for enforcing discipline and cleanliness in civic life or representatives for spreading public awareness and making its health services more accessible to the community at large such as the CHVs in the present case. Depending on the number of duty hours of such special appointees, they need not be straight-jacketed as regular full-time or part-time employees of the Corporation covered under regular service rules or standing orders. A welfare state must enjoy flexibility in the kinds of engagements it may envisage for different workmen working under it. There may be jobs under its regular establishments, comprised of its various permanent departments or special jobs under special projects or tasks undertaken by it in special exigencies or for catering to special needs of the community. These latter projects or tasks may be temporary or by reason of the length of time during which they are operated, may even be termed as perennial. The state ought to be able to treat workmen engaged in such special projects or tasks differently from its regular workforce. This, of course, does not imply that the state can use the subterfuge of special projects or tasks to avoid regular employment covered by its service rules or standing orders. That would be

a colourable exercise and clearly impermissible. Wherever shown to be so, the courts will pierce the veil and find the real nature of the particular engagements. But that would be a matter of individual assessments in particular cases. There is nothing wrong in principle in conceding the power to the state to stipulate different kinds of engagements for workmen employed by it, subject to the exercise of such power being in good faith and for public interest.

17           In the present case, India Population Project-V was launched by the Corporation with an avowed objective of strengthening and expanding preventive health services with special emphasis on family welfare, and maternity and child health. The project was with special financial assistance from World Bank. It was specially targeted towards the needs of urban slums and shanties. Special health posts were created by the Corporation for this project which were manned by separate permanent and temporary full-time and part-time employees. For spreading awareness of the programme and reaching the services to the doorsteps of these communities, the Corporation thought it fit to engage willing social workers who would act as an interface between the health posts and the community catered to by them. The recruitment procedure notified for these social workers, i.e. the CHVs, envisaged appointment on a first come first served basis. There was no test, interview or medical fitness examination, etc. There was an unequivocal intimation to the candidates willing to be recruited as social workers that they would be paid a fixed honorarium, that they would not be treated as regular employees of the Corporation governed by municipal service rules and regulations; and that they could not claim service benefits like regular employees of the Corporation. This engagement can certainly be termed as genuine special engagement for a

particular project and tasked with special duties and subject to special terms and conditions, as would be permissible for a welfare state as indicated by me above. There is no colorable exercise, no attempt to get over ordinary service rules and regulations as a subterfuge. The mere lengths of their tenures or perennial nature of the project after the Corporation continued it even after cessation of World Bank assistance, cannot change the nature of the engagement. Though the engagement earns the CHVs the status of 'workman' within the meaning of Section 2(s) of the ID ct, it does not in any way require the Corporation to treat them as its regular part-time employees or extend service benefits available to its regular part-time employees to them.

18           There is one more important reason why the claim of the Union for permanency to the CHVs as regular Corporation employees or benefits on par with the latter employees cannot be accepted. The principle laid down by the Supreme Court in **Umadevi's** case (supra) requires that no temporary or contractual appointee can claim regularization or permanency simply because his engagement has continued beyond the term of his appointment or for a long period of time; he would not be entitled to be absorbed in regular service or made permanent, if the original appointment was not made by following due process of selection as envisaged by the relevant rules of regular appointments. This rule is based on the principle of equality of opportunity to employment under the state. Though the Supreme Court in the case of **MSRTC Vs. Maharashtra Castribe Rajya Parivahan Sanghtana**<sup>21</sup> revisited this law and held that the powers of industrial adjudicators under the MRTU & PULP Act, 1971, which enable them to order various corrective measures for preventing unfair labour

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21 (2009) 8 SCC (556)

practices, are not overridden by the law laid down in **Umadevi's** case, there is no real conflict in the position of law stated by the Court in the two cases. An appointment, which is not made by following the due process of selection and giving opportunity to all to compete for the same, cannot be regularized **simply** for the reason of its continuance beyond the original term or for a long time. But there may still be a case for preventing unfair labour practice of engaging an eligible candidate in a permanent post by terming the engagement as “temporary” and continuing it for all practical purposes as a permanent engagement. This can be corrected by the industrial adjudicator by regularizing the appointment. Allowing the State to continue to engage the aggrieved workman indefinitely without regularizing his engagement itself may amount to an invidious discrimination and offend the mandate of Article 14. What is needed, therefore, is a fine balancing act between these two constitutional principles and that is what was held by the Supreme Court in the later case of **Hari Nandan Prasad Vs. Management of Food Corporation of India**.<sup>22</sup> This Court, in the case of **Sandip Baliram Sandshor** (supra), has explained this position of law, referring to the cases of **Umadevi**, **MSRTC** and **Hari Nandan Prasad**.

19           As I have noted above, the selection procedure for appointing regular employees and rules framed for the same were admittedly not followed by the Corporation for engagement of CHVs; the CHVs were simply appointed on first come first served basis and in an ad-hoc manner. At the same time, on the other hand, it cannot be said that there is any unfair labour practice or exploitation in engaging them as voluntary workers and continuing them even after the special project stopped

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22 (2014) 7 SCC 190

receiving finance from World Bank and was continued by the Corporation through its own resources. The principle of equality of opportunity in public employment envisaged in Articles 14 and 16 mandates that the appointments cannot be regularized as permanent Corporation appointments and, on the other hand, there is no discrimination within the meaning of Article 14 if the CHVs are continued as such special appointees of the project. Balancing of these principles does not call for regularization or permanency of status to the CHVs like other Corporation employees.

20 I am fortified in this view by what the Supreme Court has said in the case of **Mohd. Ashif's** case (supra). The appellants before the Court in that case were appointed as Voluntary Health Workers in State run dispensaries and paid honorarium in lieu of their services. They were absorbed later in the service as Primary Health Workers. After they put in a number of years' service, they were terminated on the ground that the absorption was illegal and contrary to rules. Aggrieved by the termination, the workers filed writ petitions. Both the Single Judge and Division Bench of High Court repelled their challenge. After considering **Umadevi's** case (supra) and other cases following it, the Supreme Court, dismissed the Special Leave Petitions, observing as follows :-

“11. Applying the test laid down by this Court in *Uma Devi's* case (supra) and the cases referred to above, to the case at hand, there is no gainsaying that the appointments of the appellants as Primary Health Workers were totally illegal and violative of Articles 14 and 16 of the Constitution which guarantee equality of opportunity to all those who were otherwise eligible for such appointments. The Chief Medical Officer who had made the appointments was not vested with the power to do so nor were the claims of other candidates eligible for appointments against the post to which the appellants were appointed, considered. Surprisingly, the appointments had come by way of absorption of the

appellants who were working as Voluntary Health Workers on a monthly honorarium of Rs.50/- only. The High Court had, in our opinion, correctly held that there was no cadre of Voluntary Health Workers who were working on an honorarium in State run dispensaries. The very nature of the appointment given to the appellants as Voluntary Health Workers was honorary in nature which entitled them to the payment of not more than Rs.50/- per month. It is difficult to appreciate how the Chief Medical Officer could have regularized/absorbed such Voluntary Health Workers doing honorary service against the post of Primary Health Workers which carried a regular pay-scale and which could be filled only in accordance with the procedure prescribed for that purpose. The appointment of the appellants against the said posts was thus manifestly illegal and wholly undeserved to say the least. Inasmuch as these appointments came to be cancelled pursuant to the said directions no matter nearly a decade and a half later the termination could not be said to be illegal so as to warrant interference of a writ court for reinstatement of those illegally appointed. The High court was, in that view of the matter, justified in declining interference with the order of cancellation and dismissing the writ petitions.”

These observations apply with equal force to the facts of our case. There is no cadre of CHVs in the regular service rules of the Corporation and there is no question of regularizing the CHVs or terming them on par with other regular part-time employees of the Corporation or extending service benefits available to the latter to the former.

21. The final award of the Tribunal rejected Demand Nos.1 and 3 to 6 made by the Union on the ground that these documents were based on the Union's plea that the CHVs should be considered as part-time employees of the Corporation and such plea was untenable. The Tribunal was justified, as held by me above, in its reasons for rejecting the plea. No interference is called for as regards this part of the final award. As for Demand No.2, the Tribunal noted that as a matter of practice, the

Corporation had always periodically increased the honorarium payable to the CHVs; that there was no increase in the honorarium for the last three years; and that the amount of work put in by the CHVs did call for an increase. The conclusion of the Tribunal by finding an increase of Rs.150/- per month in the honorarium as reasonable, cannot be said to be suffering from any infirmity. In fact, this part of the award was not seriously contested by the Corporation. Anyway, the Corporation has itself thereafter periodically made further upward revisions in the honorarium payable to CHVs, the currently payable honorarium standing at Rs.5,000/- per month.

22. Coming now to the impugned orders/awards in other petitions involving individual CHVs, even these need to be dealt with according to the above discussion concerning the nature of relationship between the Corporation and the CHVs and its incidents. The individual CHV in Writ Petition Nos.1300 of 2005 and 6944 of 2016, being a workman, could not have been removed without complying with the provisions of Section 33 of the ID Act pending the Union's reference. The demand, however, of the CHV in Writ Petition No.4980 of 2010 for reinstatement on the footing that she is entitled to permanency as a regular Corporation employee is untenable. The Corporation's challenge in Writ Petition No.6831 of 2015 to the demands of 8 days' leave and conveyance allowance to CHVs granted by the Tribunal, insofar as the challenge is based on the plea of want of master-servant relationship between the Corporation and the CHVs, needs to be repelled. No specific grounds are urged by learned Counsel for the Corporation insofar as the merits of these two demands are concerned. In any event, the 8 days' leave, which is granted on a reasonable estimate of legitimate absence in a year, and conveyance allowance of Rs.600/- p.m.,

which is based on evidence of expenses of travel having to be incurred actually by the CHVs, hardly merit any interference by this court in its jurisdiction under Articles 226 and 227 of the Constitution of India.

23           Accordingly, all writ petitions, namely, Writ Petition Nos.7958 of 2005, 8947 of 2004, 1300 of 2005, 6944 of 2016, 4980 of 2010 and 6831 of 2015, are dismissed. No order as to costs.

24           Mr. Pakale, learned Counsel for the Corporation applies for stay of the impugned final award for a period of four months. There was a stay in respect of the final award throughout the proceedings. On the application of Mr. Pakale, this order is stayed for a period of twelve weeks from today.

25    In view of the disposal of the petitions, the interim applications, namely, Civil Application Nos.2093 of 2010 and 874 of 2007, do not survive and the same are disposed of.

**(S.C. Gupte, J.)**