

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5827 OF 2017

- | | |
|---|---|
| 1] Mahesh Bhalchandra Amrutkar, |] |
| Age 44, Residing at |] |
| A901, Raunak Paradise, Pokharan Rd 2, |] |
| Near Upvan Lake, Thane (W)400 610. |] |
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| 2] Prashant Jagannath Bhovad, |] |
| Age 43, Residing at |] |
| 1 and 17 Radha Niwas, Ganesh S. Road, |] |
| Bhandup (west), Mumbai 400 078. |] |
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| 3] Ravishankar P. Shinde, |] |
| Age 47, Residing at |] |
| Shahu Market Building, 2 nd floor, |] |
| M. G. Road, Opposite Naupada Police Station, |] |
| Naupada, Thane (W) 400 602. |] |
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| 4] Bhagwan Uddhaorao Shinde, |] |
| Age 45, Residing at |] |
| A1/601, Shree Satguru Garden, |] |
| Next to Suraj Water Park, Ghodbunder Road, |] |
| Thane (West) 400 615. |] |
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| 5] Prashant Ashok Firke, |] |
| Age 42, Residing at |] |
| D/2. 201 Vedant Complex Vartak Nagar, |] |
| Phokran Road No.1, Thane West, |] |
| Pin code 400 606. |] |
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| 6] Sandeep Shashikant Sawant, |] |
| Age 42, Residing at |] |
| Laxmi Park Phase II, Building No.1, |] |
| A Wing, Flat No.701, Lokmanyagar Pada |] |
| No.2, Thane (W) 400 606. |] |

- 7] Ram Dattatray Jadhav,]
Age 41, Residing at]
Flat No.203, Building No.21,]
Ashtagandha CHS, Manisha Nagar,]
Kalwa, Thane 400 605.]
- 8] Mahesh Bandu Zagade,]
Age 46, Residing at]
A, 202, Sunflower Bldg. Raheja Complex,]
Kalyan (W).]
- 9] Shailendra Ramdas Chari,]
Age 46, Residing at]
A/29, Hill Garden CHSL, Manpada 400 607.]
- 10] Shashikant Babruvahan Salunke,]
Age 46, Residing at]
B504, Cosmos Nest, Dhokali Naka,]
Kolshet Road, Thane (West).]
- 11] Vaman Madhav Sakhadeo,]
Age 40, Residing at]
101, New Samadhan CHS,]
Near Shiv Mandir, Karnik Road,]
Kalyan (W) 421 301.]
- 12] Anant Ramrao Bade,]
Age 42, Residing at]
AL3/19/3, Kakasaheb Thorat CHS,]
Near Nhp School, Sector-19,]
Airoli, Navi Mumbai.]
- 13] Ravindra Dattatray Kasar,]
Age 43, Residing at]
102, C Wing, Merigold,]
Prestige Residency, Behind Dalal Engg.]
Kavesar, Ghodbandar Road,]
Thane West 400 615.]..Petitioners

Versus

- | | |
|---------------------------------|---|
| 1] Thane Municipal Corporation, |] |
| Through the Commissioner, |] |
| Mahapalika Bhavan, |] |
| Gen. A. K. Vaidya Marg, |] |
| Pachpakhadi, Thane 400 602. |] |
| | |
| 2] Additional Commissioner II, |] |
| Thane Municipal Corporation, |] |
| Mahapalika Bhavan, |] |
| Gen. A. K. Vaidya Marg, |] |
| Pachpakhadi, Thane 400 602. |] |
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| 3] Anjum Ahmed |] |
| | |
| 4] Umesh Bhosle |] |
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| 5] Dattatray Shinde |] |
| | |
| 6] Rohit Gupta |] |
| | |
| 7] Vaibhav Vaidya |] |
| | |
| 8] Dipak Jagtap |] |
| | |
| 9] Divakar Bhole |] |
| | |
| 10] Rajendra Kusurkar |] |
| | |
| 11] Kishore Gole |] |
| | |
| 12] Milind Patil |] |
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| 13] Dinesh Shendge |] |
| | |
| 14] Suhas Rane |] |
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| 15] Jayant Gayakwad |] |

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| 16] Atul Bhole |] |
| 17] Madhav Jangde |] |
| 18] Rhishikesh Javalkar |] |
| 19] Dattatray Shelar |] |
| 20] Rupesh Padgaonkar |] |
| 21] Nitin Pradhan |] |
| 22] Kundan Suryarao |] |
| 23] Charudatta Sarulkar |] |
| 24] Atul Kulkarni |] |
| 25] Anil Patil |] |
| 26] Nilesh Patankar |] |
| 27] Mahesh Vinodrai Raval |] |
| 28] Dipak Prataprao Mane |] |
| 29] Vivekanand Raghunath Karande |] |
| 30] Sunil aatmaram Nikumbhe |] |
| 31] Pravin Prabhakar Saple |] |
| 32] Vijay Vasant Malhar |] |
| 33] Aasavari Bhalchandra Nisal |] |
| 34] Chandu Murali Ramchandani |] |

- 35] Keshav Namdev Kamble]
- 36] Mahesh Bhagwan Borade]
- 37] Jayant Vasudev Choudhary]
Respondent Nos.3 to 37 working as]
Junior Engineer in office of City Engineer,]
Thane Municipal Corporation,]
Mahapalika Bhavan, Gen. A. K. Vaidya Marg,]
Pachpakhadi, Thane 400 602.]..Respondents

WITH
CIVIL APPLICATION NO.551 OF 2018
IN
WRIT PETITION NO.5827 OF 2017

- 1] Anjum Ahmed]
- 2] Umesh Bhosle]
- 3] Dattatray Shinde]
- 4] Rohit Gupta]
- 5] Vaibhav Vaidya]
- 6] Dipak Jagtap]
- 7] Divakar Bhole]
- 8] Rajendra Kusurkar]
- 9] Kishore Gole]
- 10] Milind Patil]
- 11] Dinesh Shendge]
- 12] Suhas Rane]

13] Jayant Gayakwad	]
14] Atul Bhole	]
15] Madhav Jangde	]
16] Rhishikesh Javalkar	]
17] Dattatray Shelar	]
18] Rupesh Padgaonkar	]
19] Nitin Pradhan	]
20] Kundan Suryarao	]
21] Charudatta Sarulkar	]
22] Atul Kulkarni	]
23] Anil Patil	]
24] Nilesh Patankar	]
25] Mahesh Vinodrai Raval	]
26] Aasavari Bhalchandra Nisal	]
27] Chandu Murali Ramchandani	]
28] Keshav Namdev Kamble	]
29] Mahesh Bhagwan Borade	]
30] Jayant Vasudev Choudhary	]
Respondent Nos.3 to 27 and 33 to 37	]
working as Junior Engineer in	]
office of City Engineer,	]

Thane Municipal Corporation,]
Mahapalika Bhavan, Gen. A. K. Vaidya Marg,]
Pachpakhadi, Thane 400 602.]..Applicants

IN THE MATTER BETWEEN

- 1] Mahesh Bhalchandra Amrutkar,]
Age 44, Residing at A901,]
Raunak Paradise, Pokharan Rd. 2,]
Near Upvan Lake, Thane (W)400 610.]
- 2] Prashant Jagannath Bhovad,]
Age 43, Residing at]
1 and 17 Radha Niwas, Ganesh S. Road,]
Bhandup (west), Mumbai 400 078.]
- 3] Ravishankar P. Shinde,]
Age 47, Residing at]
Shahu Market Building, 2nd floor,]
M. G. Road, Naupada,]
Thane (W) 400 602.]
- 4] Bhagwan Uddhaorao Shinde,]
Age 45, Residing at]
A1/601, Shree Satguru Garden,]
Next to Suraj Water Park, Ghodbunder Road,]
Thane (West) 400 615.]
- 5] Prashant Ashok Firke,]
Age 42, Residing at]
D/2, 201 Vedant Complex, Vartak Nagar,]
Phokran Road No.1, Thane West,]
Pin code 400 606.]
- 6] Sandeep Shashikant Sawant,]
Age 42, Residing at]
Laxmi Park Phase II, Building No.1,]
A Wing, Flat No.701, Lokmanyagar Pada]
No.2, Thane (W) 400 606.]

- 7] Ram Dattatray Jadhav,]
Age 41, Residing at]
Flat No.203, Building No.21,]
Ashtagandha CHS, Manisha Nagar,]
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A/29, Hill Garden CHSL, Manpada 400 607.]
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B504, Cosmos Nest, Dhokali Naka,]
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Age 40, Residing at]
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- 12] Anant Ramrao Bade,]
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AL3/19/3, Kakasaheb Thorat CHS,]
Near NHP School, Sector-19,]
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- 13] Ravindra Dattatray Kasar,]
Age 43, Residing at]
102, C Wing, Marigold,]
Prestige Residency, Behind Dalal Engg.]
Kavesar, Ghodbandar Road,]
Thane West 400 615.]..Petitioners

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| Through the Commissioner, |] |
| Mahapalika Bhavan, |] |
| Gen. A. K. Vaidya Marg, |] |
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| 2] Additional Commissioner II, |] |
| Thane Municipal Corporation, |] |
| Mahapalika Bhavan, |] |
| Gen. A. K. Vaidya Marg, |] |
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29] Vivekanand Raghunath Karande	]
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- 35] Keshav Namdev Kamble]
- 36] Mahesh Bhagwan Borade]
- 37] Jayant Vasudev Choudhary]
Respondent Nos.3 to 37 working as]
Junior Engineer in office of City Engineer,]
Thane Municipal Corporation,]
Mahapalika Bhavan, Gen. A. K. Vaidya Marg,]
Pachpakhadi, Thane 400 602.]..Respondents

Mr. Sandeep V. Marne, Advocate for the Petitioners.

Mr. R. S. Apte, Senior Advocate I/by Mr. A. R. Pitale, Advocate for Respondent Nos.1 & 2 – TMC.

Mr. Sudhir Talsania, Senior Advocate a/w Mr. A. K. Jalisatgi I/by Mr. Ratnesh R. Mishra, Advocates for Respondent Nos.3 to 27 and 33 to 37 in Writ Petition and for Applicants in CAW No.551 of 2018.

Mr. Akshay A. Deshmukh, Advocate for Respondent Nos.28 to 32.

**CORAM : B. R. GAVAI &
N. J. JAMADAR, JJ.
DATE : 9th JANUARY, 2019**

ORAL JUDGMENT (Per B. R. Gavai, J)

1] Rule. Rule made returnable forthwith. Heard by consent of the parties.

2] The Petitioners have initially approached this Court challenging the order dated 27th February 2017 passed by the

Respondent Nos.1 and 2, thereby deciding to grant seniority to the Respondent Nos.3 to 37 with retrospective effect from the date of their initial appointment. However, the same also provided that the said Respondents would not be entitled to the financial benefits with retrospective effect.

3] It appears that the Division Bench of this Court vide order dated 3rd May 2017, recorded that the Petitioners were willing to file their written objections individually to the seniority list. The Respondent Corporation was directed to consider the said objections as expeditiously as possible. The Court had granted liberty to the Respondent – Corporation to finalize the final seniority list subject to the legal rights of the Petitioners. The Court had further directed that till the next date, the Respondent – Corporation would not initiate the issuance of promotional orders based on the said final seniority list.

4] In pursuance to the said order, the Petitioners had submitted their representation to the Respondent - Corporation, which came to be rejected vide order dated 5th October 2017 and also vide the order of the same date, the final seniority list also

came to be published. By way of amendment, the Petitioners have challenged these two orders also.

5] The basic issue that arises for consideration in the present Petition is as to whether Respondent Nos.3 to 37, who were appointed on contract basis in the year 1997-1998 (hereinafter referred to as “Contract Engineers”) could be placed senior over the Petitioners, who have been appointed after following regular selection process on 9th October 2001 (hereinafter referred to as the “Regular Engineers”)

6] The facts in the present case are not in much dispute. The Contract Engineers were appointed in pursuance to the “Walk-In-Interview” issued by the Respondent – Corporation. The advertisement was issued on 28th August 1997. The Contract Engineers came to be appointed vide the orders issued in the year 1997-1998 for a period of four months.

7] In pursuance to the appointments which were made in the year 1997 i.e. vide order dated 24th October 1997, the Respondent Nos.3 to 15, 27, 29, 32, 33 and 36 came to be

appointed as Junior Engineers. It is the case of the Petitioners that the Respondent No.35, who had not applied and had not participated in the selection process also came to be appointed as Contract Engineer on 4th October 1998 on the basis of simple application. In pursuance to the advertisement issued in the year 1998, Respondent Nos.16, 26, 28, 30, 31, 34 and 37 were appointed for a period of six months vide order dated 10th December 1998. Though it is the contention of the Petitioners that the Contract Engineers were given periodical breaks, it is vehemently denied by the Respondents. However, in view of the view that we propose to take, it will not be necessary to go into that question.

8] On 1st October 1999, the Respondent – Corporation issued advertisement for filling up regular posts of Junior Engineers. Initially, there were 14 posts mentioned in the advertisement. However, at the relevant time, the proposal for sanctioning 19 additional posts was also pending before the State Government. During the said selection process, the State Government had sanctioned additional 19 posts. Against the said 33 posts, the present Petitioners as well as the Respondent Nos.27 to 37, who

were initially appointed as Contract Engineers came to be selected as Regular Engineers.

9] It appears that in the meantime, Respondent Nos.3 to 26 and Petitioner No.4 who were working on contract basis had filed complaint before the learned Industrial Court under MRTU & PULP Act, 1971, seeking declaration that they should be declared as permanent employees and should be given permanency from the initial date of joining or from the date of completion on 240 days of service. The complaint was vehemently opposed by the Respondent - Corporation by filing written statement. It appears that in the meantime, in view of the selection process for appointing Regular Engineers, the said complainants filed an application for interim relief in the said complaint and affidavit in reply was also filed on behalf of the Respondent - Corporation in the said application for interim relief. However, it appears that subsequently the matter was settled between the Complainants and the Respondent - Corporation. On 29th August 2003, the Advocate of the Complainant before the learned Industrial Court submitted a letter to the Municipal Corporation agreeing to withdraw the complaints, if they

were issued permanency letter. On 30th August 2003, the Municipal Commissioner issued a fresh appointment order dated 30th August 2003, appointing 31 contract Junior Engineers on regular basis.

10] It appears that the Respondent – Corporation had published a draft seniority list of Junior Engineers on 20th April 2004. The draft seniority list also came to be finalized on 19th October 2004. In the said list, the names of the Petitioners and Respondent Nos.27 to 37, who were also selected as Regular Junior Engineers came to be included. However, the said list did not include the names of Respondent Nos.3 to 26. On 5th December 2005, the President of Thane Municipal Corporation Engineers Association made a representation demanding seniority to the Contract Engineers from 1997-1998. The Respondent No.1 replied to the said representation on 2nd January 2006 stating that the same is not permissible in view of the provisions of Maharashtra Civil Services (Determination of Seniority) Rules, 1982.

11] Subsequently, a draft seniority list was again published on 2nd January 2006, wherein the names of the Petitioners and Respondent Nos.27 to 37 were placed above the names of

Respondent Nos.3 to 26. Being aggrieved thereby, the Respondent Nos.3 to 26 had made representations before the Respondent - Corporation. Vide order dated 29th January 2006, the said representation came to be rejected. The Respondent No.1 again published a fresh draft seniority list on 10th January 2014, in which again the names of the Regular Engineers came to be placed above the names of the Respondent Nos.3 to 26. However, it appears that the said draft seniority list was not taken to logical end and thereafter the Respondent - Corporation initiated suo-moto proceedings and passed the order at page 27 vide which the Respondent Nos.3 to 37 were granted seniority from the date of their initial appointment.

12] Being aggrieved thereby, the Petitioners have approached this Court. As already discussed herein-above, this Court had granted permission to the Petitioners to raise their objections. The said objections were rejected on 5th October 2017 and final seniority list was also published on the same date, thereby showing the Contract Engineers above the Regular Engineers. Hence, the present Petition.

13] We have heard Mr. Sandeep Marne, learned counsel appearing on behalf of the Petitioners, Mr. R. S. Apte, learned Senior Counsel appearing on behalf of Respondent Nos.1 and 2, Mr. Sudhir Talsania, learned Senior Counsel appearing on behalf of Respondent Nos.3 to 27 and Mr. Akshay Deshmukh, learned counsel for Respondent Nos.28 to 32.

14] Mr. Sandeep Marne, learned counsel appearing on behalf of the Petitioners submitted that by the impugned orders the Respondent – Corporation has placed the Contract Engineers, who were appointed on contract basis for a fixed period, above the Petitioners, who were regularly selected after following the rigorous selection process. He submits that insofar as the Petitioners are concerned, they had applied in pursuance to the advertisement issued by the Respondent - Corporation, which provided that such persons, who were graduate engineers and who were having two years experience would only be entitled to participate in the selection process. He submits that the Petitioners had to undergo a selection process, which was conducted by selection committee consisting of Municipal Commissioner, City Engineer, one official

belonging to reserved category, Personnel Officer and Deputy Commissioner (HQ). He submits that however, the Contract Engineers were appointed in “Walk-in -Interview”. He submits that the appointment orders appointing the contract employees itself would show that it was on a contract basis for a fixed period. He submits that one of the terms and conditions of the employment specifically provided that since the said employees are appointed on contract basis, they would not be entitled to any other benefits, which the employees of the Respondent - Corporation are entitled to. Learned counsel further submits that as a matter of fact the Respondent Nos.27 to 37 had also participated in the selection process in which Regular Engineers were selected. He submits that, however, the Respondent Nos.3 to 26 chose not to appear in the selection process and continued with the adhoc employment. He submits that only on account of a latitude shown by the Respondent - Corporation to the Contract Engineers, they have been appointed as the Regular Engineers with effect from 30th August 2003 and that too initially on a period of probation for one year. He submits that therefore the appointment of the Contract Engineers will have to be deemed to be construed as an appointment with effect from 30th

August 2003 and their seniority will have to be reckoned from that date. Mr. Sandeep Marne, learned counsel submits that not only that but the Respondent - Corporation has consistently acted on the same premise till 2017, when for the first time the position, which was settled for almost 16 -17 years sought to be unsettled by the Respondent - Corporation. Mr. Sandeep Marne, learned counsel relies on the judgments of the Apex Court in the case of H. S. Vankani and others Vs. State of Gujarat and others¹, P.P.C. Rawani (Dr.) and others Vs. Union of India and others², Davinder Bhatia and others Vs. Union of India and others³ and State of Punjab and another Vs. Ashwani Kumar and others⁴

15] Mr. R. S. Apte, learned Senior Counsel appearing on behalf of the Respondent – Corporation submitted that after receipt of representations of the Contract Engineers, the Respondent - Corporation has got the position examined and had obtained the legal opinion of senior counsels. He submits that after considering the legal opinions and taking into consideration the law laid down by the Hon'ble Apex Court in the case Jacob Vs. Kerala Water

1 (2010) 4 SCC 301.

2 (2008) 15 SCC 332.

3 (1998) 5 SCC 262.

4 (2008) 12 SCC 572.

Authority⁵ and in the case of Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others⁶ and Division Bench judgment of this Court in the case of Sachin Ambadas Dawale Vs. The State of Maharashtra and another in Writ Petition No.2046 of 2010, the Respondent - Corporation found that since the Contract Engineers were in the regular employment of the Respondent - Corporation and continuously in service from 1997, the Respondent - Corporation had taken a decision to regularize their services from the date of their initial appointments.

16] Mr. Sudhir Talsania, learned Senior Counsel appearing for Contract Engineers would also submit that the Contract Engineers were appointed in the year 1997 against the sanctioned posts. He submits that from the affidavit in reply, which is filed by the Respondent - Corporation to the Misc. Application filed before the Learned Industrial Court, it will be relevant that the Respondent - Corporation also construed the Contract Engineers to be permanent employees of the Respondent – Corporation. He submits

5 1990 AIR (SC) 2228.

6 AIR 1990 SC 1607.

that like the Regular Engineers, the Contract Engineers were also required to undergo selection process. They were also required to possess the same qualification as is possessed by the Regular Engineers i.e. Degree in B.E. (Civil). He submits that taking into consideration this aspect of the matter, the Respondent – Corporation has regularized the services of the Contract Engineers from the date of their initial appointment. Learned Senior Counsel submits that the present case is squarely covered by the judgment of the Hon'ble Apex Court in the case of Secretary, Minor Irrigation Department and RDS Vs. Narendra Kumar Tripathi⁷.

17] The undisputed facts that emerge are as under :-

The Respondent - Corporation had issued an advertisement on 28th August 1997. Perusal of the advertisement would reveal that the Respondent - Corporation has stated in the advertisement that it was looking out for young smart graduate Civil Engineers for PWD and Water Supply Department. The advertisement clearly states that the monthly remuneration would be at Rs.4,000/- to 5,000/-. It provides that the appointment was on

⁷ (2015) 11 SCC 80.

contract basis initially for a period of six months. No doubt that the qualification provided is B.E.(Civil) with minimum 60% marks at final year. In pursuance to the advertisement, the Contract Engineers were appointed and they were issued orders on different dates between 1997 and 1998. However, it is to be noted that the terms and conditions specifically provided that since they were on contract basis, they would not be entitled for benefits as are applicable to the employees of the Municipal Corporation. It also provided that they were required to enter into an agreement with the Respondent - Corporation to that effect. It is thus clearly seen that perusal of the advertisement as well as the appointment order of Contract Engineers would show that the appointments were purely on contract basis and for a fixed period.

18] As against this, the Petitioners had applied in pursuance to the advertisement, which was issued on 1st October 1999. The advertisement clearly provides that the applications were invited for filling up the vacant posts on the establishment of Thane Municipal Corporation for the different cadres. At Sr. No.4, it provides for cadres of Junior Engineers (Civil). The advertisement also provides

for category-wise reservations. In pursuance to the said advertisement, the Petitioners had applied and after undergoing selection process, they were appointed by order dated 9th October 2001. Perusal of the order appointing the Petitioners (Regular Engineers) would reveal that their appointment is on probation of two years. It could thus be seen that the Petitioners were appointed after they had applied in response to the advertisement to fill in regular vacant posts and after undergoing the rigorous selection process.

19] However, it appears that in the meantime, the Contract Engineers were agitating their grievance for regularization. In the complaint filed by them, one of the prayers in the said complaint was for direction to the Respondent – Corporation to declare the Complainants as permanent employees and to give them all the benefits of permanency from their respective date of joining. The complaint was vehemently resisted by the Corporation. It would be relevant to refer to the following averments made by the Respondent - Corporation in the affidavit in reply in the said complaint :-

“15. I say that such employees cannot be regularised in the permanent cadre of employees of the Respondents. Such regulations may create inconvenience and conflicts with regard to seniority, promotions, etc.

16. I say that the Commissioner of the Corporation has got powers to make appointments of employees on temporary/adhoc basis. The provisions in this regard have been clearly stipulated in B.P.M.C. Act, 1949. I say that the Respondents have not violated the provisions of any law or that of Industrial Employment (Standing Orders) Act, as alleged by the Complainants. I say that the Complainants are paid a fixed remuneration. I say that the Complainants are paid a fixed remuneration. I say that the Complainants were initially paid Rs.4,000/- per month and then revised to Rs.5,000/- per month. This itself indicates that this set of employees is different from that of the permanent employees of the Corporation working in similar positions. I further say that the two sets of employees are mutually exclusive and cannot be combined and therefore the Complainants cannot claim regularisation or permanency. I say that the Respondents have entered into independent agreements with each of the Complainants making the conditions of service clear and specific. I say that none of the Complainants have ever raised any objection to the nature of appointments.”

20] It appears that during the pendency of the complaint, the matter was amicably settled between the Respondent - Corporation and the Contract Engineers. The Contract Engineers through their advocate, addressed a letter on 29th August 2003 stating therein that as soon as they receive permanency letter, they will withdraw the entire complaint immediately. As per the

settlement, immediately after two days, an order came to be issued by the Respondent - Corporation. It will be relevant to refer to the following part in the said appointment order :-

“The Government, vide the Government Resolutions referred to above at Serial No. 2, has granted approval to appoint the said employees on the sanctioned and vacant posts, in the cadre of Junior Engineer, on the establishment of Thane Municipal Corporation. Considering the aforesaid Government Order, the below-mentioned employees are hereby appointed on the post of “Junior Engineer” in the pay scale of Rs. 1710-080-2110-090-2560-100-3260-E.B.-110-3920, on probation period of one year from the date of this Order, subject to the following terms and conditions.”

(emphasis supplied)

21] It could thus be seen that the order specifically provides that the Contract Engineers were given fresh appointment from the date of the order i.e. 30th August 2003 and that too on probation of one year. The said appointment order refers to the Government Resolution dated 23rd July 2003. Perusal of the said Government Resolution itself would reveal that what has been provided by the said Government Resolution is a permission to fill in 485 posts by appointing the persons on daily wages basis and temporary basis. It does not provide for regularization. It could thus be seen that the

Petitioners were very well aware that they have been freshly appointed vide order dated 2nd August 2003 and that too on probation of one year. On the basis of the said order, the Contract Engineers withdrew their complaint. Even thereafter, when the final seniority list was published on 19th October 2004, the Contract Engineers did not raise any grievance. It appears that since their appointment was on probation for a period of one year from 30th August 2003 and draft seniority list was published on 20th April 2004 and since the probation period of the Contract Engineers was for a period of one year from 30th August 2003 which period was yet to be over, the Contract Engineers were prudent and decided not to raise objection with regard to their seniority at that stage. As such, final seniority list came to be published on 19th October 2004, thereby showing the Regular Engineers above the Contract Engineers.

22] Thereafter the President of the Thane Municipal Corporation Engineers' Association addressed communication dated 5th December 2005 to the Municipal Corporation, thereby praying that the Contract Engineers should be given seniority from 1997-

1998. The said representation is rejected by the Corporation vide order dated 2nd January 2006. Perusal of the said communication would reveal that it is specifically stated that since the appointment of the Contract Engineers was not done in accordance with the service regulations and purely on adhoc basis, such a period cannot be taken into consideration for the purpose of the seniority. It categorically states that their seniority will have to be construed from the date, on which they will be regularly appointed. A subsequent representation made by the Petitioners also came to be rejected by the Respondent - Corporation on 29th April 2006. As early as upto 10th January 2014, the Regular Engineers were placed in the seniority list above the Contract Engineers.

23] What happens after 2014, is an interesting turn. After consistently holding that the Contract Engineers were not appointed by a regular selection process and were appointed on adhoc basis and as such would be entitled their seniority only from the date on which they were regularly appointed, the Respondent - Corporation started doing somersault and finally without assigning any reason passed an order on 27th February 2017, thereby granting seniority to

the Contract Engineers with effect from the date of their initial appointment. As already discussed herein-above, though in pursuance to the order passed by the Division Bench of this Court, a representation was made. The same is rejected and the seniority has been granted to the Contract Engineers over the Regular Engineers.

24] We find that the Petition deserves to be allowed on more than one grounds. As has been discussed herein-above, right from 2003 i.e. the year in which the Contract Engineers were granted appointment on a probation of one year, till recently, Regular Engineers have been shown as senior to the Contract Engineers. Only recently, the same has been sought to be changed. It will be relevant to refer to paragraph 38 of the judgment of Their Lordships of the Apex Court in the case of *H. S. Vankani (supra)*.

“38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority, etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in

service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.”

It could thus be seen that Their Lordships have held that seniority is a civil right which has an important and vital role to play in one's service career. It has been held that if the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost. The observations made by the Hon'ble Apex Court in the said judgment are self speaking and therefore, we do not find it necessary to elaborate more on that.

25] It will further be relevant to refer to the observations of the Hon'ble Apex Court in the case of *Davinder Bhatia (supra)* :-

“6. In view of the rival submissions at the Bar, the only question that arises for our consideration is: whether the ad hoc continuance of the appellants in the cadre of Enquiry-cum-Reservation Clerk can be counted for the purpose of seniority in the cadre, even though, they were regularly absorbed by a process of selection only in the year 1982. The answer to this question depends upon the relevant provisions of the Rules governing the manner of filling up of the post of Enquiry-cum-Reservation Clerk. Undisputedly, the post of Enquiry-cum-Reservation Clerk is a selection post and therefore the Railway Administration would be entitled to select competent persons to man the cadre. As it appears, prior to 1978, 25% of the posts were being filled up by way of direct recruitment but rest of the 75% were being filled up by giving promotion to the Junior Commercial Clerks, those of whom were exercising their option and also were giving a declaration that they would not revert back to the commercial side. But in 1978, the policy was changed and the Government decided to fill up the post by direct recruitment by women candidates only. The appellants, no doubt, have been brought to the reservation side prior to 1978 but admittedly there had been no process of selection in their case and they were posted as Enquiry-cum-Reservation Clerks merely on ad hoc basis as a stopgap arrangement. The post of Enquiry-cum-Reservation Clerk is being a selection post, the persons like the appellants who were posted against those posts without going through the process of selection on ad hoc basis do not have a right to be in the cadre until and unless they are duly regularised after going through a process of selection. In the case in hand, this process of selection was made only in the year 1982 and the appellants have been absorbed in the cadre of Enquiry-

cum-Reservation Clerks after being duly selected. In this view of the matter, their continuance on ad hoc basis from 1978 to 1982 cannot be counted for the purpose of their seniority in the cadre of Enquiry-cum-Reservation Clerk nor can they be held senior to the women candidates who were directly recruited as Enquiry-cum-Reservation Clerks under the changed policy by undergoing a process of selection. In the aforesaid premises, we see no infirmity with the order of the Tribunal so as to be interfered with by this Court. The appeals are accordingly dismissed but in the circumstances there will no order as to costs.”

(emphasis supplied)

The facts in the said case are almost similar as of present case. The Appellants therein who were initially appointed on adhoc basis were claiming seniority over the employees who were regularly selected. In the present case also, we find that since the Contract Engineers were appointed purely on contract basis for a particular period, they could not be permitted to march over the regularly selected candidates, who were appointed after undergoing the regular selection process.

26] It will also be relevant to refer to the observations of the Hon'ble Apex Court in the case of *P.P.C. Rawani (Dr.) (supra)*. No doubt that Their Lordships in paragraph 14 have observed that any

observations made by them in the said judgment should be construed as observations made in that case. However, even *obiter dictum* of the Hon'ble Supreme Court is binding on us. It will be relevant to refer to paragraph 10 of the said judgment :-

“10. If all the ad hoc doctors were to be regularised with effect from the date of their initial appointment, with seniority also from the date of initial appointment, there will be no difference between regular recruitment and regularisation of ad hoc appointments, thereby defeating the very purpose of systematic regular recruitment through UPSC. Ad hoc or stopgap appointees were not normally regularised and given seniority from the date of initial appointment. They were usually given regularisation and seniority only after a certain period of service, which used to vary from one year to ten years or even more.”

(emphasis supplied)

It could thus clearly be seen that Their Lordships of the Hon'ble Apex Court have clearly held that if argument which is sought to be advanced by the contract employees is accepted, then there will be no difference between regular recruitment and regularization of ad hoc appointments, thereby defeating the very purpose of systematic regular recruitment through UPSC. Their Lordships have further held that ad hoc or stopgap appointees were

not normally regularized and given seniority from the date of initial appointment.

27] Insofar as the judgment of the Hon'ble Apex Court in the case of *Secretary, Minor Irrigation Department (supra)*, on which Mr. Sudhir Talsania, learned Senior Counsel vehemently relies is concerned, we find that the said judgment would not be applicable to the facts in the present case. It will be relevant to refer to paragraph 15 of the said judgment :-

“15. The scheme of the working of the Rules in the Department shows that right from 1979, the Department has been making direct recruitment after due selection and by applying the 1979 Rules which Rules have been extended from time to time to subsequent recruitments, services were regularised. Validity of the scheme of these recruitments is not under challenge. In such circumstances, when the Rules provide that such ad hoc appointments have to be regularised and seniority counted from the date of appointment, the writ petitioner could not be deprived of the past service rendered by him from 12-6-1985 till the date of regularisation. It is not a case of appointments made without due selection or without vacancy or without qualification or in violation of the Rules. The larger Bench failed to observe that the appointment of the writ petitioner was not dehors the Rules nor was by way of stopgap arrangement. The Rules had the effect of treating the appointment as a regular appointment from initial date of appointment. In these circumstances, the principle laid down in *Keshav Chandra Joshi* was not

applicable. It is not a case where service rendered is either fortuitous or against the rules or by way of stopgap arrangement. Applying the principle laid down in *Direct Recruit Class II Engg. Officers' Assn.*, the writ petitioner is entitled to count service from 12-6-1985. Moreover, the Department has allowed the benefit of past service to other similarly placed incumbents as observed in the judgment giving rise to the appeal of the Department.”

(emphasis supplied)

In the said case, Their Lordships were considering the case, in view of Rules 4 and 7 of the Uttar Pradesh Regularisation of Ad Hoc Appointments (on Posts Outside the Purview of the Public Service Commission) (Second Amendment) Rules, 1989. Their Lordships observed that when the said rules itself have provided for regularization of the adhoc appointments and seniority counted from the date of appointment, the writ petitioner could not be deprived of the past service rendered by him from 12-6-1985 till the date of regularization. It could thus be seen that the case that fell for consideration before Their Lordships was with regard to regularization of the services of adhoc employees in accordance with the rules, which itself provided for regularization of services of such employees appointed on adhoc basis. Learned counsel for the Respondent – Corporation nor the learned counsel for Respondent

Nos.3 to 27 have been in a position to point out any such rules, which permit the regularization of services of the Contract Engineers from the date on which they were initially appointed and not from the date they were regularly appointed. On the contrary, as has been reproduced herein-above, it has been consistent stand of the Respondent – Corporation that the Contract Engineers were initially appointed on adhoc basis and that they would be entitled for regularization only when they were regularly appointed in accordance with the rules.

28] Insofar as the reliance placed by the Respondent – Corporation on the judgment of the Hon'ble Apex Court in the case of *the Direct Class-II Engineering Officer (supra)* is concerned, the same is pertaining to the quota and relaxation to be done in certain cases. We find that the issue which arises for consideration in the present case is as to whether the persons who have entered into service on adhoc basis, but who have been regularized subsequent to the regular employees being appointed after following the due process, would get higher seniority or not.

29] Insofar as the judgment in the case of *Jacob (supra)* is

concerned, the same is also pertaining to the issue of regularization. However, it does not concern the seniority between the two groups of employees i.e. direct and contractual. As such, the said judgment would not be applicable to the facts in the present case.

30] Insofar as the judgment in the case of *Sachin Dawale (supra)* is concerned, one of us (B. R. Gavai, J) was a party to the said judgment. In the said case, taking into consideration the peculiar facts and circumstances of the case, as there was no recruitment through MPSC for a very long period and that the Petitioners therein were appointed through the duly constituted selection committee consisting of various experts and that some of them were age bar, this Court in the peculiar facts and circumstances of the case directed them to be regularized. The issue which falls for consideration in the present matter is as to whether the Contract Engineers, who are appointed on adhoc basis and that too for a particular period, could be placed senior to the Regular Engineers, who were appointed after following the due selection process. The said issue did not fall for consideration in the case of *Sachin Dawale (supra)*.

31] In that view of the matter, we find that the action of the Respondent – Corporation impugned in the present Petition is not sustainable in law. Rule is therefore made absolute in terms of prayer clauses (a), (aaa), (b) and (c).

32] At this stage, Mr. Sudhir Talsania, learned Senior Counsel for Respondent Nos.3 to 27 prays for stay to the order passed by this Court.

33] Mr. Sandeep Marne, learned counsel for the Petitioners vehemently opposes the prayer for stay.

34] Taking into consideration the view that we have taken, we are not inclined to grant the said prayer. The said prayer is rejected.

35] In view of disposal of Writ Petition, the Civil Application does not survive and accordingly stands disposed of.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]